United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, THURSDAY, NOVEMBER 14, 2002 *No. 147—Part II*

Senate

HOMELAND SECURITY ACT OF 2002—Continued

Mr. BYRD [continuing]. We have done the same thing right here. This was concocted in secrecy in the darkness of the night. It didn't see the light of day until yesterday—484 pages. We are expected to pass this. We are expected to invoke cloture on it tomorrow and pass it and tell the American people they are safer after the passage of that monstrosity.

No doubt there are some good things about that bill. There are some good things in it. Some of the provisions in this 484-page bill have come out of Senator LIEBERMAN's committee's deliberations, and it passed. Some of these have been discussed before, but not all of them. There are a lot of provisions in this bill that had not seen the light of day until yesterday.

The press has been kept in the dark. The press is going to realize all too late what has happened to the people's right to know that we were going to pass right here in this bill. I am going to address those provisions briefly in a few minutes. I hope the press will stay tuned because I want to point out to the press what is about to happen to the people's right to know.

I have often had my differences with reporters, but I am a firm believer in the freedom of the press and in the responsibilities of the fourth estate. If the Congress is going to so willingly blindfold itself to the inner workings of this administration and this new bureaucracy, I hope the press will not be so compliant. Hear me, those in the fourth estate. You stay tuned. I will point out part of this bill in a few minutes. But if you haven't read it as yet, it is going to turn your stomach because you believe in the people's right to know. I hope it will keep a watchful eye. I am talking about the media. I hope the media will keep a watchful eye on this new agency. Unfortunately, provisions contained in this bill will make it harder for the fourth estate—harder for you in the press—and harder for the people to do so.

I still find it difficult to believe that the American war on terrorism hinges on the building of a new, huge bureaucracy. Our plan to eradicate a vicious, cunning nest of vipers is to reorganize the Government.

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MARK DAYTON, *Chairman.*

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I have read much about Senator BYRD and whether or not he would filibuster this bill. If I thought for a moment I could kill this bill here tonight by filibustering it, I would do it. But there are a lot of Senators here who wouldn't know a filibuster—a lot of people who wouldn't know a filibuster—if they met one on the way home. There are a lot of people who wouldn't know it if they met it in the middle of the road.

I intend to stand on my feet and try to expose some of the things in this bill that are not going to be good for the American people and which will not contribute to their safety.

Our plan to eradicate a vicious, cunning nest of vipers is to reorganize the Government. This is a massive reorganization. This is our battle plan—talking about the administration. This is its priority. This is our ammunition against the terrorist threat to our homeland.

A certain Senator here a few days ago talked about killing snakes. He talked about snakes in his State. He knew snakes when he saw them. Well, there are some snakes in West Virginia too. I knew about those snakes when I walked the red clay hills of southern West Virginia in Mercer County. We had copperheads back in those hills in those days and a few rattlesnakes. There are snakes. I know a snake when I see it. I saw a snake in this bill. This bill is a snake. If I could chop off its head, kill it dead, dead, dead, I would do it.

This 484 pages right here is what I am talking about. This is our initiative—this is the administration's ammunition. They know better than that. They know that is not going to make this homeland one whit safer.

I have listened very hard. I do not hear the American people clamoring for us to build a new, cumbersome, bureaucratic leviathan.

The midterm elections—despite what many of the pundits may believe—had little to do with the creation of this new Department. The American people weren't clamoring for this new bureaucracy. While Americans cast their ballots, they may have had hopes for safer communities than protection from terrorism, but I sincerely doubt that they were voting to create a huge, new bureaucracy.

Surely nobody believes that building a giant bureaucracy has suddenly become the nemesis to the threat of the acts of madmen on our people here at home.

With a battle plan such as the Bush administration is proposing, instead of crossing the Delaware River to capture the Hessian soldiers on Christmas Day, George Washington would have stayed on his side of the river and built a bureaucracy.

During the Civil War, President Lincoln would dismiss one general after another until he found one capable of building a better bureaucracy.

Perhaps what we are lacking to make this new idea really resonate with the American people is a powerful, stimulating slogan—a dramatic slogan such as the kind of slogan that we politicians slap on bumper stickers, one that would serve to inspire and unite our soldiers and our citizens.

Maybe we could draw from history to see how our new lust for a huge bureaucracy would fair.

I can picture Nathan Hale saying: I regret that I have but one bureaucracy to lose. I regret that I have but one life to give for my bureaucracy.

I can hear Captain John Paul Jones on September—I believe it was September 23, 1779—shouting: I have not yet begun to fight for my bureaucracy.

I can think of Commodore Oliver Perry hoisting his famous flag upon his ship with the motto: Don't give up the bureaucracy.

I can just imagine Commodore Stephen Decatur returning from the war on the Barbary Coast, offering his famous toast: My bureaucracy, right or wrong.

It just gives me chills to think of the people of Texas remembering the Alamo and being inspired to fight with the restoring battle cry: Remember the bureaucracy.

What about the professorial President Woodrow Wilson taking us into World War I with the proclamation: The world must be made safe for bureaucracy.

I was born during his administration. Nonsense, of course. But it has been said that necessity is the mother of invention. I guess then that political expediency has now become the mother of bureaucracy.

I don't think there is much doubt that the Senate will pass this legislation to restructure our homeland defense agencies. But my point is that the administration's plan is a sham. It is a sham. It is a political ploy. It worked well during the campaign. It was worked up in haste and for the wrong reasons.

Homeland security is a serious and dangerous matter involving the lives and the livelihoods of millions of Americans. We ought to be ashamed of ourselves to offer our people a quick bureaucratic pacifier instead of taking our time and working thoughtfully and carefully on an effective and lasting plan for the protection of the American people.

What we ought to be even more ashamed of, however, is the manner in which we are passing this bill. Prior to our recessing, hundreds of amendments were filed to make changes to the pending bill that had been reported by the Governmental Affairs Committee.

There were hundreds of amendments up at that desk. Yet Senators are choosing not to call up amendments. We are told that any amendments to this bill would force a conference with the House.

Now, get this. We are told that if we amend this bill, it will force a conference with the House of Representatives and could delay or even kill this bill. So Senators are being urged not to call up their amendments. And in many instances, they are choosing not to call up their amendments.

Is the Senate afraid of its own shadow? Are we afraid to think, to debate, to ask questions, to stand for something? Are we afraid to stand for something? Are we afraid to stand against a President of the United States? Is the Senate afraid to stand up against an administration, a political administration? Is the Senate afraid? Are Senators afraid to stand up against the President, to be the loyal opposition at this time of great distress?

It is a dangerous thing when a President believes that he is so right that he should be given any and all powers he deems necessary to achieve his ends. That is a dangerous thing. It is dangerous when a President believes that he possesses the people's consent to freely tamper with their rights and their liberties.

But it is considerably more dangerous when the elected officials such as ourselves, whose duty it is to protect the people's liberties against the excesses of an overreaching Executive, an overreaching White House, accede to a President's every request. Shame on us. Shame on us.

And it is even worse when we not only fail to impose restraint but actually aid and abet the Executive in a brazen power grab. That is exactly what this is.

The American people feel unsettled. They are nervous. They are jittery. They are scared. And they have every right to be. Their President has spent months and loads of taxpayers' dollars frightening them. Their Government has issued an unceasing proliferation of warnings about potential violence.

But the threats to our homeland go well beyond terrorist attacks. Our Nation is threatened, perhaps most seriously threatened, by a mentality that says that Presidents should have a free hand to do whatever they deem necessary whenever they deem to do it as necessary.

Our President has been speaking a great deal in recent months about our enemies and how they hate our freedoms. Mr. President, I doubt that they hate our freedoms. They hate our arrogance. They do not hate our freedoms. They hate our arrogance.

Our President has made protecting our freedoms a rallying cry. I have been working at protecting our freedoms for 50 years in this Congress. Fifty years come January 3 I have been working at protecting our freedoms. I have been helping to appropriate the moneys for our men and our women who serve in our military services.

The President has touched a raw nerve with the public, in speech after speech after speech about foreign terrorists who are attacking their liberties, and yet, in many ways, it is this President's proposals that are the most serious threats to the liberties of Americans.

We should be standing up and fighting for what is right in this legislation. That is the place to start to fight. That is where we start to fight to protect this land of ours, these people of ours, its institutions, the institutions of our country.

We should be standing up and fighting for what is right in this legislation. We talk about justice. Justice is fine. But what is right? We should be debating, offering amendments, and telling the American people like it is. We should be honest enough to admit that this new Department is a massive undertaking that is far more likely to provide political security for its proponents than to provide domestic security for the American people out there, at least for the foreseeable future.

I do not believe this is a time for us or for the American people to cower in a corner. I do not believe this is a time for the elected representatives of the American people to run like whipped dogs. This is a time for us to seize the power that was established for us by the courageous Founders of our Nation.

Mr. President, were it not for this Constitution, which I hold in my hand, you would not be presiding over this body at this moment. I say that to every Senator who sits in this body. And I say that for the people on the staffs of Senators. You would not be here. You would not be here, I would not be here were it not for this Constitution and for the great compromise—talk about a compromise—the great compromise which was entered into on July 16, 1787, out of which came this Senate, and the equality of votes of every State that is represented in this body.

This is not a time to be voiceless. This is not a time to be silent. This is not a time to vote for cloture and to hurry away home. This is not a time to give in and to give up on the ideals that led to the creation of our country.

Far too many Americans failed to go to the polls on election day and vote—far too many. I spoke of Nathan Hale, who said: ''I only regret that I have but one life to lose for my country.'' And how many Americans did not even walk around the corner to cast a vote? They did not give one vote for their country. Far too many felt that the outcome of the election was beyond their control, that their votes would make no difference.

Today, I see far too many Members in this Senate falling into the same desultory way of thinking. Our votes matter, if we have the guts to make them matter. But, no, we are going to tuck our tails between our legs and run like whipped dogs and vote for cloture and go home. That is not right.

The American people have a right to know what is in these 484 pages. My constituents have a right to know. Your constituents, Mr. President, have a right to know. The constituents of every Senator on both sides of the aisle have a right to know what is in this bill.

We Senators have a right to know what is in this bill. We Senators ought to insist that we not invoke cloture on tomorrow but that we wait. Invoking cloture is all right down the road somewhere, maybe a week from now, but we ought to take the time to study this bill. Our staffs ought to know what is in this bill. We ought to know what is in this bill before we cast our votes.

Yes, I admit the handwriting on the wall is all too obvious. But I will do what is right in my frail way of thinking and seeing things. I will vote against this bill, unless it is amended—unless it is amended.

(Mr. CORZINE assumed the Chair.)

Mr. BYRD. I will probably vote against it, anyhow, because we are being pressured into voting for something that has not had a committee hearing, not a single hearing, 484 pages. There has not been a single hearing on this bill. There have been no witnesses called to testify in support of this bill. There have been no witnesses who have had an opportunity to stand before a committee and oppose this bill.

That is no way to legislate. Yet we are going to pass one of the most far-reaching pieces of legislation that we have passed in my 50 years in Congress.

It will provide for a massive shift of power. To whom? To the President of the United States. If he were a Democrat, I would oppose this just as vociferously, just as strongly, just as bitterly as I oppose this piece of legislation right here. I don't oppose it because we have a Republican President. I am going to oppose it because it gives away the powers of the people. It provides for a massive shift of power to the executive branch. It upsets that delicate balance of power the Framers provided to the American people over 200 years ago.

The popularity of a President is a fleeting thing, a fleeting thing. Our duty to our Nation is not.

One serious problem with the legislation before the Senate is the expanded authority it gives to the executive branch to conduct its actions in secret. Here is where I hope the press, the fourth estate, will pay close attention.

I have great respect for a free press. I have not always been happy with what the free press has written about me, but in my 50 years, I think overall the press has been very fair to me. I have no complaints. Some of the things the press has said that I didn't like I deserved. I am for a free press.

One serious problem with the legislation currently before the Senate is the expanded authority that this legislation gives to the executive branch to conduct its actions in secret, protected from the oversight, protected from the scrutiny of the Congress, the media, and the American people.

An example of this expanded secrecy that has been added in this new bill can be found in the exemptions that it provides from the Federal Advisory Committee Act. This is section 871 of the new substitute that we have just been given, the substitute that fell like manna from heaven. But this didn't come from heaven, I can assure you. It fell into our laps about 48 hours ago without any warning, and we are asked to invoke cloture on this thing tomorrow.

Let me say that again. An example of this expanded secrecy that has been added in this new bill can be found in the exemptions it provides from the Federal Advisory Committee Act. Section 871 of this new substitute we have just been given provides the Secretary of Homeland Security blanket authority—get that, blanket authority—to exempt all advisory committees in the Department from existing public disclosure rules.

That is pretty serious. This provision was not included in Senator LIEBERMAN's substitute, but it has been slipped into this new bill which was made available to us, as I said, late Tuesday night of this week. I am told it was 5 in the morning. It appeared on the web site of the House Rules Committee, I believe, the night before, Tuesday night. It was made available to us just within these last 48 hours with the hope that Senators will not have enough time to scrutinize this dramatic change to an existing statute.

The statute I am talking about here, the Federal Advisory Committee Act, applies to the ad hoc committees that are often used in the executive branch to formulate policy. This statute, the Federal Advisory Committee Act, which has been on the books for 30 years now, requires the advice provided by these advisory committees is objective and accessible to the public.

The purpose of making this information available to the public is to allow the Congress, the media, and groups outside of Government to know how the executive branch is making important policy decisions. The role of this oversight and scrutiny from the public and a free press is central to upholding the principles of our government, of our constitutional system. It ensures that the people—the people—will be the ultimate judges of the wisdom of the policies of the Federal Government.

I understand this new Homeland Security Department will be wrestling with many issues of national security that should not be subjected to public disclosure rules. Sometimes these advisory committees will be dealing with classified intelligence information or with sensitive security policy, and making this information available to the public might compromise national security and the fight against terrorism. I understand that. But that is exactly why existing law allows the President of the United States, be he a Democrat or a Republican, to waive these public disclosure rules for any advisory committee for national security reasons.

The President can do that on a case-by-case basis in the current law. So the President has this authority today. He

will have it tomorrow. And he will be able to use it to protect any advisory committee in the Homeland Security Department from having to disclose information when national security information is involved. But he will be accountable for that. He will be responsible for that.

So why do we see an expansion of this authority given to the Secretary in this bill? Why do we see an expansion of this authority given to the Secretary of the Department of Homeland Security in this bill?

Advisory committees can already be exempted from public disclosure rules for national security reasons by the President on a case-by-case basis. So why does this bill, then, allow the Secretary of Homeland Security to exempt any committee, regardless of whether national security is pertinent?

Why is it in there? Why do we see this new blanket authority in this bill? I will tell you why. It is because this administration wants to shield itself from any scrutiny of the public. This administration has made it very clear that it does not want anyone meddling in executive branch decisions—not the Congress, not the media, not the American public.

Since the first day this administration took office, all we have seen is a concerted effort to prevent outside criticism of its policies and conduct. The White House has refused to share information or cooperate with the Congress at every turn—maybe not at every turn, but at all too many turns.

The Vice President has refused to release documents concerning a secret energy working group, even after court orders demanding that he do so. We have read in the newspapers that the Attorney General is trying to expand the powers of the Justice Department to operate in secret, appealing another court decision that rejected his new secrecy rule. Even Tom Ridge, the President's top man in the war on terrorism, refused to testify before Congress about the steps that the administration was taking to protect the American people.

With the President's support, top officials in this administration have stonewalled Congress—stonewalled the Congress. Tom Ridge stonewalled the Appropriations Committee of the U.S. Senate. I know; I am the chairman of that committee. Invitation after invitation was extended by my colleague, Senator STEVENS, and myself for him to appear before the Appropriations Committee to testify. The answer was no. With the President's support, top officials in the administration have stonewalled Congress, stonewalled the media, and they have stonewalled the American public. Now they are hoping to expand their ability to operate in secret, to allow even less public scrutiny. There it is. It is in the bill.

The provisions in the bill allow the Secretary to use ad hoc advisory committees to craft policy in secret, without making specific findings that such secrecy is necessary in any particular instance. This unnecessary new blanket authority will give the President carte blanche to expand the culture of secrecy that now permeates this White House.

This substitute language that we have just been given also provides the same blanket exemption from disclosure rules for the Justice Department's new Office of Science and Technology. This new exemption will allow John Ashcroft, the Attorney General, to conduct even more of his duties in secret, even after the courts and the press have recently rebuked the Justice Department for secrecy abuses. This Senate is being asked to authorize the Attorney General to cloak even more of the Justice Department's activities in secrecy.

I am worried that exempting this new Science and Technology Office will allow the Justice Department to provide special treatment for corporate campaign contributors who are pushing new technologies.

Let me say that again. I am worried that exempting this new Science and Technology Office will allow the Justice Department to provide special treatment for corporate campaign contributors who are pushing new technologies. These exemptions are unnecessary and they are a danger to our people's liberty.

I believe that I have a duty to the people I represent to do what I can to improve this legislation. So I hope to offer an amendment to strike these exemptions from the bill. I will do whatever I can do to improve the legislation and keep the people and the press from being locked out of the process. The people have a right to know.

I am not among those who are willing to let this Senate be beaten into rubber stamping the language sent to us by the House. It is our job as legislators to see that the Senate protects the interests of the people who sent us here and who will foot the bill for this behemoth department.

The public disclosure exemptions in this bill are a license for abuse. I do not believe that they are worthy of the Senate's approval. So I am doing everything I can to see that this Senate does not roll over at the command of any President—whether he is a Democrat or a Republican or an Independent—when there are dangerous provisions remaining in this bill that ought not be put into law.

These issues are too fundamental to let slide with the vain hope that we will get a chance to revisit them next year. Don't forget, it is easier to pass a law than it is to repeal that law. We only need a majority in each body to pass a law and have the President sign it. Once that law is on the books, in order to repeal it, a President can veto the repeal. And, then, if only one-third plus one in either body uphold that President's veto, that is the end of it. There won't be any repeal.

The Senate must act, and act responsibly, and we ought not to be in all that hurry to pass this legislation.

Having been up until almost 2 o'clock this morning, I am tired. I want to speak a little longer. I won't be able to speak tomorrow. The Senate is going to vote on cloture in the morning. And as I wet my finger and hold it to the wind, I sense that the pressure is going to be on tomorrow to invoke cloture on this bill.

Here it is, 484 pages. It has only seen the light of 2 days—yesterday and today. It has not been before a committee; there has not been a single hearing on this bill; not a single witness has appeared before any committee in support of this 484-page bill. I doubt that any Senator in this body knows everything there is to know about this bill. I do believe that the great majority of Senators know very little about this bill, and what little most Senators know about this bill comes about as a result of some of the provisions in the bill that have been lifted out of the legislation that was reported out of Senator LIEBERMAN's committee when the bill was reported earlier this year.

Mr. President, the pressure is on. We are going to be asked to vote for cloture tomorrow. I will be surprised if the Senate does not vote for cloture. But I appeal to Senators on both sides of the aisle not to vote for cloture. Nathan Hale regretted that he had but one life to lose for his country. I hope Senators will take the same view about their responsibilities to the people.

They have a responsibility to stay until they know what is in this bill, and not to invoke cloture on it until they know what is in it, until their staffs know what is in it, and until they, Senators, have had an opportunity to offer amendments to make corrections in the bill.

I daresay many Senators will find provisions in this bill they have not seen in any bill before, that are new to this bill, that are new to the Senate, and that they, those Senators, dislike. They have a duty to their constituents. I do not have to tell other Senators what their duties are to their constituents. They have the same duties to their constituents that I have to my constituents. But I have a duty to my constituents not to roll over and play dead, not to roll over and appear to be oblivious to what is in the bill, just pass it and go home and say: We have passed a bill creating the Department of Homeland Security. Whoopee. This will make us all safer.

This will not make us one whit, not one tiny whit safer.

That bill, if it passed tomorrow, would not be implemented for another year. It will take another 12 months before it is implemented. The same people who will be out there protecting the homes of the American people a year from today, if they are out there a year from today, will be out there tomorrow. They are out there tonight.

They are out there on the borders—the northern border, the southern border—the Atlantic coastline, the Pacific coastline, the gulf coastline, the ports of this country, the ports of entry.

They are out there tonight protecting the airports. They are protecting the ports of entry all over this country. They are protecting the nuclear facilities, the nuclear plants. They are standing at their stations in the law enforcement agencies. They are standing at their stations in the fire departments. They are standing at their stations in the health departments. They are out there now. They are out there tonight. When I go home to sleep tonight and pray the Lord my soul to keep, they will be out there. I will be asleep; they will be there.

This bill is not what is putting them there. They are already there, and they are being put there by the taxpayers' money that flows through the Appropriations Committee in this Senate. So they are there. Do not think for a moment that this country has to have this bill creating this massive bureaucracy in which there will be at least 28 agencies that will be crammed into a new Department—170,000 people employed.

May I say to the people sitting back here on the benches—I am talking to these staff people right back here—pay attention here—170,000 people employed in this new agency. They are not employed by virtue of these 484 pages in this bill.

The Senate apparently is on a path to rush to consider this legislation, and we can all say: Whoopee, let's go home now. We have created a Department of Homeland Security. Everybody is safer now.

But don't you believe it.

The Senate's legislative counsel did not finish drafting this behemoth bill until the wee hours of yesterday morning, and now Senators are being pressured to pass it without question and without comment. What a shabby way to treat the security and safety of the American people, those people who are looking right at us through those electronic lenses.

As I have said all along, this new Department likely will take many years to become effective. We should not simply put a new name on a hodgepodge of agencies and claim that the Nation is, ipso facto, instantly safer. What a sham. What a sham. A lot of Senators who vote for this are going to come to realize that when it is too late to change their votes. What a sham. Yet this legislation is being bull-rushed through Congress and is being hailed as the great homeland security panacea.

This new bill is 484 pages long. Here it is. I have not weighed it, but it weighs as heavy as 484 pages. Yet we will not be one whit closer to homeland security if it passes.

If the House and Senate wanted to provide true protections, we would be working to complete action on the appropriations bills instead of playing this gargantuan shell game. If the President wanted to do more than score political points in a rehashed retread of a stump speech, he would loose the bonds, he would cut the handcuffs from the House leadership and urge them to pass appropriations bills which contain critical homeland security funds that could provide real protection for our people, and provide it quickly.

Those dollars could make a difference today. Those dollars and the protections they would fund could save people's lives. We need not wait for a new Department to set up yet another huge bureaucracy. Instead, the House leadership is stuck in concrete. The appropriations bills may never see the light of day. There are 11 of them—11 of them—that have been reported from the Senate Appropriations Committee. They may never see the light of day, and the security of American people continues to be at risk.

How many tape recordings of Osama bin Laden do we need to hear before we start to take immediate action to protect ourselves in a meaningful way, not in a sham, sham legislative procedure that will produce another massive bill, massive shift of power, in a massive new bureaucracy? How many more threats do we need to hear? How many more threats need to be made?

Just in recent times, in recent hours the newspapers are reporting that U.S. intelligence officials believe that terrorist groups may be planning a new wave of attacks on Western targets. According to these reports, our intelligence agencies have detected a significant spike in intelligence chatter during the last 10 days that strongly indicate new assaults are being planned.

What more warning do we need? Do we have to wait until the chatter turns into screams of terror? Do we really believe this new Department of Homeland Security will provide the immediate protections that are so desperately needed? We are not only fooling ourselves, we are also jeopardizing the lives of the American people.

The new Department of Homeland Security will provide no immediate security—none. The legislation gives the President another year in which to put the pieces of this Department together. That is a year without any significant improvements to our Nation's protections. Maybe we should rename this the Department of Homeland Security Delay.

The appropriations bills, on the other hand, that are languishing in the other body controlled by the President's party would provide real security right now. All we have to do is just enact them.

The Senate Appropriations Committee reported appropriations bills for fiscal year 2003 that contained a total of $25.6 billion for homeland defense funding.

That is a lot of money, $25.6 billion for homeland defense. That is real money for the real defense of our homeland that could be available now, under our committee-reported bill, if the House Republican leadership on the other side of the Capitol could get White House permission to complete action on those appropriations bills. It could be done now.

The House is getting ready to leave town. They do not have to leave town. They could stay in town. We ought to pass those appropriations bills. That is money available now to protect lives and prevent future attacks. But under this constant stream of continuing resolutions, many homeland defense investments cannot take place.

The Commerce Justice State appropriations bill, the Treasury appropriations bill, the Agriculture appropriations bill, the VA/HUD appropriations bill, the Labor, Health and Human Services appropriations bill, these are fancy names that probably do not mean that much to anyone listening, but to the security and safety of the American people, these bills mean a whole lot more than a new letterhead on the same old Government stationery, which will come about as a result of the passage of this 484-page bill.

Instead, we are being told to create this new bureaucracy and put funding for homeland security on autopilot with a constant stream of continuing resolutions. It is an irresponsible path and one I hope Congress has the wisdom to avoid. The Senate's VA/HUD and Commerce Justice State appropriations bills provide more than $3.5 billion for police officers, for firefighters, and for other first responders. That is $3.5 billion that could be made available next week. All that has to be done is for the House to get the signal from the executive branch which controls the Republican leadership in the House. All that is needed is for the White House to unloose the shackles that are on the House leadership and say, pass that appropriations bill. We restored over $1 billion of cuts the President proposed for State and local law enforcement programs. That is real safety, without any delay.

What is the administration's response? The administration says we are spending too much money on the security of the American people.

Mr. President, you cannot place a price tag on homeland security. You cannot protect lives on the cheap.

The Senate Labor, Health and Human Services appropriations bill provides $3.8 billion to protect against biological and chemical weapons. We know that terrorists have them. We are fools if we do not invest in defenses against these weapons. The funds in these appropriations bills help to provide real savings now, without delay. You do not have to wait on passing a 484-page bill which cannot be implemented for another 12 months.

What is the President's response? Hold the line on the appropriations, he says. Hold the line. He has stopped the House Republican leadership from allowing these investments in homeland security to move forward.

Mr. President—I am talking to the President at the other end of the avenue—you cannot place a price tag on homeland security. You cannot protect lives on the cheap.

The Senate Agriculture appropriations bill includes more than $150 million for the Food and Drug Administration to ensure our food supply is protected from terrorism and to accelerate the development and approval of medicines and tests to protect Americans from bioterrorism agents. This is a real saving. There is no delay here. Just pass the appropriations bill. We stand ready. But the administration has the handcuffs on the House leadership.

Apparently the administration thinks a safe food supply and vaccines to counter anthrax are too expensive. I say once again, a price tag cannot be placed on homeland security. You cannot protect lives on the cheap.

Take the Senate Commerce-Justice-State appropriations bill. It funds new FBI agents. The Treasury appropriations bill funds critical border security initiatives. These bills represent billions of dollars for homeland security. They help to provide real safety without delay, but regrettably the White House says no deal. According to this administration, the price is too high.

In my 50 years in Congress, if the Lord lets me live a few more days, this is the most cynical and potentially most devastating political game any administration has ever played. I am talking about administrations under Republican Presidents and under Democratic Presidents.

While funding battles are not uncommon and while many Congresses and administrations have not agreed on all the priorities, there has never been such a dispute that threatens the security of the American people. This administration would rather protect its political backside than the lives of this Nation's citizens. It is a calculated, cynical, manipulative, and irresponsible approach that I pray does not result in lost lives.

It disgusts me that the President has worked with the House Republican leadership to delay these appropriations bills. That is exactly what has happened. You mark my word. After the new year, when there is a new administration that takes over and this body goes under Republican control, as the other body will be under Republican control, you watch how fast those appropriations bill will pass. They will then pass, and this administration will be able to say; see now how things work under this new administration, how fast we get things done. I think that is the game we will see.

In fact, at the administration's urging, the House of Representatives has not considered a regular appropriations bill in 16 weeks. That is 4 months. And the White House machinations have not stopped at the regular appropriations bills. At the direction of the administration, $8.9 billion for homeland security investments were squeezed out of supplemental appropriations bills approved unanimously by the Senate Appropriations Committee, made up of 15 Democrats and 14 Republicans. If the President were serious about homeland security, we would do far more than simply pass a feel-good bill of 484 pages that creates a new department. We would pass these appropriations bills. We would train our first responders. We would provide them with equipment to carry out their mission of protecting the American people. We would put more agents on the borders. We would close the security loopholes in our ports. We would buy vaccines and increase our capacity to handle an attack using a biological weapon. We would invest in immediate homeland security initiatives and not rely on a campaign slogan to protect us 6 months or 1 year or even 5 years from now.

I hope we will not try to sell the American people this bill of goods on homeland security. It is nothing but snake oil. A new department would be welcome, but it will not be enough. We need to do much more and we need to do it quickly.

The Senate Appropriations Committee reported appropriations bills for fiscal year 2003 that contained a total of $25.6 billion for non-DOD homeland defense funding, an increase of $5 billion over the levels approved last year. That is real money for the defense of our homeland that could be available now, under our committee-reported bills for fiscal year 2003, if the White House would but take off the shackles from the House Appropriations Committee and let it work, let it complete action on the bills in the regular manner.

This authorizing bill we are debating right now provides nothing immediately for homeland defense. It has a 12-month transition period built into it. It sounds good. It will make a good headline. But it does nothing immediately to increase the security of our country. The appropriations bills, on the other hand, would do something immediately. Right now, all we have to do is enact. That is real money for real protection.

Under the continuing resolution we are operating under now, the significant increases for homeland defense funding that we approved in our committee bills cannot take place. Let me give some examples of what will not be funded under the continuing resolution.

Under the continuing resolution, only $651 million will be available for the Office of Domestic Preparedness to train and equip State and local law enforcement personnel to handle biological and chemical weapons, this compared to $2 billion that would be available in the Senate Commerce-Justice-State appropriations bill. Crucial bioterrorism research will be postponed. The Senate Labor-HHS appropriations bill provided nearly $1.5 billion for bioterrorism activities at the National Institutes of Health. This would fund research and infrastructure improvements necessary to develop countermeasures against smallpox, anthrax, and other deadly pathogens. Bioterrorism funding for NIH under a long-term continuing resolution would be limited to approximately $107 million.

The fiscal year 2003 Senate bill contains a large increase for hospital preparedness funding. Why worry about local hospitals? Again, just today news accounts detail a warning from the FBI to hospitals in Houston, San Francisco, Chicago, and Washington, DC, that they may be targets of a terrorist threat perhaps from anthrax. That is getting close to home, Washington, DC. The $593 million worth of grants in the Senate appropriations bill are necessary to make sure hospitals have the proper equipment, the staff, and the training to handle a bioterrorism attack. A long-term continuing resolution, however, would provide only $129 million in fiscal year 2003 for this activity. In total, a long-term continuing resolution for the Labor-HHS bill would provide only $1.8 billion for bioterrorism preparedness in fiscal year 2003. This is $2 billion less than the committee-reported appropriations bill. What a difference.

Under the continuing resolution, only $540 million would be available to local fire departments, from FEMA, for training and equipping firemen for weapons of mass destruction. For fiscal year 2003, the Senate committee VA-HUD appropriations bill provided a total of $900 million for the fire grant program.

On September 11, 2001, in New York City, we learned that fire and police could not communicate by radio, undermining the response to those vicious terrorist attacks. This is a nationwide problem. We found that out as we conducted testimony on our appropriations bills earlier this year in hearings conducted by the Senate Appropriations Committee. We included $180 million in the committee bill for grants for interoperable communications equipment for firefighters, none of which would be available under the continuing resolution. Under the continuing resolution, $180 million that the committee approved for grants to upgrade State and local emergency operation centers would not be funded and $75 million for grants to upgrade FEMA's 28 research and rescue teams would not be funded.

The Coast Guard is also one of the largest agencies to be included in the new Department of Homeland Security. The Coast Guard just signed the largest procurement contract in the history of the entire Department of Transportation, the so-called deep water capability replacement project. It is a comprehensive effort to modernize the Coast Guard's aging fleet of ships, planes, and helicopters so that the agency can better execute its homeland security and other missions.

Under the continuing resolution—that is what we will be operating under—the Coast Guard will have to start delaying the procurement of long-range aircraft as soon as December. In fact, due to the absence of adequate funding, the Coast Guard will have to start paying contract penalties totaling $500,000 per month.

So at the same time as the Coast Guard is being merged into the new homeland security agency, the inadequate funding provided under the continuing resolution will mean the Coast Guard will delay the procurement of critical homeland security aircraft while simultaneously wasting half a million of the taxpayers' dollars every month on contract penalties.

The Senate committee Treasury-general government bill added $18 million to the Customs Service for container security administration. This funding allows for inspection of shipping containers before they reach U.S. ports. Currently, only 2 percent of the containers that come into this country are inspected. Yet this funding will not be available under the continuing resolution.

The Senate committee energy and water bill includes $64 million to provide for the security guards at critical Corps of Engineer infrastructure sites. Under a long-term continuing resolution, this funding would not be available. Pass the appropriations bill. There is the money. It is available.

This Congress faces a choice. Despite its myriad problems, we will likely pass this legislation to create a Department of Homeland Security. The President will make his speeches to try to convince the American people to feel good. My, we can feel good about this new Department we will have created. What the President will not tell the American people is that the shiny new Department will not be effective until far into the future. What he will not tell the American people is that in the interim, they—the American people—may be less safe rather than more safe because of the chaos and confusion inherent in massive Government reorganizations. What he will not tell the American people is that he continues—he, the President—to block investments that would help to protect the American people from terrorist attacks today.

If we truly want to protect our constituents, if we truly want to make a difference in our constituents' lives, we will provide the funds that are so critically needed. We will support the FBI. We will support the police officers. The funds will support our firefighters in our hometown. We will strengthen our border patrols and our port security. We will take steps to fight terrorism today. We will not wait until the station is ready at the new Department of Homeland Security. The price of continued delay is simply too great to fathom.

Mr. President:

The Moving Finger writes; and, having writ,
Moves on; nor all your Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all your Tears wash out a Word of it.

So, Mr. President, tonight I am writing the record. I will not have that opportunity tomorrow because on tomorrow the Senate will vote to invoke cloture. I urge Senators not to do that, not to vote to invoke cloture tomorrow. Senators should give themselves more time, give their staffs more time to study these 484 pages in this new bill, this bill that has not seen a committee witness, this bill that has not been in a committee room, this bill that was unknown to the Members of this Senate 48 hours ago—a massive bill providing for a massive shift of power to the President of the United States. And once that power is shifted, Senators, remember, it is going to be very difficult to retrieve that power. Yet the legislative branch is just about to do that.

The executive branch never hesitates to stand up in defense of its prerogatives. The judicial branch never hesitates to stand up in defense of its prerogatives. But the same cannot be said of the legislative branch. Nearly always in the legislative branch, half of the branch is made up of supporters of the administration. If it were a monarchy, these would be supporters of the king. If it were in the days of the Revolution, they would be Tories. Half the legislative branch stands up in the defense of the king, in the defense of the executive branch. Only half, if that many, stand up in defense of the legislative branch. Yet we all in this legislative branch, whether we are members of the party that controls the administration or not, we stand before that desk up there and we lift our hand to Almighty God and we put a hand upon the Holy Bible and we swear an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic.

Are we doing that? Are we supporting and defending this Constitution which provides for a balance of powers, a separation of powers, three departments equally balanced? Is that what we are supporting? That is what we swore to support. That is what we swore we would support. But not all of us are going to vote that way.

There are half of us in the two bodies, roughly speaking, who are always ready to run to the executive branch and uphold the executive branch against our own nest, against the legislative branch. I hope it will not be that way tomorrow. I hope that Senators will say whoa, whoa, whoa, just hold on here; let's just wait a little bit. Let's don't vote for cloture today. Let's have a few more days to debate this legislation, see what's in it, offer amendments to it, clean it up, protect the American people, their liberties and their rights. I call upon Senators to do that.

I have watched the Senate floor today. I have heard the assertion made that the Senate has been considering the pending homeland security bill for 7 weeks now. Let's be clear about that. The Senate just received this homeland security bill, not 7 weeks ago but just the night before yesterday. We have had access to it for 36 to 48 hours, perhaps. The Senate did spend 7 weeks debating another homeland security bill, but that bill is no longer before the Senate. That bill is no longer before the Senate. All of those weeks of debate and amendments have been thrown out the window. In its place we are now debating a new bill, crafted in secret, crafted behind the shades and curtains of darkness; a new bill which many of us have not had the time to read because we just received it. I haven't had time to read it. I have only read parts of it. I haven't had time to read this bill.

We were not involved in drafting this bill. I had nothing to do with the drafting of that bill. It did not go through the committee process. There were no hearings, no markups. It was drafted, not unlike the President's plan, behind closed doors and hidden away from the eyes of the American public. So I must say I am a little distressed when I hear Senators saying that the Congress should pass this bill quickly because we have exhausted debate on it.

I grow even more distressed when I read in this morning's papers that a number of controversial provisions had been quietly inserted into this new bill in the hopes that no one would notice them before the bill passed.

Congress Daily reported this morning that provisions have been inserted into this bill to eliminate or reduce a manufacturer's product liability. Sure enough, title VIII of the new bill would authorize the new Homeland Security Secretary to provide manufacturers with liability protections for a broad range of items, from drugs to life preservers, in case such equipment malfunctions or does not work. According to the Democratic staff of the Governmental Affairs Committee, even if manufacturers sold equipment, technology, or drugs that they knew would not work as intended, the manufacturer could not be held liable for punitive damages unless he knowingly participated in the terrorist act giving rise to the injuries.

Do Senators know that? Do Senators know that this bill does just that? Exactly. Do Senators know that?

Congress Daily reports that limited liability protections already in place for vaccines would be expanded in this bill to include vaccine components such as the preservative Thimerosal, manufactured by Eli Lilly and Company. These drugs, I am informed, are already the subject of class action lawsuits by parents who claim the product's high mercury levels have caused their children's autism.

I have heard other Senators expressing dismay about these provisions that have been slipped into this bill. I have heard other Senators expressing puzzlement, dismay, consternation, surprise—to find such provisions, to find

this bill as it is. And yet we are being asked to invoke cloture tomorrow, invoke cloture so that we limit ourselves in future debate to 30 hours, a total of 30 hours on this bill.

The American people out there don't know this. The American people are being told that this is a great bill, this is a good bill, we are about to create a Department of Homeland Security and you will all be safer, ladies and gentlemen, out there in the hills and the prairies and the valleys and the mountains. You will all be safer.

The American people are being hoodwinked. We are complicitous in going along with the idea—going along with this sham. We are all guilty of going along with this. Yet we are going to invoke cloture on ourselves. We are going to invoke the gag rule.

We hear that this Senate is the greatest deliberative body in the world—greatest deliberative body in the world, the Senate of the United States. Yet we have been on this bill now parts of 2 days—just parts—and tomorrow morning we are going to put the gag rule on. We are going to invoke cloture so that we will deprive ourselves of the opportunity and we will deprive ourselves willingly of the opportunity to expose the weaknesses of this bill—to expose to the people who send us here, the judges of our political fortunes. We are going to say no to the people who send us here when we put this gag rule into effect and say to ourselves that we are not going to be interested in debating this longer than 30 hours, if that much time is used. We are saying to the American people who send us here we are putting the gag rule on you. We are putting the blindfolder on you.

How many of us would like to go to the American people in the next campaign for reelection and tell them that we believe in blindfolding them, and we don't believe they should know what is in this bill. It has some good provisions, I am sure, but we are willing to shut ourselves off here.

This is a bad bill—bad because there are some provisions in it that are bad—not all but some provisions in it are bad. Some provisions we don't even know about. We intend to vote on it—pig in a poke, blindfold ourselves, gag ourselves. We are willing to do that.

Are we willing to draw our moneys, our salaries? The American people pay us to represent them, to protect them, to protect their liberties, to protect their Constitution. If the American people knew that there were certain provisions in here of which some Senators were just becoming aware, the American people would say to all of us: Hold up. Take a look at that bill. Don't you vote for that homeland security bill until you fully know what you are doing. They would say: Hold up here. Don't you come back to me asking for my vote again if you are going to vote to hoodwink the American people by shutting off debate so you can get out of there, so you can go home. We ought to be right here. Here is where we ought to be until we know what is in this bill. We ought not pass this bill now. We ought to pass the appropriations bills that provide real homeland security for the American people.

So these drugs, as I say, are already the subject of class action lawsuits by parents who claim the products with high mercury levels have caused their children's autism. Is this what the President's homeland security proposal is really all about—exempting multibillion-dollar pharmaceutical companies from lawsuits when the products they sell to the American public do not function properly or, even worse, injure or kill somebody—multibillion-dollar companies from lawsuits when the technological products they sell to the American people do not function properly? What is this? Is this a payoff for those companies for their contributions in the past election?

Yet another provision in the bill would require liability claims against smallpox vaccine manufacturers to go through the Federal tort system.

Let me say that again.

Yet another provision in the bill would require liability claims against smallpox vaccine manufacturers to go through the Federal tort system. The Federal Government would pay the damages. And punitive damages would be banned.

The new bill also would limit liabilities for airport screening companies and high-tech firms that develop equipment for domestic security. It would aid the airline industry by extending aviation war-risk insurance for a year, and giving airports another year to install baggage screening equipment.

I wonder how many Senators know that provision is in this bill.

According to the New York Times, the bill would reverse an earlier measure and allow American companies that have moved offshore in order to evade taxes to contract with the Homeland Security Department.

How about that? How many Senators know that? Let me say that again.

The bill would reverse an earlier measure and allow American companies that have moved offshore in order to evade taxes to contract with the Homeland Security Department.

These kinds of provisions underscore just how ridiculous this homeland security debate has become. Anyone who opposes this legislation will be labeled unpatriotic. You can count on that. The sting of that political attack is enough to allow gobs of complete and utter junk to be shoved in this bill and shoved through the Congress with lightning speed. The fear of being subjected to utterly vile campaign political attacks is allowing a slew of dangerous provisions—provisions that would never ever get through on their own—to be pushed along with hardly a glance. Just hold your nose, pinch it, and vote for cloture and vote for this bill. Go home feeling good. Oh, we passed some feel-good legislation. Whoopee, great, hot diggedy dog. We passed a piece of feel-good legislation.

The American people should be afraid. The American people should be very afraid not only of Osama bin Laden and Saddam Hussein but of the monumental cynicism driven by this White House, and regrettably unopposed by this body.

Mr. President, I apologize to the Senate, to the staff, to the pages, all who work in this body—they work hard; they work long hours—for detaining you from going home early and getting an early supper. We call it supper down in West Virginia. Call it dinner, if you wish. We have kept you waiting, and I apologize for my part. Who else has done it? I am the one rascal here who has kept you waiting. I apologize for that.

Had we not been faced with a cloture vote tomorrow, I could have waited until tomorrow and said these things. But when else am I supposed to say it? If cloture is invoked tomorrow, I will have no opportunity to say it. Then we only have 30 hours—all of us, 100 Senators have 30 hours—and I suppose that is an hour each at most.

There is a record standing. There is a record that stands with him who holds the waters in his hands; there is a record that stands. That record will be written, and it will be there for the next thousand years for all who want to read it.

I believe the American people expect us to oppose this way of legislating. It is not as our children are being told the way to make laws.

Mr. President, I end my remarks, as I began them earlier today, by reading from 1st Corinthians, chapter 14, verse 8 and verse 9:

> For if the trumpet give an uncertain sound, who shall prepare himself to the battle?
>
> So likewise ye, except ye utter by the tongue words easy to be understood, how shall it be known what is spoken? For ye shall speak into the air.

Mr. President, that is the way I began my remarks. If we pass this bill, we are going to be the trumpet that gives forth an uncertain sound. The American people are going to be told, and they are going to believe, that they are made more safe, but we will have sent forth an uncertain sound. The people will not be made more safe by this piece of legislation.

The PRESIDING OFFICER. Senator from Alaska.

Mr. STEVENS. Mr. President, I have two short statements that I would like to make concerning this legislation. The first deals with the use of appropriated funds.

As my colleagues know, one of the major issues confronting Congress with respect to establishing the Department of Homeland Security was the extent to which the Homeland Secretary would be given the authority to transfer funds between appropriations accounts or among the organizations and programs within the new Department.

Underlying this issue are two critical questions—how best to give the Homeland Secretary the flexibility he or she needs to organize and operate the new Department, and how best to preserve the Congress's constitutional authority to appropriate funds and to oversee their use.

Previous versions of the Homeland Security Department legislation included extensive language governing how the Department would allocate and use appropriated funds and funds generated through property disposal or gifts from outside the Federal Government.

The compromise embodied in the final version of the Homeland Security Department legislation now before us takes a somewhat different approach, but the net effect is the same: Congress's appropriations authorities are maintained. Transferred funds must be used for the purposes for which they were appropriated, and Congress must approve, in advance, the reallocation of transferred funds away from their originally intended purposes.

Language added to the final bill reinforces the requirement that personnel, assets, and obligations transferred to the new Department shall be allocated in accordance with section 1531(a)(2) of title 31, United States Code. That section of permanent law requires that funds transferred within or between Executive branch agencies to finance transferred functions or activities must be used for a purpose for which the appropriation was originally available.

During the final negotiations on this bill, any language dealing directly with use of the general authority to transfer funds was dropped, since it is an authorization act. That authority will be included in the continuing resolution that I hope we will pass to keep the Federal Government functioning after we adjourn or recess this year. Since virtually every annual appropriations act includes general transfer authority language, the negotiators agreed that it was more consistent and effective to include the new Department's transfer authority in an appropriations act. The continuing resolution is our first appropriations opportunity to accomplish this objective. I intend to see to it that it will be in the resolution if at all possible, and I believe it is already agreed to.

The negotiators did retain in the authorization bill the language regarding property disposal and gifts. The language also requires that the new Department submit a detailed budget request annually beginning with fiscal year 2004. That will be the request we receive next year.

The continuing resolution language provides general transfer authority of $500 million for fiscal year 2003 and the same amount in fiscal year 2004. It stipulates that this authority may not be used unless for higher priority items, based on unforeseen homeland security requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress. The language provides an additional $140 million in transfer authority for fiscal year 2003 for the salaries and expenses associated with the initiation of the Department.

The appropriations language further requires that the Senate and House Committees on Appropriations receive 15 days' advance notice before any funding transfer is made, and it establishes that the new Department will submit formal reprogramming requests to these committees for any proposed funding transfer. The language further stipulates that, of the total amount of transfer authority provided, and except as otherwise specifically authorized by law, not to exceed two percent of any appropriations available to the Home Secretary may be transferred between appropriations. I am satisfied those meet our general requirements, although they are not in the original request I made in the Governmental Affairs Committee on which I serve.

In many respects, these provisions mirror language that is included annually in every Department of Defense Appropriations Act. In addition, use of transfer authority would be subject to approval or disapproval in writing by the Committees on Appropriations, which would review reprogramming requests submitted and considered under established procedures based on the reprogramming procedures used by the Defense Department and Congress for defense transfer authority actions. We intend to mirror the procedure that has been used so successfully with regard to defense matters when we are reviewing national security matters.

Finally, the authorization bill includes a provision intended to help Congress to assess the long-term funding requirements for the new Department. That provision requires annual submission of a Future Years Homeland Security Program that projects spending requirements for at least five fiscal years. This detailed, multi-year document is due beginning with the fiscal year 2005 budget request.

The final authorization language, and the language in the continuing resolution, preserve 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.

This language, and the annual appropriations process, ensure that the Homeland Security has the appropriate authorities to organize and operate the new Department, and that Congress will remain directly engaged in deciding how appropriated funds are used, or reallocated, by the Executive branch.

In so doing, I believe, and it has been my intent working with the distinguished chairman, that this language preserves Congress's Constitutional and rightful role in our government—a role that the Founding Fathers intended and that our constituents demand. Our constitutional oath requires Members to assure that our constituents' demand for our oversight will be fulfilled.

I have a second short statement. I have been very interested in preserving the Coast Guard's non-homeland security mission performance under this bill. I will discuss for the Senate today a vitally important section of the homeland security legislation that we consider here.

This section—Section 888—is entitled ''Preserving Coast Guard Mission Importance,'' and its implementation is essential to maintaining without significant reduction the Coast Guard's non-homeland security capabilities and missions.

We all recognize the critical homeland security missions the Coast Guard performs. However, it is just as critical to the United States that the Coast guard effectively and successfully accomplish its non-homeland security missions. The criticality of these non-homeland security missions extends far beyond the 30 coastal and Great Lake states. These non-homeland security missions affect the maritime safety, law enforcement, environmental conditions, and economic security of our entire nation.

The Coast Guard's non-homeland security missions are marine safety, search and rescue, aids to navigation, living marine resources—including fisheries law enforcement, marine environmental protection, and ice operations.

All these missions 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. I am confident that my colleagues who also will speak on this section of the bill will attest further to the importance to their states and to the rest of the nation of preserving the Coast Guard's vital non-homeland security capabilities and missions.

Preserving these missions and capabilities is the fundamental intent and purpose of Section 888.

The Coast Guard cannot accomplish its non-homeland security missions effectively and successfully unless its current capabilities in these areas are preserved intact and without significant reduction. Section 888 mandates the preservation of these capabilities, and of the Coast Guard's authorities and functions in these areas, unless Congress specifies otherwise in subsequent acts.

I would add at this point that, since September 11, 2001, the Coast Guard has assumed greatly expanded homeland security responsibilities without seeing a reduction in its non-homeland security requirements. This is a strong justification for allocating even more total resources to the Coast Guard on an annual and long-term basis.

Section 888 further reinforces and protects the Coast Guard's non-homeland security missions and capabilities by preventing the diversion of any mission, function, or asset—including ships, aircraft, and helicopters—to the principal and continuing use of any other organization, unit, or entity of the Homeland Security Department. This restriction is intended to minimize, if not eliminate, any prospect of the diversion from the Coast Guard of the personnel, equipment or other resources needed to perform its non-homeland security missions. Personnel details or assignments that do not reduce the Coast Guard's capability to perform these missions are permitted.

Section 888 further prohibits the Homeland Secretary from reducing the Coast Guard's non-homeland security missions and capabilities substantially or significantly unless Congress specifies otherwise in subsequent Acts.

The Homeland Security Secretary may waive this restriction for no more than 90 days, but he or she must first declare and certify to Congress that a clear, compelling, and immediate need exists for such a waiver.

If he or she exercises the waiver authority, the Homeland Secretary must submit to Congress a detailed justification. Thus, the elected Senators and Representatives of the American people will have an opportunity to determine whether they agree or disagree with the waiver. We will have the opportunity to assess the impact of such a waiver on the Coast Guard's non-homeland security missions and to make our views known should there be any cause for concerns.

The language in Section 888 does provide more flexibility than the Coast Guard-related language in the earlier versions of the Homeland Security Department bills that we have been debating since July. However, this latest language still will protect the Coast Guard from any major changes to its non-homeland security missions and capabilities because it clearly does not provide the authority to make wholesale and sweeping changes in these areas.

This final language also includes other important provisions that will contribute to the Coast Guard's overall well-being and effectiveness as part of the new Homeland Security Department, as well as help preserve its non-homeland security missions and capabilities. These provisions have been carried over from at least one of the previous versions of the legislation, or they have been crafted to further enhance the Coast Guard's position in the new Department.

These provisions include language transferring the Coast Guard to the new Department as a freestanding and distinct entity that is not under the jurisdiction of any of the Department's new directorates, and language ensuring that the Service's Commandant shall report directly to the Homeland Secretary without being required to report through any other departmental official.

Take separately and together, these subsections strengthen the institutional position of the Coast Guard and the Commandant within the Department, thus enhancing the Service's ability to compete for resources and to influence policy in both the non-homeland security and homeland security areas. They are an unambiguous statement by the Congress about the importance of the Coast Guard and all its missions within the Department.

Another subsection requires the new Department's Inspector General to report annually to Congress on the mission performance of the Coast Guard, with a particular emphasis on the non-homeland security missions. This information should help Congress identify whether additional actions are needed to preserve these non-homeland security missions and capabilities.

The Homeland Secretary also is required by another subsection to report to Congress not later than 90 days after enactment of the Act on whether the procurement rate in the Service's top-priority modernization program—the integrated deepwater system—can be accelerated by 10 years. Timely implementation of the Deepwater program is essential to maintaining and improving the Coast Guard's capabilities to accomplish all its missions. Congress should consider whether accelerating the program is an affordable and cost-effective way to accomplish these objectives, especially in the non-homeland security area.

A final subsection ensures that the conditions and restrictions in Section 888 shall not apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States code. It would be inappropriate to apply these conditions and restrictions under such circumstances. Under section 3 of title 14, the Coast Guard becomes part of the Navy in Wartime or as directed by the President.

In summary, Section 888 resulted from productive negotiations with the White House and our House colleagues during which all sides strived to make reasonable compromises that would enable Congress to pass a final version of the Homeland Security Department legislation during this post-election session. Refinements suggested by the Coast Guard also are included in the language.

The language maintains the structural and operational integrity of the Coast Guard, the authority of the Commandant, the non-homeland 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. The language is clearly intended to assure that the important homeland security priorities of the new Department will not eclipse the Coast Guard's crucial non-homeland security missions and capabilities.

Section 888 strikes the right balance at this time between maintaining the Coast Guard's vital non-homeland security missions and capabilities and permitting it to carry out important homeland security responsibilities.

Just as importantly, this language and the annual appropriations process, ensure that Congress will remain directly engaged in deciding the extent to which any significant changes occur in the future to the Coast Guard's non-homeland security missions and capabilities. Congress's continued and direct engagement in such matters is essential given the importance to the American people of these missions and capabilities.

And again, these missions and capabilities are vital to my State of Alaska.

I thank my distinguished friend for allowing me to make these two statements. I am late to a meeting. I wanted to make sure we explained to the Senate what we have done in modifying this bill.

I know it does not meet totally the requirements and approval of my friend from West Virginia. But I do think, under the circumstances, that we will have this continued role of supervision and we will retain the same type of control over reprogrammings of the new Homeland Security Department that we have over the Department of Defense. We should be able to continue in the future the same kind of Congressional connection to the changes in the use of funds—and there will be changes, based on changing priorities, changing circumstances—and we are part of that process. It will not be done without the prior approval of Congress.

I think I can assure my friend, in my judgment, we have preserved to the maximum extent possible our constitutional role in this process as it goes forward. There is no question every appropriations bill annually will address this issue and we will address it as we have in connection with defense matters in the past.

I thank my friend from West Virginia.

Mr. BYRD. Mr. President, the distinguished Senator is welcome. I appreciate what he has said. I hope the Senator's assurances—I know they are sincerely given—will prove to be direct and true. I must say I have great concerns about this legislation as it is written as to the verbiage that we find in this new package that is on our desks today. It made its appearance yesterday. I hope the distinguished Senator from Alaska is accurate and that he is correct, and that the assurances which he has been given and which he is giving will prove to be the case.

I have a great deal of confidence in my friend from Alaska. I have implicit confidence in him. I have never had that confidence shaken. But that confidence I have in him does not extend beyond him, I have to say truthfully, to the people in this administration. But I do trust my friend and I know he will try to his level best to see to it that the administration deals fairly

and squarely with us in the appropriations process.

With that, I again thank him.

Mr. STEVENS. Mr. President, if the Senator will yield——

Mr. BYRD. Yes, I yield.

Mr. STEVENS. I give the Senator my assurance we will continue to work together to assure we maintain our constitutional role in the activities of this new Department. But I also feel it is absolutely necessary that this bill be passed this year because if it is not, regardless of the size of the bill, it will literally die at the end of December and we will have to start all over again. With the tensions facing the world and challenges our Government faces to maintain homeland security, it is absolutely essential we start forward. We have a slight disagreement on that. But I do believe this bill gives us a framework to work with this subject.

I think the ongoing responsibility to assure the new Department will continue to be effective will primarily rest with the appropriations process. This will be an enormous demand, a new demand on our Treasury, to fund a wholly new type of homeland security.

We are consolidating a whole series of agencies, hopefully bringing about some new efficiencies. But it will require increased money.

Senator BYRD and I have, will continue to have, the role of seeing to it the Senate's operations with regard to the appropriations process are fully understood by the new homeland security department and its personnel, and that we will work effectively to see to it we fulfill our constitutional responsibility with regard to control of the people's money.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I have never seen anything in the demeanor of the distinguished Senator from Alaska, anything in his words, anything in his daily activities, the record he has made here, that would create any doubt, as far as I am concerned, in him and his intention to carry this out. I have to say I don't have the same kind of confidence in the people at the other end of the avenue. I think we are making a huge mistake in passing this bill at this time.

I think the appropriations the distinguished Senator from Alaska and I have worked together in making possible, along with the other members of our committee—I think those appropriations, which have not been signed into law by the President, some of which have not passed the other body, and most of which have been held in check by the other body at the behest of the administration—those would have given to the American people far more security than would this bill. But as to the Senator, my trust in him—as I said it before and I will say it again—is implicit. I have no doubt he intends to do the best he can to see this appropriations process goes along as the Framers and as our predecessors have intended.

Mr. STEVENS. I thank the Senator.

Mr. AKAKA. Mr. President, I rise to discuss the critical distinctions between the legislation as reported out by the Governmental Affairs Committee and the House passed bill, creating a Department of Homeland Security.

I think it is wise to proceed cautiously when creating a mega-Department of Homeland Security which would encompass approximately 22 agencies and involve about 170,000 employees. We all recognize that we face new threats, and we all recognize the need to better coordinate efforts to protect Americans from these threats. However, it is also critically important, as the distinguished senior Senator from West Virginia has repeatedly noted, to consider carefully what is being proposed to ensure that any legislation enhances our security and does not detract from it.

William Safire describes in Thursday's New York Times how the House proposed Homeland Security Act will create a computerized dossier on the private life of every American citizen. I urge my colleagues to read Mr. Safire's prescient column entitled, ''You Are a Suspect''. His arguments are one reason why we should proceed cautiously to creating a Department of Homeland Security.

The President compares the reorganization of agencies within the federal government into a new Department of Homeland Security to the creation of the Department of Defense after World War II. But the two departments that were combined to create the Department of Defense, the Department of the Army and the Department of the Navy, had the same primary mission, to defend the United States. They had similar cultures and management priorities. This is not true of the proposed new Department of Homeland Security. Many of the agencies, such as the Coast Guard, the Immigration and Naturalization Service, and the Federal Emergency Management Agency, have varying missions, priorities and cultures.

Any far-reaching change to the structure of the federal government demands thorough and open discussion. Senator LIEBERMAN has done a great service to his country by holding hearings and debating extensively the structure of such a department. But there needs to be further debate and amendment to the proposal offered by the Republicans.

Let me make a dozen points as to why the legislation reported out by our Governmental Affairs Committee, which was subjected to numerous public hearings, represents an improvement over legislation passed by the House last night and why the House proposal, supported by the President, is seriously flawed.

First, the House proposal raises serious concerns about the collection, use, and dissemination of private information, the issue addressed by Mr. Safire. It gives the Secretary broad access to information relating to investigations and places restrictions on the authority of the inspector general to conduct inquiries into the new department's operations. Our committee substitute corrected this oversight by creating both a strong Civil Rights Officer and a strong Chief Privacy Officer.

The privacy officer would assist the Department with the development and implementation of policies and procedures to ensure that privacy considerations and safeguards are incorporated and implemented in programs and activities, and that information is handled in a manner that minimizes the risks of harm to individuals from inappropriate disclosure. Such officers are necessary to protect Americans from encroachments on their civil liberties.

The committee-reported legislation created a powerful civil rights officer, ensuring compliance with all civil rights laws, coordinating with the administration, assisting in the development and implementation of civil rights policies, and reporting to the Inspector General on matters warranting further investigation. In contrast, the new bill just passed by the House would only require the Civil Rights Officer to review and assess alleged abuses and report to Congress. In the House bill the Secretary appoints the officer and in the Governmental Affairs committee-reported bill the President appoints and the Senate confirms the officer, ensuring greater accountability. The Committee alternative worked to ensure that civil rights were not violated in the first instance.

The threat of a ''Big Brother'' new department cannot be overemphasized. With the President proposing programs like the Terrorism Information and Prevention System, Operation TIPS, a national program to encourage volunteers to report suspect activities to the Department of Justice, and the Department of Defense's new ''Total Information Awareness,'' we need strong protections against violations of Americans' privacy and civil rights. The first defense of our freedom comes from a system with checks and balances. The House proposal, supported by the President, does not contain sufficient checks and balances.

Second, under the first House-passed bill and the President's original proposal, whistleblowers were not protected. Merit Systems Protection Board, MSPB, appeal rights as well as Office of Special Counsel, OSC, enforcement were not included. I am pleased to say that under the proposal before us today, whistleblowers retain most of their rights. However, the bill does not go far enough. Due to the waiver of collective bargaining rights, third-party arbitration may not be protected for those federal employees who are union members and blow the whistle. Third party arbitration is an effective way to resolve whistle blower cases due to the hostile decisions of the Federal Circuit.

Third, the administration proposal transfers the Transportation Security

Agency, TSA, into the new department. Baggage screeners are our first line of defense against terrorism on our airlines, and they need to have the same protections as our border patrol agents, INS employees, and custom inspectors so that they can come forward to disclose risks to our public health and safety. The committee's bill, as a result of an amendment offered by Senator LEVIN and myself, gave full whistleblower rights to baggage screeners and their supervisors and to contract screeners. This is something that the House proposal fails to do.

Fourth, the new administration-supported bill gives minimal assurances that non-homeland security functions in the 22 agencies to be absorbed in the new Department will be preserved and not eliminated or diminished. The committee's amendment, which I offered with Senator CARPER, required that all non-homeland security functions of each agency be identified, along with the resources needed to preserve these functions, and the additional changes needed to ensure that non-homeland security functions would not be diminished. The new proposal drops this critical reporting requirement. In fact, the new bill removes all reports to Congress which would allow Congress to monitor closely the creation of the new department and to ensure vital non-homeland security functions are preserved.

Fifth, the committee-reported bill provided critical management guidance to the development of an effective homeland security mission. Agencies need specific guidance on how to achieve success. There are over 40 federal agencies with homeland security missions—some to be within the new department but others to remain outside. For many, homeland security is a new responsibility that must be added to existing missions. Agencies will need to rationalize their new homeland security missions with their existing responsibilities. The committee's amendment provided for a process for ensuring that this occurs. The House proposal does not.

Sixth, the House-passed bill creates a new Under Secretary for Information Analysis and Infrastructure Protection with two subordinate directorates, including one for intelligence which is given extraordinary access to sensitive information, both domestic and foreign. Under the House formulation as supported by the President, the new Secretary can trump the authority of the Director of Central Intelligence. The new directorate will duplicate work already being performed by the CIA's Counter Terrorism Center. Furthermore, Section 202 of the President's bill requires all agencies to provide all information to the new Department, including information which might pertain to intelligence sources and methods, without the Secretary even having to request that information. This gives this new office unprecedented access with few checks and balances, suggesting that the new office may have the capability to intrude to an extraordinary extent into the private lives of individual American citizens. These are very worrisome developments. The new formulation risks endangering our individual, as well as our national, security. Senator THOMPSON, Senator LIEBERMAN, Senator LEVIN and I had worked out an amendment which was contained in the committee bill. This amendment should have been accepted by the President. I am deeply troubled concerning the administration's new mission for the Department's intelligence directorate.

Seventh, the latest proposal does not address the serious shortcomings across the Federal Government in communicating security threats to the public. The American people are confused and frustrated by threat advisories without direction and repeated statements by the administration that future terrorist attacks are inevitable. The committee bill ensured that the Secretary of the new Department worked with state and local officials to develop more effective alert systems, more useful warnings, and improved communication with the public and private sector. In short, the Governmental Affairs Committee's legislation would have empowered the American people to play a role in the war on terrorism.

Eighth, this new proposal transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security. However, many potential agriculture terrorism diseases, such as anthrax, are not studied at Plum Island. Rather than pulling off one piece of the Department of Agriculture's much needed and underappreciated laboratory network, the Governmental Affairs Committee alternative left Plum Island where it was and instead ensured coordination and consultation between the Department of Homeland Security and Agriculture on bioterrorism research priorities.

Ninth, the House proposal does not address serious shortfalls in emergency preparedness and response capabilities for agricultural terrorism. The Lieberman alternative acknowledged the importance of agriculture to our national economy and the dangers that an infectious animal or plant disease could pose to human health, rural America, and our Nation's economy. A large scale agricultural disease outbreak, whether of natural or deliberate origin, will require rapid and coordinated efforts by the Department of Agriculture, the Federal Emergency Management Agency, the Environmental Protection Agency, the Departments of Health and Human Services, Transportation, Defense, and Justice, and local and State emergency managers. The committee's amendment ensured that agricultural health diseases were considered in security assessments and that the animal health and agriculture communities would be included in planning, training, and response activities.

Tenth, in the name of flexibility, the President's initial proposal waived all of the provisions of title 5 leaving federal employees without protection from discrimination or whistleblower retaliations. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining rights and appeal rights. One of the key factors to the so-called success of the Federal Aviation Administration, FAA, and the Internal Revenue Service, IRS, two agencies that have managerial flexibilities, is the strong role federal labor unions play in the shaping of the personnel system and in resolving employee disputes through third-party arbitration. This third-party arbitration is even more critical since cases involving coercion to participate in political activity, violations of veterans preference rights, giving unlawful preference or advantage to any employee, or other prohibited personnel practices can no longer be appealed to an independent body such as the Merit Systems Protection Board, MSPB. The personnel system at the FAA removed MSPB appeal rights in 1996 only to have them reinstated by Congress in 2000 at the urging of Federal employees and managers.

While the merit system principles are designed to ensure that Federal employment is efficient, fair, open to all, and free from political interference, the civil service rules of title 5, reinforced by collective bargaining rights, provide the framework for implementing and enforcing merit principles. Without such laws in place, the principles we all strive for cannot be reached. The Governmental Affairs Committee's reported bill preserved all of title 5, protected collective bargaining rights, and provided additional flexibilities governmentwide.

Some 25 years ago, the Civil Service Reform Act, CSRA, of 1978 responded to the same issues confronting our Government today. The act established the principles of openness and procedural justice that define the civil service today. It created the Merit Systems Protection Board and the Office of Special Counsel to protect the rights of Federal employees. The Federal Labor Relations Authority was created to oversee labor-management practices. The act provided a statutory basis for the collective bargaining rights of Federal workers. It prohibited reprisals against employees who expose government fraud, waste and abuse. Those in the Federal workforce demonstrate their loyalty and dedication not just to their employer but to their country every day. On September 11, the Federal workforce responded with courage, dedication, and sacrifice. Why is the President repaying their sacrifice by undermining their rights and our civil service by proposing these changes?

Eleventh, the House legislation fails to protect veterans by allowing the

waiver of chapter 77 of title 5 relating to appeals. This would make veterans go to an agency management-operated process to challenge anti-veteran personnel actions by the same agency management. Under current law, veterans who believe that they have been denied a position or have been subject to a ''designer'' Reduction-In-Force, RIF, action in violation of veterans' preference requirements can challenge such wrongful actions through the Merit Systems Protection Board or through a union grievance procedure. This will no longer be possible under the House bill. The Committee's bill would have preserved MSPB review of veterans' preference complaints. Ironically, as we are in the midst of a war on terrorism and have authorized a war against Iraq, the Administration is weakening veterans' preference rights. This is fundamentally wrong.

Twelfth, the House proposal and the Governmental Affairs Committee-reported bill include provisions protecting the confidential sharing of critical infrastructure information. With cyber attacks on the rise, government and industry leaders have been seeking a way to facilitate the sharing of information related to cyber vulnerabilities and attacks. Sharing such information is important because 85 percent of the Nation's infrastructure is controlled by private utility, telecommunications, or other similar companies. Despite the need to facilitate information sharing, I question the extent to which such information will be protected and the impact of such protections on environmental and public health laws.

In general, the owners and operators of critical infrastructure are concerned about the type and scope of information they are being asked to submit to the government. This data deals with vulnerabilities, incidents, and remedies which, if made available to business competitors or to the general public, could compromise their competitive position, expose them to liability, disclose sensitive information to terrorists and others who might wish to disrupt the function of their infrastructure, or harm their public relations.

However, current law provides adequate protection to the private sector for disclosing this type of information to the Federal Government. Nonetheless, industry has expressed its concern over non-binding case law that could be overturned. As such, the Governmental Affairs Committee bill provided a narrow exception to the Freedom of Information Act which closely follows current law. This provision was designed to facilitate the sharing of information with the Federal Government, while at the same time providing citizens with necessary information on public health and environmental issues. The Committee bill was careful not to provide an inadvertent safe harbor for those who violate Federal health and safety statutes.

For these reasons, I believe that the Governmental Affairs Committee's legislation offered a more effective approach to guarding homeland security than the proposal advocated by the President who recently stated that ''our job—our government's greatest responsibility is to protect the American people. ''I agree with the President, but I do not agree that by voting for the President's flawed proposal we will be adequately protecting the American people.

Mr. JEFFORDS. Mr. President, I would like to commend Senator CORZINE for his efforts to address the serious issue of chemical site security. The Chemical Security Act, S. 1602, which I cosponsored, would require ''high priority'' facilities to improve security and reduce hazards. The bipartisan and strong support for this issue was demonstrated last July when the bill unanimously passed the Senate Environment and Public Works Committee.

Across the country, thousands of industrial facilities use dangerous chemicals in amounts that could endanger nearby communities if the facilities were attacked by terrorists. According to the Environmental Protection Agency's Risk Management Planning program, there are 123 facilities where a release of chemicals could threaten more than 1 million people. There are also more than 700 facilities from which a chemical release could threaten more than 100,000 residential neighbors. Yet there is no Federal security standard for chemical facilities, no Federal guidelines on facility proximity to neighboring communities, and no Federal agency overseeing the operations and safety of these facilities.

This bill is not intended to address chemical accidents. The Clean Air Act already provides existing authority. However, a review of the chemical accident data provides clear insight into the dangers associated with chemical releases from these facilities. Federal data suggests that in 1998 there were almost 50,000 incidents—fires, spills and explosions—over 100 deaths, and nearly 5,000 injuries, related to chemical industrial accidents in the United States. Some analysts suggest that for each catastrophic chemical accident that causes a fatality, there are 300 recordable incidents and 30,000 near misses. One estimate suggests that U.S. chemical accidents cost about $15 billion a year.

In 1999, Congress required the Department of Justice to issue, within 3 years, a report to Congress on the vulnerability of chemical facilities to criminal and terrorist activity. For over a year, the Senate Environment and Public Works Committee has been asking for this report. Beyond a very thin and useless preliminary draft, the administration has not complied with this requirement of the Clean Air Act amendments. The Justice Department claims that funding constraints have impacted their work. This excuse is completely unacceptable, as is the administration's delay in addressing what may be this Nation's biggest terrorist vulnerability. Three years ago, Congress recognized the potential risks to our Nation's chemical security. Not 1 more year or month should pass with this issue unresolved.

Press reports highlight the public's frustration. In September, Newsweek reported a failing grade to the Federal Government in protecting chemical plants and other hazardous materials. I believe the article accurately described the forces blocking action: ''industry lobbyists and infighting among a multitude of government agencies trying to defend their turf have combined to hold (Governor) Ridge's office and the Environmental Protection Agency at bay.''

I ask my colleague to step beyond bureaucratic delays and special interest pressures to think of the families that could be impacted by our inaction here today. We must act on this issue as soon as possible.

Mr. President, I yield the floor and suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I extend my appreciation to the Senator from Iowa who has other things to do, but he has agreed to be here for a few minutes.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 788, 789, 851, 911, 922, 926, 1031, 1032, 1033, 1034, 1071 through 1135, 1147 through 1176; and all nominations placed on the Secretary's desk. I further ask that the nominations be confirmed en bloc, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and any statements be printed in the appropriate place in the RECORD, and the Senate then resume legislative session, with the preceding all occurring with no intervening action or debate.

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

The nominations considered and confirmed en bloc are as follows:

NATIONAL LABOR RELATIONS BOARD

Rene Acosta, of Virginia, to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 2003.

Dennis P. Walsh, of Maryland, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2004.

DEPARTMENT OF ENERGY

Kyle E. McSlarrow, of Virginia, to be Deputy Secretary of Energy.

THE JUDICIARY

John M. Rogers, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

DEPARTMENT OF AGRICULTURE

Phyllis K. Fong, of Maryland, to be Inspector General, Department of Agriculture.

FEDERAL COMMUNICATIONS COMMISSION

Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2003.

DEPARTMENT OF THE TREASURY

Wayne Abernathy, of Virginia, to be an Assistant Secretary of the Treasury.

FEDERAL MARITIME COMMISSION

Rebecca Dye, of North Carolina, to be a Federal Maritime Commissioner for the term expiring June 30, 2005

DEPARTMENT OF TRANSPORTATION

Roger P. Nober, of Maryland, to be a Member of the Surface Transportation Board for a term expiring December 31, 2005.

REFORM BOARD (AMTRAK)

David McQueen Laney, of Texas, to be a Member of the Reform Board (Amtrak) for a term of five years.

THE JUDICIARY

Stanley R. Chesler, of New Jersey, to be United States District Judge for the District of New Jersey.

Rosemary M. Collyer, of Maryland, to be United States District Judge for the District of Columbia.

Mark E. Fuller, of Alabama, to be United States District Judge for the Middle District of Alabama.

Daniel L. Hovland, of North Dakota, to be United States District Judge for the District of North Dakota.

Kent A. Jordan, of Delaware, to be United States District Judge for the District of Delaware.

James E. Kinkeade, of Texas, to be United States District Judge for the Northern District of Texas.

Robert G. Klausner, of California, to be United States District Judge for the Central District of California.

Robert B. Kugler, of New Jersey, to be United States District Judge for the District of New Jersey.

Ronald B. Leighton, of Washington, to be United States District Judge for the Western District of Washington.

Jose L. Linares, of New Jersey, to be United States District Judge for the District of New Jersey.

Alia M. Ludlum, of Texas, to be United States District Judge for the Western District of Texas.

William J. Martini, of New Jersey, to be United States District Judge for the District of New Jersey.

Thomas W. Phillips, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Linda R. Reade, of Iowa, to be United States District Judge for the Northern District of Iowa.

William E. Smith, of Rhode Island, to be United States District Judge for District of Rhode Island.

Jeffrey S. White, of California, to be United States District Judge for the Northern District of California.

Freda L. Wolfson, of New Jersey, to be United States District Judge for District of New Jersey.

EXPORT-IMPORT BANK OF THE UNITED STATES

Philip Merrill, of Maryland, to be President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

DEPARTMENT OF STATE

Kim R. Holmes, of Maryland, to be an Assistant Secretary of State (International Organizations).

Maura Ann Harty, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State (Consular Affairs).

Ellen R. Sauerbrey, of Maryland, for the rank of Ambassador during her tenure of service as the Representative of the United States of America on the Commission on the Status of Women of the Economic and Social Council of the United Nations.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Quanah Crossland Stamps, of Virginia, to be Commissioner of the Administration for Native Americans, Department of health and Human Services.

NATIONAL INDIAN GAMING COMMISSION

Philip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission for the term of three years.

FARM CREDIT ADMINISTRATION

Nancy C. Pellett, of Iowa, to be a Member of the Farm Credit Administration Board, Farm Credit Administration for a term expiring May 31, 2008.

DEPARTMENT OF DEFENSE

Otis Webb Brawley, Jr., of Georgia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

NATIONAL LABOR RELATIONS BOARD

Robert J. Battista, of Michigan, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2007.

Wilma B. Liebman, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2006.

Peter Schaumber, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2005.

NATIONAL COUNCIL ON DISABILITY

Joel Kahn, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Patricia Pound, of Texas, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

Linda Wetters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

David Gelernter, of Connecticut, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

NATIONAL MUSEUM SERVICES BOARD

A. Wilson Greene, of Virginia, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2002.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

Maria Mercedes Guillemard, of Puerto Rico, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Nancy S. Dwight, of New Hampshire, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Peter Hero, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

Thomas E. Lorentzen, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

NATIONAL INSTITUTE FOR LITERACY

Juan R. Olivarez, of Michigan, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

James M. Stephens, of Virginia, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2005.

BARRY GOLDWATER SCHOLARSHIP & EXCELLENCE IN EDUCATION FOUNDATION

Peggy Goldwater-Clay, of California, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring June 5, 2006.

NATIONAL INSTITUTE FOR LITERACY

Carol C. Gambill, of Tennessee, to be a Member of the National Institute for Literacy Advisory Board for a term of three years.

NATIONAL MUSEUM SERVICES BOARD

Beth Walkup, of Arizona, to be a Member of the National Museum Services Board for a term expiring December 6, 2003.

DEPARTMENT OF EDUCATION

John Portman Higgins, of Virginia, to be Inspector General, Department of Education.

DEPARTMENT OF STATE

J. Cofer Black, of Virginia, to be Coordinator for Counterterrorism, with the rank and status of Ambassador at Large.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Irene B. Brooks, of Pennsylvania, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

BROADCASTING BOARD OF GOVERNORS

Blanquita Walsh Cullum, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2005.

DEPARTMENT OF STATE

Peter DeShazo, of Florida, a Careen Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during tenure of service as Deputy Permanent Representative of the United States of America to the Organization of American States.

David N. Greenlee, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Bolivia.

John Randle Hamilton, of North Carolina, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guatemala.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Collister Johnson, Jr., of Virginia, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2004.

DEPARTMENT OF STATE

John F. Keane, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Paraguay.

OVERSEAS PRIVATE INVESTMENT CORPORATION

John L. Morrison, of Minnesota, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2004.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Allen I. Olson, of Minnesota, to be a Commissioner on the part of the United States

on the International Joint Commission, United States and Canada.

FOREIGN SERVICE

PN2230 Foreign Service nominations (152) beginning William Joseph Burns, and ending Michael L. Young, which nominations were received by the Senate and appeared in the Congressional Record of October 8, 2002

PN2231 Foreign Service nominations (144) beginning Jon Christopher Karber, and ending Peter Fernandez, which nominations were received by the Senate and appeared in the Congressional Record of October 8, 2002

NOMINATION OF JOHN M. ROGERS

Mr. LEAHY. Madam President, last night, the Senate voted to confirm the nomination of John Rogers who is nominated to the U.S. Court of Appeals for the Sixth Circuit. By confirming this nomination, we are trying to move forward in providing help to the Sixth Circuit. Earlier this year, we held a hearing for Judge Julia Gibbons to a seat on the Sixth Circuit, who was confirmed by the Senate on July 29, 2002 by a vote of 95 to 0. With last night's vote, the Democratic-led Senate confirmed the 15th judge to our Federal Courts of Appeal and our 98th judicial nominee since the change in Senate majority in July 2001. I have placed a separate statement in the RECORD on the occasion of confirming that many of this President's judicial nominees in just 16 months.

Republicans often say that almost half of the seats on the Sixth Circuit are vacant but what they fail to acknowledge is that most of those vacancies arose during the Clinton Administration and before the change in majority last summer. None, zero, not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership. With the confirmation of Professor Rogers, we have reduced the number of vacancies on that court to six, but four of those remaining lack home-State consent due to the President's failure to address the legitimate concerns of Senators in that circuit whose nominees were blocked by Republicans during the period of Republican control of the Senate.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year. Judge White's nomination may have set an unfortunate record.

Her nomination was pending without a hearing for more over 4 years—51 months. She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination. Under Republican control, the committee averaged hearings on only about eight Courts of Appeals nominees a year and, in 2000, held only five hearings on Courts of Appeals nominees all year.

In contrast, Professor Rogers was the fifteenth Court of Appeals nominee of President Bush to receive a hearing by the committee in less than a year since the reorganization of the Senate Judiciary Committee. In 16 months we held hearings on 20 circuit court nominations. Professor Rogers was being treated much better than Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm. She never had a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

Others who supported Professor Markus include prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON, the National District Attorneys Association, and virtually every major newspaper in the state.

In his testimony to the Senate in May, Professor Markus summarized his experience as a federal judicial nominee, demonstrating how the ''history regarding the current vacancy backlog is being obscured by some.'' Here are some of things he said:

On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . .

At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.

With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.

Over and over again they told me two things: (1) There will be no more confirmations to the 6th Circuit during the Clinton Administration[.] (2) This has nothing to do with you; don't take it personally it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Some were unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now so many vacancies on the Sixth Circuit.

Had Republicans not blocked President Clinton's nominees to this court, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republicans and Democrats. That is what Republican obstruction was designed to avoid, balance. The same is true of a number of other circuits, with Republicans benefitting from their obstructionist practices of the preceding six and a half years. This combined with President Bush's refusal to consult with Democratic Senators about these matters is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations. The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge noted that, with four vacancies—the four vacancies that arose in the Clinton administration the Sixth Circuit ''is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court.'' He predicted: ''By the time the next President is inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them.''

However, no Sixth Circuit hearings were held in the last three full years of the Clinton administration—almost his

entire second presidential term—despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over four years. Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor Rogers, just a few short months later in June.

Just as we held the first hearing on a Sixth Circuit nominee in many years, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit last year was the first on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years.

When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in 6 years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

A number of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on half—56 percent—of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

From the time the Republicans took over the Senate in 1995 until the reorganization of the committee last July, circuit vacancies increased from 16 to 33, more than doubling. Democrats have broken with that recent history of inaction. In the last 16 months, we have held 26 judicial nominations hearing, including 20 hearings for circuit court nominees.

Professor Roger's nomination was also the fourth judicial nomination from Kentucky to be considered by the committee in its first year, and the eighth nomination from Kentucky overall. There are no judicial vacancies left in the State.

Professor Rogers of the University of Kentucky College of Law has experience as an appellate litigator and a teacher, and is a prolific author on a number of difficult legal topics. It is important to note that aspects of his record raise concerns. As a professor, he has been a strong proponent of judicial activism. No Clinton judicial nominee with such published views would ever have been confirmed during the period of Republican control. In his writings, Professor Rogers has called on lower court judges to reverse higher court precedents, if the lower court judge thinks the higher court will ultimate reverse its own precedent. Such an activist approach is inappropriate in the lower federal courts. The Supreme Court itself has noted that lower courts should follow Supreme Court precedent and not anticipate future decisions in which the Supreme Court may exercise its prerogative to overrule itself.

Prognostications about how the Supreme Court will rule often turns out to be wrong. For example, some predicted that the Supreme Court would overturn Miranda, but the Supreme Court, in an opinion by Chief Justice Rehnquist, declined to do so. Similarly, people like Professor Rogers have called on the Supreme Court to overturn Roe v. Wade, but thus far the Supreme Court has rejected calls to reverse itself in this important decision regarding the rights of women and has resisted calls to return this country to the awful period of dangerous back alley abortions.

Professor Rogers also suggested in his academic writings that lower court judges should consider the political views of Justices in making the determination of when lower courts should overrule Supreme Court precedent. In his answers to the committee, Professor Rogers acknowledged that he had taken that position but he now says that lower courts should not look to the views of Justices expressed in speeches or settings other than their opinions. Also, in his answers to the committee, Professor Rogers said he would give great weight to Supreme Court dicta, or arguments that are not part of the holding of the case. I would like to take this opportunity to urge him to take seriously the obligation of a judge to follow precedent and the holdings of the Supreme Court, rather than to look to dicta for views that may support his own personal views. I would also urge him resist acting on his academic notion that a judge should diverge from precedent when he anticipates that the Supreme Court may eventually do so.

Professor Rogers has assured us that he would follow precedent and not overrule higher courts, despite his clear advocacy of that position in his writings as a scholar. He has sworn under oath that he would not follow the approach that he long advocated. As with President Bush's Eighth Circuit nominee Lavenski Smith, who was confirmed earlier this summer, I am hopeful that Professor Rogers will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge.

I would also note that during his tenure at the Justice Department, Professor Rogers appeared to support an expansive view of the power of the executive branch vis-a-vis Congress. I am hopeful, however, that Professor Rogers will recognize the important difference between being a zealous advocate for such positions and being a fair and impartial judge sworn to follow precedents and the law.

When he was asked to describe any work he had handled which was not popular but was nevertheless important, he said that the case which came to mind was one in which he defended the CIA against a lawsuit seeking damages for the CIA's illegal opening of the private mail of tens of thousands of U.S. citizens during this 1970s or 1980s. Those were dark days of overreaching by the intelligence community against the rights of ordinary law-abiding American citizens. Although times have changed forever since the tragic events of September 11, I think it is important that the American people have access to judges who will uphold the Constitution against government excesses while also giving acts of Congress the presumption of constitutionality to which our laws are entitled by precedent.

Professor Rogers has repeatedly assured the committee, however, that he would follow precedent and not seek to overturn decisions affecting the privacy of women or any other decision of the Supreme Court. Senator MCCONNELL has also personally assured me that Professor Rogers will not be an activist but is sincerely committed to following precedent if he is confirmed. I sincerely hope that his decisions on the Sixth Circuit do not prove us wrong.

Mr. HATCH. Madam President, I am particularly pleased today to speak in support of the confirmation of John M. Rogers to the U.S. Court of Appeals for the Sixth Circuit. As we know, there is a judicial vacancy crisis in the Sixth Circuit and the addition of Mr. ROGERS to the bench represents a positive step in alleviating that regrettable situation.

John M. Rogers is currently the Thomas P. Lewis Professor at the University of Kentucky College of Law, where he has taught since 1978. He is a Phi Beta Kappa graduate of Stanford University and an Order of the Coif graduate of the University of Michigan Law School, where he served on the Michigan Law Review. He is an expert in international, administrative, and constitutional law and a respected teacher and scholar.

Prior to teaching, Professor Rogers was an appellate attorney in the Civil Division of the United States Department of Justice. This work, and a later stint at DOJ, led to his being awarded a Special Commendation for Outstanding Service to the Civil Division of the U.S. Department of Justice. Rogers has twice been a Fulbright Senior Lecturer in the People's Republic of China, and is a member of the Council on Foreign Relations. He has also

served this country for 28 years as a reserve officer in the U.S. Army Reserve and the Kentucky Army National Guard.

All of these accomplishments and contributions explain why the American Bar Association has rated Professor Rogers unanimously qualified. I agree with that judgment, I applaud President Bush for making this nomination, and I urge all of my colleagues to confirm Professor Rogers to the Sixth Circuit. I am confident he will serve with distinction as a Federal judge.

NOMINATIONS OF U.S. DISTRICT COURT NOMINEES

Mr. HATCH. Madam President, I rise in support of the fine group of district court nominees who are being confirmed tonight. I have reviewed their individual records and I find all of them to be excellent choices for the Federal bench. Permit me a moment to highlight the merits of each nominee.

U.S. Magistrate Judge Stanley R. Chesler, our nominee to the District Court for the District of New Jersey, received his undergraduate degree from Harpur College. He then went on to do graduate work at Brooklyn College where he accumulated 30 graduate credits in education. While working as teacher during the day, he graduated magna cum laude and first in his class from St. John's University School of Law, receiving no less then 12 American Jurisprudence Awards and consistently making the dean's list.

Upon graduation, Magistrate Judge Chesler joined the Bronx District Attorney's Office and specialized in prosecuting public corruption, organized crime, narcotics and fraud cases. In 1980 he became a Special Attorney for the U.S. Department of Justice's Newark Organized Crime Strike Force, before becoming an Assistant United States Attorney. During his career at the Department of Justice, he was awarded the Special Commendation Award and the Special Achievement Award. The nominee was then appointed by the New Jersey District Court judges to the office of Magistrate Judge in 1987. Magistrate Judge Chesler has also been recognized by his colleagues in receiving an ABA rating of Unanimously Well Qualified.

Rosemary Collyer, our nominee to the U.S. District Court for the District of Columbia, is a graduate of the University of Denver School of Law. She began her career at the Denver firm of Sherman & Howard as an associate in the labor and employment law group. Four years later she was nominated by President Reagan and confirmed by the Senate to be the Chairman of the Federal Mine Safety and Health Review Commission, which reviews decisions of specialized administrative law judges who adjudicate cases dealing with mine safety, health and discrimination claims under Federal law.

In 1984 Ms. Collyer was nominated by President Reagan and confirmed by the Senate to be General Counsel of the National Labor Relations Board. In this capacity, she served as the nationwide prosecutor of labor law violations, overseeing election processes, representing the NLRB before State and Federal courts, and overseeing agency personnel and budget matters. Since 1989, Ms. Collyer has been a partner at Crowell & Moring in Washington, D.C. Her specialization has been in labor law and employment law.

A July 22, 2002 Legal Times article reported that Ms. Collyer is ''well-regarded by her fellow labor lawyers.'' One colleague asserted, ''She cares about getting it right. She is definitely capable of navigating complex cases.'' Another stated that during her time of government service, ''she was an oasis of perceived neutrality. She pandered to no one.'' These are traits that will undoubtedly serve Ms. Collyer well upon her confirmation to the Federal bench.

Mark E. Fuller, nominated to be a U.S. District Court Judge for the Middle District of Alabama, is an excellent choice for the federal bench. After graduating from the University of Alabama School of Law in 1985, Mr. Fuller joined the firm of Cassady, Fuller & Marsh, a small litigation firm specializing in all aspects of state and federal practice in rural southeast Alabama. He became a partner in 1986 and remained with the firm until 1996, handling insurance and corporate defense work, and domestic relations, real estate, and corporate law matters.

From 1987 to 1992 and from 1995 to 1996, Mr. Fuller worked as a part-time Assistant District Attorney. In 1996 Mr. Fuller accepted the position of Chief Assistant District Attorney for Alabama's Twelfth Judicial Circuit, serving there until 1997, when he was appointed District Attorney in the same office. While working in the District Attorney's office, Mr. Fuller has represented the people of Pike and Coffee counties in criminal cases, including capital murder trials and juvenile and district court matters. In 1998 Mr. Fuller was elected to a full six-year term as District Attorney. He oversees the operations of the office and continues to handle criminal jury trials.

Daniel Hovland, nominated to the District Court for the District of North Dakota, promises to be an excellent federal judge. Upon graduation from the University of North Dakota School of Law, he served as a law clerk to the Honorable Ralph J. Erickstad on the North Dakota Supreme Court. He then accepted a position with the Office of the Attorney General for North Dakota, working as an Assistant Attorney General and acting as Director of the Consumer Fraud Division from 1980 to 1983.

From there he moved into private practice, working with Fleck Mather & Strutz from 1983 to 1994 and Smith Bakke Hovland & Oppegard from 1994 to the present. As a trial lawyer, Mr. Hovland handles personal injury, wrongful death, medical malpractice, employment/labor, and product liability cases. While in private practice, Mr. Hovland has gained experience particularly helpful for the federal bench. Since 1994 he has served as an Administrative Law Judge for North Dakota's Office of Administrative Hearings, he currently serves on the North Dakota Parole Board, and he has experience with mediation and arbitration.

Kent A. Jordan, who has been nominated to the U.S. District Court for the District of Delaware, comes fully recommended by Senators BIDEN and CARPER, and I urge my colleagues to support him as well.

Mr. Jordan possesses the experience needed for handling the court's heavy caseload of intellectual property, government corruption, and corporate matters. Following graduation from Georgetown University Law Center in 1984, he served as a law clerk to the Honorable James L. Latchum, judge on the U.S. District Court for the District of Delaware. He then worked in private practice with a Wilmington, Delaware, firm, focusing on corporate and commercial litigation. From 1987 to 1992, Mr. Jordan worked in public service as an Assistant U.S. Attorney for the District of Delaware, advancing to become lead attorney on many civil and criminal issues.

Mr. Jordan currently works as a Vice President and General Counsel for the Corporation Service Company, which provides registered agent, public records filing and retrieval, corporate and intellectual property information management, and litigation information management services.

James E. Kinkeade, nominated to the U.S. District Court for the Northern District of Texas, is a graduate of Baylor University School of Law. Judge Kinkeade began work as a law clerk and then associate for Brewer & Price in Irving, Texas. One year later he became a partner at Power & Kinkeade Law Firm. He represented a large number of closely held businesses and acted as local counsel for several national corporations. In addition, he had an active domestic relations and criminal practice. Judge Kinkeade served as an Associate Municipal Judge for the City of Irving from 1976–1980.

Judge Kinkeade stopped practicing law in January of 1981 to become a judge for the County Criminal Court in Dallas, Texas. In fall of 1981, he became a judge for the 194th District Court of Texas. Since 1988, Judge Kinkeade has served on the State of Texas, 5th District Court of Appeals. In addition, Judge Kinkeade has served as an adjunct professor for over 10 years at the Texas Wesleyan School of Law. He received the Outstanding Adjunct Professor award four times while teaching Professional Responsibility.

Judge Robert Gary Klausner, who has been nominated to the District Court for the Central District of California, graduated from Loyola Law School (Los Angeles) in 1967. Though awarded

a merit scholarship by Loyola he supported himself as a gas station attendant. Upon graduation, he commenced his service as an active duty officer in the U.S. Army, rising to the rank of Captain and receiving the Bronze Star.

After leaving the Army, Judge Klausner worked as a Deputy District Attorney for Los Angeles County. In 1974, he became Court Commissioner to the Pasadena Municipal Court for 6 years. In 1980, he became a Judge to that Court. Judge Klausner then left the Pasadena Municipal Court to become a Judge for the Los Angeles Superior Court. He has been with the Los Angeles Superior Court for the last 17 years. This nominee's life has been dedicated to the people of California and I cannot urge the Senate enough to confirm this well-qualified and well-deserving nominee.

Our nominee to the District of New Jersey, Judge Robert Byron Kugler, graduated from Rutgers, Camden Law School and then clerked for the Honorable John F. Gerry of the United States District Court in Camden, New Jersey. In 1979, he was appointed Assistant Camden County Prosecutor and then one year later he was appointed Deputy Attorney General for the New Jersey Department of Law and Public Safety. In these positions, he prosecuted criminal cases brought by county and/or State law enforcement agencies. As a prosecutor, Judge Kugler tried over 30 cases to jury verdict and over 100 cases to verdict in bench trials.

In 1982 Judge Kugler entered private practice and focused on matters of civil and criminal litigation. While in private practice, he tried as sole counsel to verdict over 50 cases. Before becoming a Magistrate Judge, Judge Kugler qualified for appointment by the New Jersey Supreme Court as a Certified Trial Attorney and Certified Civil Trial Attorney. Since 1992, Judge Kugler has been a United States Magistrate Judge in the District Court for the District of New Jersey. In January of 2002, the Camden County Bar Association presented its most prestigious award, the Peter J. Devine Award, to Judge Kugler and his wife for their service to the community and bar.

Ronald B. Leighton, who has been nominated to the U.S. District Court in the Western District of Washington, is a highly experienced and respected federal trial attorney. Upon graduation from UC—Hastings College of Law, Mr. Leighton clerked for the Honorable Frank Richardson of the California Supreme Court. He then joined the Tacoma, WA, firm of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, becoming a partner in 1978. He has remained with the same firm to the present day, working as a trial attorney with emphasis on complex litigation in Federal court.

Mr. Leighton's excellence as a litigator has not gone unrecognized. Among other honors, he is a member of the American College of Trial Attorneys, the American Board of Trial Advocates, the International Association of Defense Counsel, and the International Society of Barristers. He has represented clients on both sides of the docket.

Mr. Leighton was nominated by President George H.W. Bush to the same position in the spring of 1992, but the Democrat-controlled Judiciary Committee did not grant him a hearing. I am pleased that we can finally vote Mr. Leighton to the federal court, and I urge my colleagues to join me in my support.

Nominated to the U.S. District Court for the District of New Jersey, Judge Jose Luis Linares immigrated to the United States from Cuba when he was 12 years old. He received his undergraduate degree from Jersey City State University in 1975, where he was a member of the National Honor Society. He then graduated from Temple Law School in 1978. During his studies at Temple, he was on the Dean's List for 2 years and was the recipient of the that law school's Barristers' Society Award for Excellence in Trial Advocacy.

Judge Linares started his career with the New York Department of Investigation, where he supervised white-collar crime and corruption investigations in the City of New York. Later, as an attorney at Horowitz, Bross, Sinnins & Imperial, P.A., he was responsible for the preparation and trial of both civil and criminal cases. In 1982, Judge Linares started his own law firm, litigating both civil and criminal cases with a focus on complex medical malpractice and product liability cases. After 18 years as a partner in his own firm, in its many incarnations, he was appointed as a Judge to the New Jersey Superior Court in Essex County. He currently oversees complex medical malpractice cases in the Civil Division of the court. His fellow attorney's are quite impressed with his record as well. He has received the highest rating by the ABA, unanimously Well Qualified. I am proud to say that I will vote for this nominee and I recommend him without reservation to the Senate.

Nominated to the U.S. District Court for the Western District of Texas, Judge Alia Moses Ludlum, graduated from the University of Texas School of Law in 1986. She continued her law school job as a law clerk in the Travis County Attorney's Office, where she eventually was promoted to Assistant County Attorney. She held a variety of positions in the office, first as Intake Attorney, then as Trial Attorney, and ultimately as Chief of the office's Appellate Division. Her primary responsibility as an Assistant County Attorney was the prosecution of criminal cases at the trial and appellate levels. She also handled all civil expunction suits and some mental health commitment cases, and represented battered spouses in protective order proceedings.

After 4 years at the County Attorney's Office, Judge Ludlum was hired to work as the sole resident AUSA in the Del Rio Division of the U.S. Attorney's Office for the Western District of Texas. She was eventually elevated to the position of Senior Litigation Attorney, then promoted to Chief of the Del Rio Division. As an AUSA, Judge Ludlum prosecuted an average of 125 felony criminal case per year. In 1997, Judge Ludlum became a part-time magistrate judge for the Western District of Texas, Del Rio Division. She assumed that position on a full-time basis in 2000.

William J. Martini, who has been nominated to the U.S. District Court for the District of New Jersey, has solid prosecutorial and private practice experience, as well as congressional service all of which will serve him well on the federal bench.

A graduate of Rutgers School of Law, Mr. Martini served as a law clerk for the Superior Court of New Jersey, before working as an assistant prosecutor in the Hudson County (New Jersey) Prosecutor's Office. He then took a position as an assistant U.S. Attorney in the U.S. Attorney's Office in Newark, NJ, where he tried a dozen criminal jury trials to completion. Beginning in 1977, Mr. Martini worked as a sole practitioner, initially representing criminal defendants and later branching out into civil litigation, including plaintiff's personal injury suits and commercial contract matters. Following a term serving the people of New Jersey in the House of Representatives, he joined Sills Cummis Radin Tischman Epstein and Gross as partner, focusing on governmental affairs/regulatory law and general litigation.

Magistrate Judge Thomas Wade Phillips, nominated to the District Court for the Eastern District of Tennessee, received his undergraduate degree from Berea College in 1965. After college, he attended Vanderbilt University School of Law on a full academic scholarship. In law school he was an assistant articles editor for the law review and was the recipient of the Dean's Award for Best Senior Dissertation. After graduation, he was commissioned into the United States Army, Judge Advocate General Corps, where he received a Appellate Advocacy Award, Government Appellate Division, in 1973. During that same year, he retired from the military and earned an LL.M. in Labor Law from George Washington University Law School.

Entering private practice, he was an associate at two firms, before becoming a partner at the firm of Baker, Worthington, Cossley, Stansberry & Woolf. During this period, he was elected to and served for nearly fifteen years as the county attorney for Scott County. From 1977 to 1986 he was a partner at two different firms. In 1986, Magistrate Judge Phillips became a Senior Partner in the firm of Phillips and Williams. He held this position until 1991 when he was appointed United States Magistrate Judge for the Eastern District of Tennessee. On October 17, 2000, he was appointed Chief

United States Magistrate Judge for the Eastern District of Tennessee. He continues to serve in this capacity. The ABA has given him their highest rating of Unanimously Well Qualified.

Upon graduation from Drake University Law School, Judge Linda Reade, nominated to the U.S. District Court for the Northern District of Iowa, became an associate with a Des Moines area law firm where she worked on litigation involving federal and state civil law. In 1981, she moved to the Des Moines firm of Rosenberg and Margulies, where she worked for three years litigating federal and state, and civil and criminal law.

From 1984 to 1986, Judge Reade worked on both federal and state, and civil and criminal cases as a partner in that firm. In 1986, she became an Assistant United States Attorney for the Southern District of Iowa. In 1990, she was promoted to Chief of the General Criminal Division in the United States Attorney's Office for the Southern District of Iowa. Since 1993, Judge Reade has served as a general jurisdiction State District Court Judge in Des Moines, Iowa, where she has maintained a low reversal rate. She has also lectured on civil procedure and trial practice (1995–2000) and taught trial practice for two semesters at Drake University Law School (1988 and 1990). Judge Reade is well prepared to serve as a district court judge.

William E. Smith, who has been nominated to the U.S. District Court for the District of Rhode Island, joined Edwards & Angell, LLP, right after law school, and he is a member of the firm's labor, employment, and litigation departments. His practice has included representing management in union contract negotiations, union organizing drives, arbitration proceedings, employment discrimination matters, sexual harassment, wage and hour law, OSHA, OFCCP compliance and investigations, and other Department of Labor investigations.

While at his firm, in 1993, Mr. Smith successfully competed to become City Solicitor of Warwick, Rhode Island (under Mayor Lincoln Chafee). As such, he led a team of lawyers who took over all of the city's legal work for a fixed fee. He was also retained that year to be legal counsel to the Rhode Island Secretary of State, performing labor, employment and other matters. In 1994, he was hired by the Rhode Island Department of Administration as outside labor-litigation counsel for a number of arbitration cases. He also worked for the Rhode Island courts during an organizing drive of clerical employees and a restructuring of the court system and as a judge on the municipal court for 4½ years. Mr. Smith has since returned to private practice with Edwards & Angell.

Jeffery Steven White, who has been nominated to the Northern District of California, is a prime example of the high quality attorneys that President Bush has nominated to the Federal bench. He received his undergraduate degree from Queens College of the City University of New York in 1977. He then graduated magna cum laude from the State University of New York, Buffalo's School of Law in 1980. During his studies at SUNY Buffalo, he was a Research Editor of the Law Review and graduated first in his class.

Upon graduation, Mr. White became a Trial Attorney for the U.S. Department of Justice, Criminal Division—Management/Labor Section. In 1971 he joined the U.S. Attorney Office for the District of Maryland as an Assistant U.S. Attorney. During his tenure at this position, he was designated as an outstanding Assistant United States Attorney in 1974 and 1976. He then returned to the Department of Justice in 1977 to work as a Senior Grade Trial Attorney in the Public Integrity Section of the Criminal Division. In 1978, Mr. White began a 24 year association with the law firm of Orrick, Herrington & Sutcliffe. He quickly rose to become Chairman of the firm's Litigation Department, a position that he held from 1985 to 2000.

Freda L. Wolfson, who has been nominated to the District Court for the District of New Jersey, is a great choice for the federal court. Upon graduation from Rutgers University School of Law, Judge Wolfson was a litigation associate at Lowenstein, Sandler, Kohl, Fisher & Boylan. Her practice mostly involved commercial litigation and employment litigation. She also represented a habeas corpus petitioner in federal court and represented several criminal defendants as pro bono counsel.

From 1981–1986, she was a litigation associate at Clapp & Eisenberg where she focused on commercial litigation, employment litigation, and defense of ski areas. In addition, she frequently appeared before the New Jersey Casino Control Commission. In 1986, Judge Wolfson was appointed a United States Magistrate Judge, District of New Jersey. Since 1990, she has presided over 32 civil trials, 18 jury trials, and 14 bench trials. She has served on the Third Circuit's Task Force for Indigent Litigants in Civil Cases since 1998.

I am proud to support all of these nominees. They have excellent educational backgrounds, they have terrific legal experience, and they have the temperament to excel on the bench. I urge my colleagues to join me in my unqualified support.

NOMINATION OF JUDGE THOMAS PHILLIPS

Mr. THOMPSON. Madam President, I am very pleased that the Senate is taking up the nomination of judge Thomas Phillips, who is the President's nominee to fill a vacancy on the United States District Court for the Eastern District of Tennessee.

Judge Phillips was born and raised in Scott County, TN, the home county of our former colleague, Senator Howard Baker. His academic record is superb. A Phi Beta Kappa graduate of Berea College in Kentucky, he went on to attend Vanderbilt Law School, my own alma mater, on a full academic scholarship. While at Vanderbilt, he was an editor of the Law Review and received the Dean's Award for Best Senior Dissertation.

Upon finishing law school, Judge Phillips joined the Army Judge Advocate General's Corps, which awarded him its Outstanding Appellate Advocacy Award and the Army Commendation Medal in 1973. While serving in the Army, Judge Phillips also received a master of laws degree from George Washington University Law School here in Washington.

In 1973, Judge Phillips returned to Tennessee and entered the private practice of law. Public service called him back, however, and in 1976, Judge Phillips was elected as County Attorney for Scott County. Between 1976 and 1991, Judge Phillips continued to serve as Scott County Attorney, being reelected four times, while continuing to engage in private law practice with his own firm in his home town, Oneida. During this period, he tried hundreds of cases.

In 1991, Judge Phillips was appointed by the judges of the Eastern District of Tennessee to serve as a Magistrate Judge in Knoxville, the position he continues to hold. During the time he has served as Magistrate Judge, he has earned the respect of all who have appeared before him for his demeanor, courtesy, and intellect. During the rigorous screening process that Senator FRIST and I undertook to review the records of interested candidates for this judgeship, we heard uniformly and highly favorable comments about Judge Phillips.

I think the record before the committee demonstrates his outstanding qualifications. I cite just one example. In over 11 years on the bench, out of thousands of decisions and recommendations, Judge Phillips has been reversed on just two occasions, and on only one occasion has a District Judge rejected his recommendations.

Judge Phillips has excelled not only in his professional career, but in his commitment to his community as well. He has promoted legal education by serving as a member of the Inns of Court and by teaching at the University of Tennessee Law School. He is an Elder of the Huntsville Presbyterian Church, a member of the American Legion, and a leader of the American, Tennessee, Scott County, and Knoxville Bar Associations. In private practice, Judge Phillips provided extensive pro bono services and served on the boards of Scott County Hospital and Opportunities for the Handicapped.

I would be remiss if I failed to note the importance of moving forward with this nomination. Traditionally, two district judges sit in Knoxville, Tennessee's third largest city. Late last year and early this year, Judge Jordan and Judge Jarvis respectively assumed senior status, leaving the district court in Knoxville with no active judges. I

want to express my thanks and appreciation to both senior judges for the service they rendered for many years on the Federal bench in Knoxville.

I am confident that there is no one better qualified to fill the large hold left by Judge Jordan and Judge Jarvis than Judge Phillips. I am pleased to endorse Judge Phillips and urge my colleagues to support his nomination.

NOMINATION OF EUGENE SCALIA—MOTION TO PROCEED

Mr. GRASSLEY. Mr. President, I move to proceed to consider the nomination of Eugene Scalia to be solicitor for the Department of Labor.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion is not agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

IDENTITY THEFT VICTIMS ASSISTANCE ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 382, S. 1742.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1742) to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part printed in black brackets and insert the part printed in italic.]

S. 1742

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 ''Restore Your Identity Act of 2001''.

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) the crime of identity theft is the fastest growing crime in the United States;

[(2) the Federal Trade Commission reports that between March and June of 2001, the total number of identity theft victims in the Commission's Complaint Clearinghouse System, tallied from November 1999, increased from 45,593 to 69,370;

[(3) consumer inquiries and complaints to the Federal Trade Commission Identity Theft Hotline increased from 68,000 to over 97,000 over the same 3-month period, and consumer calls into the Hotline increased in the same period from 1,800 calls per week to over 2,000;

[(4) the Federal Trade Commission estimates that the call volume to the Identity Theft Hotline represents only 5 to 10 percent of the actual number of victims of identity theft;

[(5) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

[(6) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

[(7) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

[(8) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

[(9) victims of identity theft need a nationally standardized means of—

[(A) reporting identity theft to law enforcement, consumer credit reporting agencies, and business entities; and

[(B) evidencing their true identity to business entities and credit reporting agencies;

[(10) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

[(11) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

[SEC. 3. DEFINITIONS.

[In this Act, the following definitions shall apply:

[(1) BUSINESS ENTITY.—The term ''business entity'' means—

[(A) a creditor, as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602);

[(B) any financial information repository;

[(C) any financial service provider; and

[(D) any corporation, trust, partnership, sole proprietorship, or unincorporated association (including telecommunications, utilities, and other service providers).

[(2) CONSUMER.—The term ''consumer'' means an individual.

[(3) FINANCIAL INFORMATION.—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) FINANCIAL INFORMATION REPOSITORY.—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) IDENTITY THEFT.—The term ''identity theft'' means an actual or potential violation of section 1028 of title 28, United States Code, or any other similar provision of Federal or State law.

[(6) MEANS OF IDENTIFICATION.—The term ''means of identification'' has the meanings given the terms ''identification document'' and ''means of identification'' in section 1028 of title 18, United States Code.

[(7) VICTIM.—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.

[SEC. 4. IDENTITY THEFT TREATED AS RACKETEERING ACTIVITY.

[Section 1961(1)(B) of title 18, United States Code, is amended by inserting '', or any similar offense chargeable under State law'' after ''identification documents)''.

[SEC. 5. TREATMENT OF IDENTITY THEFT MITIGATION.

[(a) INFORMATION AVAILABLE TO VICTIMS.—

[(1) IN GENERAL.—A business entity possessing information relating to an identity theft, or who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 10 days after receipt of a written request by the victim, provide, without charge, to the victim or to any Federal, State, or local governing law enforcement agency or officer specified by the victim copies of all related application and transaction information and any information required pursuant to subsection (b).

[(2) RULE OF CONSTRUCTION.—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, except that any such provision of law that prohibits the disclosure of financial information to third parties shall not be used to deny disclosure of information to the victim under this section.

[(b) VERIFICATION OF IDENTITY.—

[(1) IN GENERAL.—Unless a business entity is otherwise able to verify the identity of a victim making a request under subsection (a)(1), the victim shall provide to the business entity as proof of positive identification, 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.

[(c) LIMITATION ON LIABILITY.—No business entity may be held liable for an action taken in good faith to provide information under this section with respect to an individual in connection with an identity theft to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim, if—

[(1) the business entity complies with subsection (b); and

[(2) such action was taken—

[(A) for the purpose of identification and 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.

[(d) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline

to provide information pursuant to subsection (a) 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; or

[(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information.

[(e) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to retain or maintain information or records that are not otherwise required to be retained or maintained in the ordinary course of its business or under other applicable law.

[SEC. 6. 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. 1681i) is amended by adding at the end the following:

[''(e) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

[''(1) BLOCK.—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 permanently 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, except as provided in paragraph (3).

[''(2) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1) that the information may be a result of identity theft, that a police report has been filed, that a block has been requested under this subsection, and the effective date of the block.

[''(3) AUTHORITY TO DECLINE OR RESCIND.—

[''(A) IN GENERAL.—A consumer reporting agency may 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 believes that—

[''(I) the information was blocked due to 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; or

[''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

[''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information pursuant to subsection (a)(5)(B).

[''(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, the prior presence of blocked information in the file of a consumer 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.''.

[(b) STATUTE OF LIMITATIONS.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended by striking ''jurisdiction'' and all that follows through ''years after'' and inserting ''jurisdiction, not later than 2 years after''.

[SEC. 7. COMMISSION STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

[(a) MEMBERSHIP.—Section 2(b) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended by inserting ''the Postmaster General, the Commissioner of the United States Customs Service,'' after ''Trade Commissioner''.

[(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.—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 4 of the Restore Your Identity Act of 2001), including telecommunications and utility companies, and organizations representing consumers.''.

[(c) REPORT CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by this section) is amended—

[(1) in subparagraph (E), by striking ''and'' at the end; and

[(2) by striking subparagraph (F) and inserting the following:

[''(F) a comprehensive description of Federal assistance to address identity theft provided to State and local law enforcement agencies;

[''(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies in regard to addressing identity theft and recommendations, if any, for legislative changes that could facilitate more effective investigation and prosecution of the creation and distribution of false identification documents;

[''(H) a comprehensive description of how the Federal Government can best provide to State and local law enforcement agencies timely and current information regarding terrorists or terrorist activity where such information specifically relates to identity theft; and

[''(I) recommendations, if any, for legislative or administrative changes that would—

[''(i) facilitate more effective investigation and prosecution of cases involving identity theft;

[''(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies;

[''(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of the person; and

[''(iv) if deemed appropriate, provide for the establishment of a Federal identity theft and false identification office or agency.''.

[SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

[(a) IN GENERAL.—

[(1) CIVIL ACTIONS.—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 or adversely affected by the engagement of any person in a practice that is prohibited under this Act or under any amendment made by this Act, 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—

[(A) enjoin that practice;

[(B) enforce compliance with this Act or the amendments made by this Act;

[(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

[(D) obtain such other relief as the court may consider to be appropriate.

[(2) NOTICE.—

[(A) IN GENERAL.—Before filing an action under paragraph (1), 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.

[(B) EXEMPTION.—

[(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if that attorney general determines that it is not feasible to provide the notice described in subparagraph (A) before the filing of the action.

[(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General of the United States at the same time as the action is filed.

[(b) INTERVENTION.—

[(1) IN GENERAL.—On receiving notice of an action under subsection (a)(2), the Attorney General of the United States shall have the right to intervene in that action.

[(2) EFFECT OF INTERVENTION.—If the Attorney General of the United States intervenes in an action under subsection (a), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

[(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act or the amendments made by this Act 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—

[(1) to conduct investigations;

[(2) to administer oaths or affirmations; or

[(3) to compel the attendance of witnesses or the production of documentary and other evidence.

[(d) 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 violation of a practice that is prohibited under this Act or under any amendment made by this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

[(e) VENUE; SERVICE OF PROCESS.—

[(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

[(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

[(A) is an inhabitant; or

[(B) may be found.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Identity Theft Victims Assistance Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the crime of identity theft is the fastest growing crime in the United States;

(2) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

(3) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved

credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

(4) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(5) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

(6) victims of identity theft need a nationally standardized means of—

(A) reporting identity theft to consumer credit reporting agencies and business entities; and

(B) evidencing their true identity and claim of identity theft to consumer credit reporting agencies and business entities;

(7) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

(8) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) BUSINESS ENTITY.—The term ''business entity'' means—

(A) a creditor, as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602);

(B) any financial information repository;

(C) any financial service provider; and

(D) any corporation, trust, partnership, sole proprietorship, or unincorporated association (including telecommunications, utilities, and other service providers).

(2) CONSUMER.—The term ''consumer'' means an individual.

(3) FINANCIAL INFORMATION.—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) FINANCIAL INFORMATION REPOSITORY.—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) IDENTITY THEFT.—The term ''identity theft'' means an actual or potential violation of section 1028 of title 18, United States Code, or any other similar provision of Federal or State law.

(6) MEANS OF IDENTIFICATION.—The term ''means of identification'' has the meanings given the terms ''identification document'' and ''means of identification'' in section 1028 of title 18, United States Code.

(7) VICTIM.—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.

SEC. 4. TREATMENT OF IDENTITY THEFT MITIGATION.

Section 1028 of title 18, United States Code, is amended by adding at the end the following:

''(i) TREATMENT OF IDENTITY THEFT MITIGATION.—

''(1) INFORMATION AVAILABLE TO VICTIMS.—

''(A) IN GENERAL.—A business entity that possesses information relating to an alleged identity theft, or that has entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business 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 under paragraph (2), provide, without charge, a copy of all application and transaction information related to the transaction being alleged as a potential or actual identity theft to—

''(i) the victim;

''(ii) any Federal, State, or local governing law enforcement agency or officer specified by the victim; or

''(iii) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

''(B) RULE OF CONSTRUCTION.—

''(i) IN GENERAL.—No provision of Federal or State law prohibiting the disclosure of financial information to third parties shall be used to deny disclosure of information to the victim under this subsection.

''(ii) LIMITATION.—Except as provided in clause (i), nothing in this subsection 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.

''(2) 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 (a)(1), the victim shall provide to the business entity—

''(A) as proof of positive identification—

''(i) the presentation of a government-issued identification card;

''(ii) if providing proof by mail, a copy of a government-issued identification card; or

''(iii) upon the request of the person seeking business records, the business entity may inform the requesting person of the categories of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; and

''(B) as proof of a claim of identity theft, at the election of the business entity—

''(i) a copy of a police report evidencing the claim of the victim of identity theft;

''(ii) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(iii) any affidavit of fact that is acceptable to the business entity for that purpose.

''(3) 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 financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim, if—

''(A) the business entity complies with paragraph (2); and

''(B) such disclosure was made—

''(i) for the purpose of detection, investigation, or prosecution of identity theft; or

''(ii) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

''(4) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information pursuant to paragraph (1) if, in the exercise of good faith and reasonable judgment, the business entity believes that—

''(A) this subsection does not require disclosure of the information; or

''(B) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information.

''(5) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this subsection 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 retained or maintained in the ordinary course of its business or under other applicable law.

''(6) NOTIFICATION SYSTEM.—

''(A) IN GENERAL.—A business entity may establish and maintain a notification system for the business entity to comply with this subsection, including a toll-free telephone number and a mailing address.

''(B) REQUIREMENTS.—A notification system under subparagraph (A) shall permit any person to make a request to, or to correspond with, the business entity under this subsection, provided that—

''(i) the business entity informs the person—

''(I) that any person may request information under this subsection; and

''(II) of the address and toll-free telephone number established and maintained for this purpose; and

''(ii) a person representing the business entity—

''(I) responds to an information request through the toll-free number within 3 business days of receiving the request; and

''(II) facilitates the provision of such information to the person who initiated the request.''.

SEC. 5. 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. 1681i) is amended by adding at the end the following:

''(e) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

''(1) BLOCK.—Except as provided in paragraph (3) 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 permanently 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, except as provided in paragraph (3).

''(2) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)—

''(A) that the information may be a result of identity theft;

''(B) that a police report has been filed;

''(C) that a block has been requested under this subsection; and

''(D) of the effective date of the block.

''(3) AUTHORITY TO DECLINE OR RESCIND.—

''(A) IN GENERAL.—A consumer reporting agency may 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 believes that—

''(I) the information was blocked due to 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; or

''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under subsection (a)(5)(B).

''(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, the prior presence of blocked information in the file of a consumer 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.

''(4) EXCEPTION.—A consumer reporting agency shall not be required to comply with this subsection when the 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—

''(A) dishonored checks;

''(B) accounts closed for cause;

''(C) substantial overdrafts;

''(D) abuse of automated teller machines; or

''(E) other information which indicates a risk of fraud occurring.''.

(b) FALSE CLAIMS.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

''(j) Whoever 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. 1681i(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 5 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. 6. COMMISSION 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'' and inserting ''6 years''.

(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.—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 4 of the Identity Theft Victims Assistance Act of 2002), including telecommunications and utility companies, and organizations representing consumers.''.

(c) REPORT CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by this section) is amended—

(1) in subparagraph (E), by striking ''and'' at the end; and

(2) 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—

''(I) cases involving 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;

''(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person; and

''(iv) if deemed appropriate, provide for the establishment of a Federal identity theft and false identification office or agency.''.

SEC. 7. ENFORCEMENT.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—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 section 4 of this Act 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—

(A) enjoin that practice;

(B) enforce compliance with this Act or the amendments made by this Act;

(C) 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

(D) obtain such other equitable relief as the court may consider to be appropriate.

(2) NOTICE.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General of the United States—

(A) written notice of the action; and

(B) a copy of the complaint for the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice of an action under subsection (a)(2), the Attorney General of the United States shall have the right to intervene in that action.

(2) EFFECT OF INTERVENTION.—If the Attorney General of the United States intervenes in an action under subsection (a), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

(3) 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 subsection (a) shall, pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Government with—

(A) a copy of the complaint; and

(B) written disclosure of substantially all material evidence and information in the possession of the attorney general of the state.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act or the amendments made by this Act 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—

(1) to conduct investigations;

(2) to administer oaths or affirmations; or

(3) to compel the attendance of witnesses or the production of documentary and other evidence.

(d) 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 section 4, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States—

(A) where the defendant resides;

(B) where the defendant is doing business; or

(C) that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) resides;

(B) is doing business; or

(B) may be found.

Mr. GRAMM. Madam President, the Senate today is considering S. 1742, the Identity Theft Victims Assistance Act of 2002. This is an important issue, and it is proper for the Senate to be giving it consideration. While the text of this bill is seriously flawed and needs careful work and refinement in order for it to have a significantly positive effect in curbing identity theft, I believe that passage of this legislation by the Senate will be seen as an indication of the importance that the Senate attaches to relieving the disruption caused in the lives of victims of these crimes.

When the Senate returns to this issue in the next Congress, I hope that the problems with this bill can be resolved, that the complexity of the issues involved can be adequately considered so that the legislation focuses on the real culprits without penalizing law-abiding citizens and businesses, and without the substantial confusion to the enforcement responsibilities of federal financial regulators that the draft before us would cause. The text in its current form would also expand opportunities for predatory lawsuits, creating new

victims, and we must avoid that. We do little good for the country that way.

Mr. REID. Mr. President, Senators CANTWELL and GRASSLEY and others have an amendment at the desk. I ask that that amendment be considered and agreed to; that the committee substitute, as amended, be agreed to; the bill, as amended, be read the third time and passed, and the motion to reconsider be laid upon the table; and that any statements be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 4954) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1742), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. Mr. President, let me say I have been working in recent hours with the Senator from Washington, Ms. CANTWELL. She has worked tirelessly on this piece of legislation. She has given a number of statements on the floor related to this issue, dealing with what has taken place and what she knows regarding identity theft. I commend and applaud her for her diligence and perseverance. The burden is now on the House of Representatives. They are still in session. There is no reason in the world that they cannot pass this most important piece of legislation.

EXECUTIVE SESSION

PROMOTIONS DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session and the list of Coast Guard promotions which are at the desk be discharged from the Commerce Committee, the Senate proceed to their consideration, that the nominations be confirmed, the motions to reconsider be laid on the table, and that any statements appear at the appropriate place in the RECORD as if read, that the President be immediately notified of the Senate's action, and the Senate return to legislative session.

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

The nominations considered and confirmed are as follows:

U.S. COAST GUARD

To be lieutenant

Dana B. Reid, 9837

U.S. COAST GUARD RESERVE

To be captain

Douglas A Ash, 9461
Salvatore Brillante, 9714
Timothy M. Butler, 8139
Jeanne Cassidy, 9266
Daniel R Croce, 1488
Sidney J Duck III, 0729
Wayne C Dumas, 2968
Kendel D Feilen, 0842
Doreen D Fuller, 8883
Robert W Grabb, 3388
William C Hansen, 6687
Maureen B Harkins, 0444
Stephen N Jackson, 6687
Mark A Jones, 2968
John W Long, 7333
John J Madeira, 4504
David A Maes, 2808
David G O'Brien, 4748
David W. Springer, 5912
Warren E. Soloduk, 3725

U.S. COAST GUARD

To be lieutenant commander

Anthony J. Alarid, 1412
Michael S. Antonellis, 5030
Michael A. Arguelles, 4343
Hector A. Avella, 8261
Paul E. Baker, 7988
Barbara J. Barata, 8450
Christopher M. Barrows, 8561
Edward K. Beale, 7399
Scott A. Beauregard, 6053
William D. Bellatty, 1168
Bryan R. Bender, 4002
Ralph L. Benhart, 0506
Benjamin A. Benson, 3424
David F. Berliner, 6106
Paul R. Bissillon, 4694
Ronald E. Brahm, 9793
John A. Brenner, 3111
Donald L. Brown, 7391
Timothy J. Buchanan, 2428
Russell S. Burnside, 9517
William Carter, 5270
Anthony J. Ceraolo, 2139
Patrick W. Clark, 4993
Leslie W. Clayborne, 8504
Rocky L. Cole, 3491
Richard W. Condit, 6705
Vernon E. Craig, 0980
Michael W. Cribbs, 3103
Christopher Curatilo, 4587
Gregory J. Czerwonka, 4516
Christel A. Dahl, 5351
Bryan E. Dailey, 2760
James W. Dalitsch, 0853
Timothy E. Darley, 3406
Joseph E. Deer, 4579
Ann B. Deyoung, 0150
Edwin Diazrosario, 7357
Timothy E. Dickerson, 7061
Douglas C. Dixon, 8495
Jean T. Donaldson, 8896
Charlene L. Downey, 1428
Patrick J. Dugan, 5898
Kathryn C. Dunbar, 0745
John C. Durbin, 5587
Bryan L. Durr, 0817
Brian E. Edmiston, 0038
David M. Ehlers, 8010
Thomas M. Emerick, 0148
Dennis C. Evans, 2583
Rendall B. Farley, 5226
Dale C. Folsom, 4148
Christopher W. Forando, 4062
Gregory T. Fuller, 3143
Eric J. Gandee, 6250
George D. Ganoung, 2083
Christian J. Glander, 3589
Michael W. Glander, 8276
Gene G. Gonzales, 1117
Jeffrey W. Good, 7748
Mark D. Gordon, 0616
Samuel J. Goswellen, 6588
Thomas A. Griffitts, 2199
Jason R. Hamilton, 9913
Kevin J. Hanson, 3914
James A. Healy, 7844
Joseph J. Healy, 3174
Michael L. Hershberger, 5328
Joseph P. Higgins, 4706
Daniel J. Higman, 6624
Russell E. Holmes, 0974
Katherine A. Howard, 5315
Jerry A. Hubbard, 8249
David A. Husted, 3248
Jeffrey A. Janszen, 4464
Terrence M. Johns, 9778
Eugene E. Johnson, 2742
Lamar V. Johnson, 7091
Richard L. Jung, 5143
Stephen D. Jutras, 5925
Robert M. Keith, 1055
Quentin C. Kent, 7468
Ian R. Kieman, 2030
Scott H. Kim, 9552
Erich F. Klein, 4294
Nicholas R. Koester, 0771
Joseph E. Kramek, 8464
Miriam L. Lafferty, 4744
Burt A. Lahn, 9390
Robert J. Landolfi, 7916
Steven A. Lang, 7316
James R. Langevin, 7045
Scott E. Langum, 2954
Keith H. Laplant, 5221
Scott X. Larson, 4589
Stephen G. Lefave, 1917
Michael R. Leonguerrero, 7974
Michael C. Long, 8213
Jess P. Lopez, 9464
Juan Lopez, 7254
Tung T. Ly, 3465
Lisa K. Mack, 9536
William J. Makell, 6745
Joseph P. Malinauskas, 1645
August T. Martin, 6627
Carol L. McCarther, 8206
Thomas W. McDevitt, 4910
Steven P. McGee, 9864
Patrick W. McMahon, 5758
Jason A. Merriweather, 1212
James F. Miller, 6437
James W. Mitchell, 1953
Kevin G. Morgan, 3889
Patrick J. Murphy, 4093
Nicole S. Nancarrow, 2108
Randall J. Navarro, 3988
Jack C. Neve, 2871
Anthony J. Nygra, 9006
Robert R. Oatman, 3261
Stephen H. Ober, 8546
Steven F. Osgood, 0310
Keith A. Overstreet, 4897
Geoffrey D. Owen, 3140
Kim J. Pacsai, 2821
John K. Park, 9448
Edwin W. Parkinson, 7735
Vincent E. Patterson, 8433
Kevin Y. Pekarek, 3307
Daryl R. Peloquin, 5796
Matthew F. Perciak, 6792
Cornell I. Perry, 7094
Mark G. Phipps, 8278
Zachary H. Pickett, 2955
Kenneth A. Pierro, 6696
Michael E. Platt, 3176
Nathan A. Podoll, 7508
Gary K. Polaski, 2160
Ronald P. Poole, 6332
Kenneth U. Potolicchio, 7762
Steven J. Pruyn, 5380
Lee S. Putnam, 9334
Gregory M. Rainey, 6693
Jeffrey K. Randall, 7612
Sean P. Regan, 7012
Francisco S. Rego, 9178
James M. Reilly, 9209
Joshua D. Reynolds, 0674
Rodd M. Ricklefs, 6519
Ronald L. Riedinger, 6390
James V. Rocco, 2868
Stanley T. Romanowicz, 5552
Shannon D. Rooney, 9051
Charles A. Roskam, 3977
Kiley R. Ross, 0559
Aaron E. Roth, 9026
Warren J. Russell, 5602
Matthew A. Rymer, 9954
Kristina E. Saliceti, 6117
Christopher S. Schubert, 2470
James W. Seeman, 7067

Edward B. Sheppard, 3579
John P. Sherlock, 6743
Arthur R. Shuman, 0528
Michael J. Simbulan, 6792
Darell Singleterry, 3552
Jerome F. Sinnaeve, 1503
Charles G. Smith, 9733
Matthew J. Smith, 9753
Robert L. Smith, 9066
Stuart M. Sockman, 9003
Gregory Stanclik, 0645
Bion B. Stewart, 4651
Anthony A. Stobbe, 0824
Paul M. Stocklin, 4098
Carrie M. Stoffel, 8350
Christopher A. Strong, 2306
Charles W. Tenney, 3941
Laura J. Thompson, 1781
Theresa L. Tierney, 6714
Shawn C. Tripp, 4929
Nancy J. Truax, 5567
Adam J. Tyndale, 0852
Daniel D. Unruh, 0015
Joseph G. Uzmann, 3423
Matthew R. Walker, 1683
Daniel P. Walsh, 5596
Thomas F. Walsh, 6807
Michelle R. Webber, 8933
Michael C. Wessel, 1833
Richard J. Wester, 0160
Sherman P. Whitmore, 2290
Gary S. Williams, 3943
Donald L. Winfield, 1051
Charles T. Wright, 2712
Jeffrey V. Yarosh, 7292
Michael E. Yensz, 1753
Cherian Zachariah, 6501
Michael B. Zamperini, 8558

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 107–19 AND TREATY DOCUMENT NO. 107–20

Mr. REID. I ask unanimous consent that the injunction of secrecy be removed from the following treaties transmitted to the Senate on November 14, 2002, by the President of the United States:

Convention with Great Britain and Northern Ireland regarding Double Taxation and Prevention of Fiscal Evasion (Treaty Doc. 107–19); and

Protocol Amending Convention with Australia regarding Double Taxation and Prevention of Fiscal Evasion (Treaty Doc. 107–20).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, signed at London on July 24, 2001, together with an exchange of notes, as amended by the Protocol signed at Washington on July 19, 2002 (the ''Convention''). I also transmit the report of the Department of State concerning the Convention.

The proposed Convention transmitted herewith would replace the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at London on December 31, 1975, as modified by a subsequent agreement and protocols.

This Convention, which is similar to tax treaties between the United States and other developed nations, provides for maximum rates of tax to be applied to various types of income, protection from double taxation of income, and for the exchange of information. The Convention also contains rules making its benefits unavailable to persons who are engaged in treaty shopping. The proposed Convention is the first U.S. income tax convention to provide a zero rate of withholding on certain direct investment dividends.

I recommend that the Senate give early and favorable consideration to this Convention, and that the Senate give its advice and consent to ratification.

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Protocol Amending the Convention Between the Government of the United States of America and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Canberra on September 27, 2001 (the ''Protocol''). I also transmit, for the information of the Senate, the report of the Department of State concerning the Protocol.

The Convention, as amended by the Protocol, would be similar to recent tax treaties between the United States and other developed nations. It provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention, as amended by the Protocol, also provides for resolution of disputes and sets forth rules making its benefits unavailable to residents that are engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Protocol, and that the Senate give its advice and consent to ratification.

TREATY WITH THE GOVERNMENT OF THE REPUBLIC OF HONDURAS FOR THE RETURN OF STOLEN, ROBBED, OR EMBEZZLED VEHICLES AND AIRCRAFT

Mr. REID. I ask unanimous consent the Senate proceed to consider Executive Calendar No. 12, the Treaty with Honduras, the treaty be advanced through its parliamentary stages up to and including the presentation of the resolution of the ratification, and the Senate now vote on the resolution of ratification.

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

The question is on agreeing to the resolution of ratification.

Senators in favor of the resolution, please stand. (After a pause.) All those opposed, please stand.

In the opinion of the Chair, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty between the Government of the United States of America and the Government of the Republic of Honduras for the Return of Stolen, Robbed, or Embezzled Vehicles and Aircraft, with Annexes and a related exchange of notes, signed at Tegucigalpa on November 23, 2001 (Treaty Doc. 107–15).

EXTRADITION TREATY WITH PERU

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 13, Extradition Treaty with Peru, the treaty be advanced through its parliamentary stages up through and including the presentation of the resolution of ratification, and that the understanding and the condition be agreed to, and the Senate vote on the resolution of ratification.

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

The question is on agreeing to the resolution of ratification. Senators in favor of the resolution, please stand. (After a pause.) All those opposed, please stand.

In the opinion of the Chair, two-thirds of those present and voting having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification and condition are as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Extradition Treaty with Peru, subject to an understanding and a condition.

The Senate advises and consents to the ratification of the Extradition Treaty Between the United States of America and the Republic of Peru, signed at Lima on July 26, 2001 (Treaty Doc. 107–6; in this resolution referred to as the ''Treaty''), subject to the understanding in section 2 and the condition in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION OF EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article XIII concerning the Rule of Speciality would preclude the resurrender of any person extradited to the Republic of Peru from the United States to the International Criminal Court, unless the United States consents to such resurrender; and the United States shall not consent to any such

resurrender unless the Statute establishing that Court has entered into force for the United States by and with the advice and consent of the Senate in accordance with Article II, section 2 of the United States Constitution.

Section 3. Condition.

The advice and consent of the Senate under section 1 is subject to the condition that nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

EXTRADITION TREATY WITH LITHUANIA

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 14, extradition treaty with Lithuania, that the treaty be advanced through its parliamentary stages, up to and including the presentation of the resolution of ratification; that the condition be agreed to and the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the resolution of ratification. Senators in favor of the resolution of ratification, please stand. (After a pause.) Senators opposed, please stand.

In the opinion of the Chair, two-thirds of those voting having voted in the affirmative, the resolution is agreed to.

The resolution of ratification and condition are as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Extradition Treaty with Lithuania, subject to a condition.

The Senate advises and consents to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Lithuania, signed at Vilnius on October 23, 2001 (Treaty Doc. 107–4; in this resolution referred to as the ''Treaty''), subject to the condition in section 2.

Section 2. Condition.

The advice and consent of the Senate under section 1 is subject to the condition that nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

SECOND PROTOCOL AMENDING EXTRADITION TREATY WITH CANADA

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 15, the Second Protocol Amending Extradition Treaty with Canada; that the treaty be advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; and that the Senate now vote on the resolution of ratification.

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

Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting and having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Second Protocol Amending the Treaty on Extradition Between the Government of the United States of America and the Government of Canada, signed at Ottawa on January 12, 2001 (Treaty Doc. 107–11).

TREATY WITH BELIZE ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 16, the treaty with Belize on mutual legal assistance in criminal matters; that the treaty be advanced through parliamentary stages up to and including the presentation of the resolution of ratification; that the understanding and conditions be agreed to; and that the Senate now vote on the resolution of ratification.

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

Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting, having voted in the affirmative, the resolution is agreed to.

The resolution of ratification and conditions are as follows:

Resolved, (two-thirds of the Senators present concurring therein,

Section 1. Advice and Consent to Ratification of the Treaty with Belize on Mutual Legal Assistance in Criminal Matters, subject to an understanding and conditions.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of Belize on Mutual Legal Assistance in Criminal Matters, signed at Belize, on September 19, 2000, and a related exchange of notes (Treaty Doc. 107–13; in this resolution referred to as the ''Treaty''), subject to the understanding in section 2 and the conditions in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON ASSISTANCE TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall exercise its rights to limit the use of assistance that it provides under the Treaty so that any assistance provided by the Government of the United States shall not be transferred to our otherwise used to assist the International Criminal Court unless the treaty establishing the Court has entered into force for the United States by and with the advice of the Senate in accordance with Article II, Section 2 of the United States Constitution, or unless the President has waived any applicable prohibition on provision of such assistance in accordance with applicable United States law.

Section 3. Conditions.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) LIMITATION ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny legal assistance that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 2(2) of the Treaty), after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(2) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

TREATY WITH INDIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to Executive Calendar No. 17, the treaty with India on mutual legal assistance in criminal matters; that treaty be advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; that the understanding and conditions be agreed to; and that the Senate now vote on the resolution of ratification.

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

Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting, having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification and understanding and conditions are as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Treaty with India on Mutual Legal Assistance in Criminal Matters, subject to an understanding and conditions.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of the Republic of India on Mutual Legal Assistance in Criminal Matters, signed at New Delhi on October 17, 2001 (Treaty Doc. 107–3; in this resolution referred to as the ''Treaty''), subject to the understanding in section 2 and the conditions in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON ASSISTANCE TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall exercise its rights to limit the use of assistance that it provides under the Treaty so that any assistance provided by the Government of the United States shall not be transferred to or otherwise used to assist the International Criminal Court unless the treaty establishing the Court has entered into force for the United States by and with

the advice of the Senate in accordance with Article II, Section 2 of the United States Constitution, or unless the President has waived any applicable prohibition on provision of such assistance in accordance with applicable United States law.

Section 3. Conditions.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) LIMITATIONS ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny assistance that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 2(2) of the Treaty), after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(2) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

TREATY WITH IRELAND ON MUTUAL LEGAL ASSISTANCE MATTERS IN CRIMINAL MATTERS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Executive Calendar No. 18, the treaty with Ireland on mutual legal assistance matters; that the treaty be advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; that the understanding and conditions be agreed to; and that the Senate now vote on the resolution of ratification.

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

Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting, having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification and understanding and conditions are as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Treaty with Ireland on Mutual Legal Assistance in Criminal Matters, subject to an understanding and conditions.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters, signed at Washington on January 18, 2001 (Treaty Doc. 107–9; in this resolution referred to as the ''Treaty''), subject to the understanding in section 2 and the conditions in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON ASSISTANCE TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall exercise its rights to limit the use of assistance that it provided under the Treaty so that any assistance provided by the Government of the United States shall not be transferred to or otherwise used to assist the International Criminal Court unless the treaty establishing the Court has entered into force for the United States by and with the advice of the Senate in accordance with Article II, Section 2 of the United States Constitution, or unless the President has waived any applicable prohibition on provision of such assistance in accordance with applicable United States law.

Section 3. Conditions.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) LIMITATION ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny legal assistance that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 2(2) of the Treaty), after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(2) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

TREATY WITH LIECHTENSTEIN ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to Executive Calendar No. 19, the treaty with Liechtenstein on mutual legal assistance in criminal matters; that treaty be advanced through its parliamentary stages, up to and including the presentation of the resolution of ratification; that the understanding and conditions be agreed to; and that the Senate now vote on the resolution of ratification.

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

Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting, having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification and understanding and conditions are as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Treaty with Liechtenstein on Mutual Legal Assistance in Criminal Matters, subject to an understanding and conditions.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Principality of Liechtenstein on Mutual Legal Assistance in Criminal Matters, and a related exchange of notes, signed at Vaduz on July 8, 2002 (Treaty Doc. 107–16; in this resolution referred to as the ''Treaty''), subject to the understanding in section 2 and the conditions in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON ASSISTANCE TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall exercise its rights to limit the use of assistance that it provides under the Treaty so that any assistance provided by the Government of the United States shall not be transferred to or otherwise used to assist the International Criminal Court unless the treaty establishing the Court has entered into force for the United States by and with the advice of the Senate in accordance with Article II, Section 2 of the United States Constitution, or unless the President has waived any applicable prohibition on provision of such assistance in accordance with applicable United States law.

Section 3. Conditions.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) LIMITATION ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny legal assistance that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 2(2) of the Treaty), after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(2) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constutition of the United States as interpreted by the United States.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. In my capacity as a Senator from the State of New York, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

In my capacity as a Senator from the State of New York, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 9:36 p.m., recessed subject to the call of the Chair and reassembled at 10:15 p.m., when called to order by the Presiding Officer (Ms. CANTWELL).

The PRESIDING OFFICER. The Senator from New York.

ECONOMIC SECURITY AND WORKER ASSISTANCE ACT OF 2001

Mrs. CLINTON. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 308, H.R. 3529.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3529) to provide tax incentives for economic recovery and assistance to displaced workers.

There being no objection, the Senate proceeded to the consideration of the bill.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, before formally making the unanimous consent request, I wish to thank Senator NICKLES for his understanding and cooperation in reaching this point this evening. I very much appreciate his willingness, and that of his staff, to work with us throughout today. And I am very personally grateful for his leadership and good advice and counsel.

This unemployment insurance extension is being sponsored, in addition to myself, by the Presiding Officer, the Senator from Washington, who has been a tremendous advocate, by Senator FITZGERALD of Illinois, and Senator SPECTER of Pennsylvania.

The commitment of all of the sponsors, and others, have made it possible for us to agree this evening to pass a bill that will be extremely welcomed by about 2.1 million Americans who will be able to take advantage of this extension that runs through the end of March. This will also specifically help approximately 177,000 New Yorkers as they enter the holiday season.

Obviously, this is not all that the Presiding Officer and I would have wanted. Perhaps it is more than some would have thought we should do. But I think it works out to be an acceptable compromise in bringing this about at this time.

Again, I personally thank Senator NICKLES for his extraordinary assistance.

So, Madam President, I ask unanimous consent that the 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 upon the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4960) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. Section 114 of Public Law 107–229 is amended by striking ''the date specified in section 107(c) of this joint resolution'' and inserting ''March 31, 2003''.

SEC. 2. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) IN GENERAL.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

''SEC. 208. APPLICABILITY.

''(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending before April 1, 2003.

''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of March 29, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

''(2) NO AUGMENTATION AFTER MARCH 26, 2003.—If the account of an individual is exhausted after March 29, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

''(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 28, 2003.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21).

The bill (H.R. 3529), as amended, was read a third time and passed.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I thank my colleague and friend from New York for working with us. I think we have worked out an acceptable compromise. Senator FITZGERALD and Senator SPECTER were very much interested in passing this bill so we were happy to accommodate them.

In contrast to the previous legislation, which was a significant expansion over current law, of which efforts had been made to pass by unanimous consent earlier today, this is an extension of current law. It is a lot less expensive. This is an extension for 3 months.

We also did something else I think is important. We eliminated the cliff. In other words, current law would say by January 1 the 13-week Federal program would be terminated. This says, no, there is a phaseout. So there is not a cliff. At the end of March, if people are already into the system, they can complete their 13-week program. So I think it is responsible.

Also, for the benefit of my colleagues—and some have reservations about this program because, legitimately, they are wondering whether, if you continue to pay out unemployment benefits, they will stay unemployed. And I happen to appreciate many of those concerns.

Now we will not be wrapped up with this beginning in January. So this will give Congress a chance and hopefully offer some assistance to those people who really need it and also offer Congress a chance to get off to a good start without wrestling and debating this issue.

I have debated this issue more than I want to debate it. And I appreciate our colleagues on both sides willing to compromise.

The House passed a 1-month extension. This is a 3-month extension eliminating the cliff. I think it is a more orderly and more well-thought-out program that makes sense.

So I will not object to its passage and appreciate our colleagues from New York and Washington, as well as Illinois and Pennsylvania, for their cooperation in making this happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. As I was listening to the Senator from Oklahoma explain why this makes sense, and particularly to eliminate the cliff that, frankly, people would have fallen off at the end of the year, right at the beginning of a new year—and hopefully providing new hope for people—I could not help but think of our colleague, Paul Wellstone. I think he is smiling down on us. I think he is up there waving his arms, pacing around, and saying, good work, and thanks for doing that.

To me, this is tremendous evidence of the kind of cooperation that can come about to bring us together to help people.

Again, I thank my friend from Oklahoma.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I have been on this floor many, many times when there have been speeches on both sides on extending unemployment insurance going back several months. This is what legislating is all about, the art of compromise. Not everyone got what they wanted. But we got something, and it is very important and very positive.

I extend my appreciation to the Presiding Officer, the Senator from Washington, who worked on this diligently, and, of course, the Senator from New York, who has worked on this very hard.

No one has been on the floor more than the Senator from Oklahoma, and he needs to be complimented because he certainly could have stopped this in the last few hours of the session. He chose not to do that. He chose to move forward on a positive note.

I, not only for the Senate, but for the respective States and the whole country, extend my appreciation to the three of you, all fine legislators.

Mr. NICKLES. Thank you.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

Ms. CANTWELL. Madam President, I would like to take the opportunity to congratulate my colleagues on the passage of the unemployment extension bill which we just did by unanimous consent.

This really was a bipartisan effort by the Senator from Oklahoma and from two of our colleagues, the Senator from Illinois, Mr. FITZGERALD, and the Senator from Pennsylvania, Mr. SPECTER, who played a very important role in communicating the needs of unemployment benefit extensions in their States.

I thank the Chair, the Senator from New York, Mrs. CLINTON, who has since July advocated passage of this legislation, talked about the importance of making sure that as our economy has faced a downturn, we continued to make sure the opportunities for income and stimulus in our economy were there.

As she fought for the State of New York, which has been gravely impacted by the events of 9/11 and the downturn in the economy where jobs are just not being created, the Senator got all of us in the country to realize how critical the issue was for us moving forward at a time when the economy has not returned to positive growth.

Obviously the State of Washington has been greatly impacted by that same downturn, in the aerospace industry, in high tech. This legislation will actually help over 75,000 Washingtonians who will get the benefit of having an extension of a program and, being a high unemployment State, will qualify for the benefits of that program. This is actually something I think a few Washingtonians tonight, maybe a few Seattlites, will be sleeping a little bit better from, knowing that in the impending months, as we struggle to get the economy going again, they will actually be able to meet those mortgage payments, pay those health care bills, and continue to move forward.

Economists have said this kind of stimulus has a two-to-one effect; that for every dollar spent on unemployment benefits, it generates about $2.15 into the local economy. We have done a good service for my State's economy and for New York's and Pennsylvania and Illinois, for the whole country, because we will be stimulating those individuals' disposable income.

Again, I thank the Senator from New York for her hard work and vision, pointing out last summer the need to do it, being diligent in this process. And tonight, because of this bipartisan support, there will be more Americans sleeping better as we approach the tough challenges ahead in getting our economy moving but knowing that we have not left workers behind, workers who would rather have a paycheck than an unemployment check, but at least now they will be continuing to add to the economy.

I yield the floor and suggest the absence of a quorum

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

IN REMEMBRANCE OF PAUL WELLSTONE

Mr. CHAFEE. Madam President, today I offer my condolences to all the friends, family members and admirers of Paul Wellstone. As has been said many times, Paul Wellstone was fiercely proud of the causes with which he associated himself. Certainly, to have Paul Wellstone articulately and strongly arguing on one's behalf was a great asset. His many friends are forever grateful for his wrestler's tenacity as he advocated for those issues in which he so emotionally believed.

Several years ago a candidate for Congress in Rhode Island retired from the campaign because of a shortage of funds, declaring that no longer could ''Mr. Smith go to Washington.'' Paul Wellstone proved that yes, indeed, Mr. Smith could go to Washington. In 1990 he challenged an incumbent who possessed a huge financial advantage in what many assumed to be a quixotic and hopeless campaign. In November of that year Paul Wellstone was the only challenger to beat an incumbent, providing inspiration forever to long shots.

Three cheers for the people of Minnesota who have shown a propensity for embracing people of divergent philosophies. In the last few years Minnesota has elected Rod Grams, Jesse Ventura and Paul Wellstone; public servants with very different approaches to the issues of the day. I join Minnesotans and Americans in mourning the death of the passionate and good-natured Paul Wellstone.

TRIBUTE TO SENATOR MAX CLELAND

Mr. CONRAD. Madam President, I am honored to pay tribute and recognize the leadership, dedication to public service and hard work of my colleague from Georgia, Senator MAX CLELAND. Few Members of the Senate have sacrified so much for their country.

Senator CLELAND has had a remarkable 30-year career in public service including a tour of duty in Vietnam in 1967 in which he was awarded the Bronze and Silver Stars for meritorious service. MAX started his career in the military soon after graduating from Stetson University, where he was a member of the Army ROTC. In 1967, he volunteered for duty in Vietnam. He quickly worked his way up the ranks, earning a promotion to Captain in 1968. In April of the same year, he was seriously wounded in a grenade explosion, which cost him both of his legs and his right arm. One month before his tour was up, he was sent home to recover from his injuries.

His dedication to public service continued when he won a seat in the Georgia State Senate. As the youngest state senator, he pushed for a State law making public facilities accessible to the disabled. In 1975, Senator CLELAND began his lifelong mission of improving the lives of the men and women in the military. MAX was asked to work for the Senate Veterans Affairs Committee, and 2 years later he accepted the position to head up the U.S. Veterans Administration. He was the youngest administrator and only Vietnam veteran to ever head up the agency. During his time with the Veterans Administration, MAX instituted the ''Vets Center Program,'' which for the first time provided psychological counseling to combat veterans. This program has now led to over 200 Vet Centers around the country.

Senator CLELAND continued his public service for the people of Georgia in 1982, when he was elected Secretary of State. During his time in this position, he fought relentlessly for campaign finance reform and to reduce telemarking fraud. Senator CLELAND also played a key role in the implementation of the National Voter Registration Act, or Motor Voter, in the State of Georgia. This in turn allowed an increase in access to government by getting nearly 1 million citizens of Georgia registered to vote.

MAX was elected to the U.S. Senate in 1996; he filled the spot that was vacated by the retiring Sam Nunn. The 6 years that he spent in the Senate were marked by his passion and drive to accomplish what was of importance to the people he served. He was a proponent for the Patients' Bill of Rights and doggedly battled for the improvement of education by way of increased resources for teacher training and certification.

As a former military man who served his country in Vietnam, Senator CLELAND brought an understanding to the Senate Chamber, of the sacrifices made by individuals in the armed forces. This understanding led him to champion military causes. As chairman of the Personnel Subcommittee of the Armed Services Committee, he fought for improvements in the quality of life of our active-duty, reserve, and retired military personnel through enhancement of the Montgomery G.I. Bill

and improvement of retirement benefits. All his hard work has not gone unnoticed, Senator CLELAND has been recognized nationally as the ''Minute Man of the Year,'' an award given by the Reserve Officers Association of America to two individuals annually for their tremendous leadership in the areas of military and national security. There is no doubt that on and off the battlefield, MAX was a leader for the Armed Forces.

Senator CLELAND also provided support to military personnel stationed at the Grand Forks Air Force Base in North Dakota. In 1997, during the devastating floods in North Dakota, several hundred active duty personnel from the Grand Forks base were unable to access disaster relief because Federal law limited assistance to personnel living on the base. Senator CLELAND, as a member of the Senate Armed Services Committee, was instrumental in amending the law to enable those servicemen living off base to be eligible for this critical disaster assistance.

MAX's bravery, courage, and passion for these issues and many others will be missed. It has been an honor to serve with somebody who represents his constituents with such energy, drive and passion. I would like to join my colleagues in wishing the Senator and his family the best in the future and paying tribute to his outstanding public service. I wish him well.

TRIBUTE TO REPRESENTATIVE JAMES V. HANSEN

Mr. HATCH. Madam President, I rise to pay tribute to my long-time friend and colleague, Representative JAMES V. HANSEN. After 22 years of dedicated service to his country and to the State of Utah, Jim has chosen to end his career as a Member of Congress and return home to Utah and to his grandchildren.

I am pleased that Mr. HANSEN will be able to enjoy his retirement, but we will miss him. Utah has never been better served by a Member of Congress. Just this year he was described by a national media source as one of the 10 most powerful Members of the House of Representatives. Considering the number of Members of that body, that is really saying something. Representative HANSEN has had a very positive impact on our Nation, but his impact on Utah and Utahns is truly incalculable.

Mr. HANSEN was the first Representative from Utah to chair a full committee. Due in large part to the respect he earned among his colleagues on both sides of the aisle, he was appointed to chair the high-profile Committee on Standards of Official Conduct.

As some of my colleagues may know, Utah is made up of about 70 percent public lands which includes national parks, Bureau of Land Management lands, national forests, national monuments, national wildlife refuges, and vast military holdings. As a very senior member of the House Armed Services Committee and the Chairman of the Committee on Natural Resources, Representative HANSEN has the protector and promoter of so many of Utah's interests.

Mr. HANSEN's service to the public has spanned more that four decades. He spent the first 12 years of his public service career on the City Council of Farmington, UT. Following that, he served for four terms as a member of the Utah House of Representatives, including one term as the Speaker of the House. In 1980, Mr. HANSEN was elected to Congress where he has served diligently until today.

Mr. HANSEN's honesty, hard work, and strong character have made him a lawmaker that we will never forget. I am one of many who will sorely miss his plain talking leadership and his wisdom on matters of public policy. On behalf of my colleagues in the Senate and the people of Utah, I would like to publicly thank JIM and his wonderful wife Ann for giving so much of themselves to their State and to their Nation.

GRATITUDE FOR NEW ZEALAND'S FIREFIGHTERS

Mr. SMITH of Oregon. Madam President, I rise today, on behalf of my State of Oregon, to express our deepest gratitude for the New Zealanders who put their lives on the line this last summer in fighting the ravenous wildfires experienced in the West.

Even as the rains of fall settle into the forests of the Pacific Northwest, it is not difficult to remember the fiery infernos that engulfed the West only a few months ago. The year 2002 was the second worst fire season in 50 years. Nationwide 21 lives were lost and 6.7 million acres were burned.

It was one of the Nation's largest fires, called the Biscuit Fire, that drew a cadre of international firefighters to Oregon, the world's best sent to join the fight against our worst disaster. The Biscuit Fire, the largest wildfire in Oregon in over a century, eventually burned 500,000 acres in southwestern Oregon. At times, firefighters put the chances of losing one or all of the Illinois Valley's four towns at 75 percent. However, 7,000 of the world's best firefighters beat the odds and staved off an exploding fire that threatened hundreds of square miles and thousands of homes. As a result of their relentless work, no lives were lost and structural loss was virtually nonexistent.

On behalf of my State of Oregon, I want to thank and commend the brave New Zealand firefighters who helped win that battle against wildfire. They are John Barnes, Darryl Robson, John Sutton, Richard McNamara, Paul Tolladay, Phil Wishnowsky, Robin Thompson, Trevor Tiday, Jock Darragh, and Ross Hamilton.

While I hope that such perilous circumstances will never call these firefighters back to Oregon or elsewhere, I know that forest fires will continue to burn and brave firefighters will continue to put their lives between the fire and ours. We will never forget that.

TRIBUTE TO SENATOR BOB SMITH

Mr. CONRAD. Madam President, I take this opportunity to pay tribute to and recognize the hard work of my colleague from New Hampshire, Senator BOB SMITH. Since joining the Senate in 1990, he has fought with honesty and commitment for the issues that he believed to be most important.

As the ranking member and former chairman of the Environment and Public Works Committee, he focused great attention on reforms of the Corps of Engineers and funding to expand and improve transportation infrastructure. Also, as a senior member of the Armed Services Committee, Senator SMITH fought passionately for a strong military, and always made national security a top priority.

I had the pleasure of working with BOB SMITH in his efforts to establish accountability measures for missing MIAs and POWs. In his capacity as a member of the Senate Select Committee on POW/MIA Affairs, Senator SMITH was very helpful in answering and addressing questions about Vietnam POWs from North Dakota. He also helped North Dakotans on POW issues from the cold war era.

I also had the privilege of serving with Senator SMITH on the Ethics Committee, which he chaired. I found him to be completely fair and non-partisan in his conduct of his duties.

He also was one of the first of my colleagues to console me on the untimely death of my chief of staff, Kent Hall.

Mr. President, it has been an honor to serve in the Senate with BOB SMITH. I have the utmost respect for his service to the people of New Hampshire. While sitting in the historic desk of Daniel Webster, he has made contributions not only to the Senate but also to our Nation. I would like to join my colleagues in wishing Senator SMITH and his family the best in the future.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred December 28, 2001 in Marshfield, MA. According to police, a teenage assailant beat a man because the assailant thought the victim was gay. The victim was standing outside a local store when a car containing three men pulled into the parking lot. One of

the men in the car yelled anti-gay obscenities at the victim. The victim entered the store with two friends, and upon exiting, was beaten by the assailant. The assailant yelled anti-gay epithets while punching and kicking the victim, continuing the beating even after the victim fell to the ground.

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.

21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. LEAHY. Madam President, I thank the Senate for voting to end debate and to pass the bipartisan 21st Century Department of Justice Authorization Act conference report. I commend the Majority Leader for bringing this important legislation the floor and filing cloture in order for the Senate to take final action on the conference report.

I regret that consideration and a vote on final passage on this important measure was delayed, but I thank the overwhelming majority of my colleagues for supporting cloture and passage of the conference report.

This measure was passed by the House, by a vote of 400 to 4, last Thursday. All Democrats were prepared to pass the conference report that same day last week and any day this week. Given the Republicans' objection to proceed to a vote and given the refusal to agree to a time agreement, the Majority Leader was required to file cloture. I am glad that the filibuster is over.

This legislation is truly bipartisan. It passed the House 400 to 4. The conference report was signed by every conferee, Republican or Democrat, including Senator HATCH and Representatives SENSENBRENNER, HYDE, and LAMAR SMITH.

Senators from both sides of the aisle spoke in favor of the legislation. In particular, I thank Senator HUTCHISON for coming to the floor on Tuesday to support this conference report. Senator HUTCHISON has spoken to me many times about the need for more judgeships along the Texas border with Mexico to handle immigration and criminal cases.

The conference report includes three new judgeships in the conference report for Texas, one more than was included in the bill reported to the Senate by the Senate Judiciary Committee and passed by the Senate last December.

I thank Senator SESSIONS for his statements on Tuesday and today in support of this bipartisan conference report.

Although he opposes Senator HATCH's legislation regarding automobile dealer arbitration, which enjoys more than 60 Senate cosponsors and 200 House cosponsors and was included in the conference report, Senator SESSIONS is supporting this conference report because it will improve the Department of Justice and support local law enforcement agencies across the nation. I appreciate Senator SESSIONS' work on the provisions in the conference report on the Paul Coverdell Forensic Sciences Improvement Grants and the Centers for Domestic Preparedness in Alabama and other States.

Senator BROWNBACK also spoke in favor of certain immigration provisions in this bill that he worked on with Senator KENNEDY, the Chairman of the Immigration Subcommittee of the Judiciary Committee. In particular, the conference report includes language sought by Senators CONRAD and BROWNBACK to reauthorize the program allowing foreign doctors educated in the United States to remain here if they will practice in underserved communities. This is a crucial provision to ensure that residents in some of our most rural states receive adequate medical care.

The conference report also contains another important immigration provision to permit H–1B aliens who have labor certification applications caught in lengthy agency backlogs to extend their status beyond the sixth year limitation or, if they have already exceeded such limitation, to have a new H–1B petition approved so they can apply for an H–1B visa to return from abroad or otherwise re-obtain H–1B status. Either a labor certification application or a petition must be filed at least 365 days prior to the end of the 6th year in order for the alien to be eligible under this section.

The slight modification to existing law made by this section is necessary to avoid the disruption of important projects caused by the sudden loss of valued employees. At a time when our economy is weak, this provision is intended to help. I thank Senator KENNEDY and Senator BROWNBACK for their work on this provision and their contributions to the conference report. I thank Senator FEINSTEIN for her excellent speech earlier this week in support of this conference report. Senator FEINSTEIN has been a tireless advocate for the needs of California, including the needs of the federal judiciary along the southern border. She has led the effort to increase judicial and law enforcement resources along our southern border. I am proud to have served as the chair of the House-Senate conference committee that unanimously reported a bill that includes five judgeships for the Southern District of California. Long overdue relief for the Southern District of California could be on the way once this conference report is adopted.

Senator BIDEN also contributed a great deal to this conference report. He has fought doggedly to authorize a new Violence Against Women Office at the Justice Department, and his efforts have borne fruit in this legislation. He has also been one of the Senate's best advocates for reauthorizing the Juvenile Justice and Delinquency Prevention Act, which we do here. In addition, he was a cosponsor of the Drug Abuse Education, Prevention, and Treatment Act, and we have included many provisions from that bill in this conference report.

I also would like to thank Senator DURBIN for statements on the Senate floor and his dedicated efforts to authorize a new Violence Against Women Office, to expand the number of Boys and Girls Clubs in our nation, and to create new judgeships in Illinois.

Senator KOHL was a tremendous help in our efforts to reauthorize the Juvenile Justice and Delinquency Prevention Act, especially Title V of that Act, which provides for crucial prevention programs for our nation's youth.

Senator CARNAHAN deserves the credit for the inclusion of the Law Enforcement Tribute Act in this conference report. That provision provides Federal assistance for local communities seeking to honor fallen law enforcement officers. Without her tireless work, we would not have been able to include that provision in this conference report.

For his part, Senator FEINGOLD was able to include his and Senator HATCH's Motor Vehicle Franchise Contract Arbitration Fairness Act in this conference report. That bill will ensure that auto dealers will have a level playing field in their disputes with the auto manufacturers.

Finally, I also thank Senator REID for his helpful comments and support throughout the debate on the legislation.

Of course, our bipartisanship is evidenced by our including authorization for additional judgeships not only in California but also in Texas, Arizona, New Mexico, Ohio, North Carolina, Illinois and Florida. I have tried to improve on the record we inherited.

In the six and one-half years that they controlled the Senate, the Republican majority was willing to add only eight judgeships to be appointed by a Democratic President, and most of those were in Texas and Arizona, States with two Republican Senators. We have, on the other hand, proceeded at our earliest opportunity to increase federal judgeships by 20, including in the border States where they are most needed, well aware these positions will be filled with appointments by a Republican President who has shown little interest in working with Democrats in the Senate. These include a number of jurisdictions with Republican Senators.

I also commend the senior Senator from California for her leadership on the ''James Guelff and Chris McCurley Body Armor Act,'' the State Criminal Alien Assistance Program reauthorization, and the many anti-drug abuse provisions included in this conference

report. She spoke eloquently on the floor of the Senate regarding many of the important provisions she has championed in this process.

This conference report will strengthen our Justice Department and the FBI, increase our preparedness against terrorist attacks, prevent crime and drug abuse, improve our intellectual property and antitrust laws, strengthen and protect our judiciary, and offer our children a safe place to go after school.

This conference report is the product of years of bipartisan work. By my count, the conference report includes significant portions of at least 25 legislative initiatives. This legislation is neither complicated nor controversial. It passed the House overwhelmingly and in short order with a strong bipartisan vote.

I thank my colleagues again for supporting the cloture motion and final passage of this conference report so that all of this bipartisan work and all the good that this legislation will do, will reach the President's desk. I particularly want to thank Senator HATCH, who worked very hard to help construct a good, fair and balanced conference report as did all of the conferees. Likewise, I want to thank Chairman SENSENBRENNER and Representative CONYERS of the House Judiciary Committee for working with us to conclude this conference report successfully.

The staffs of these Members must also be thanked for working through the summer and over the last month to bring all the pieces of the conference report together into a winning package. In particular, the House Judiciary Committee staff has been enormously helpful, including Phil Kiko, Will Moschella, Blaine Merritt, Perry Apelbaum, Ted Kalo, Sampak Garg, Bobby Vassar, and Alec French. I would also like to thank the staff of the House Education and Workforce Committee, including Bob Sweet and Denise Forte. The Senate Judiciary Committee staff has shown its outstanding professionalism and I want to thank Bruce Cohen, Beryl Howell, Ed Pagano, Tim Lynch, Jessica Berry, Robyn Schmidek and Phil Toomajian, Makan Delrahim, Leah Belaire, Michael Volkov, Melody Barnes, Esther Olavarria, Robert Toone, Neil MacBride, and Louisa Terrell.

I appreciate that not all Members were or could be conferees and participate in the conference, but after a full opportunity to study the conference report passed last week in the House by a vote of 400 to 4, I hope that even those Members who raised objection will conclude that on the whole this is a good, solid piece of legislation.

Although the debate is over, I want to address the objections raised by a few Members to this legislation. I thank these Members for coming to the floor to discuss their views and concerns, and want to show them the respect they deserve by responding to those objections. I should note that even in posing an objection to and delaying passage of the conference report—as is their rights as Senators—these Members acknowledged that there were parts of this bill they liked or may like upon review.

Contrary to those who may argue that this legislation is not a priority, it is. Congress has not authorized the Department of Justice in more than two decades. While the Justice Department would certainly continue to exist if we were to fail to reauthorize it, that is not an excuse for shirking our responsibility now. I know that Senator HATCH and Representatives SENSENBRENNER and CONYERS share my view. It is long past time for the Judiciary Committees of the House and Senate—and the Congress as a whole—to restore their proper oversight role over the Department of Justice.

Through Republican and Democratic administrations, we have allowed the Department of Justice to escape its accountability to the Senate and House of Representatives and through them to the American people. Congress, the people's representative, has a strong institutional interest in restoring that accountability. The House has recognized this, and has done its job. I am glad that we have done ours.

I agree with those Members who say that we need to give anti-terrorism priority, but not lose sight of the other important missions of the Department of Justice. The conference report takes such a balanced approach. Those critics who say that there is nothing new in this legislation to fight terrorism, have missed some important provisions in the legislation as well as my floor statements over the past week outlining what the conference report contains to help in the anti-terrorism effort.

Let me repeat the highlights of what the conference report does on this important problem.

The conference report fortifies our border security by authorizing over $20 billion for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration. It also authorizes funding for Centers for Domestic Preparedness in Alabama, Texas, New Mexico, Louisiana, Nevada, Vermont and Pennsylvania, and adds additional uses for grants from the Office of Domestic Preparedness to support State and local law enforcement agencies. These provisions have strong bipartisan support. I thank Senator SESSIONS, Senator SHELBY and Senator SPECTER for supporting cloture on the conference report and for final passage.

Another measure in the bill would correct a glitch in a law that helps prosecutors combat the international financing of terrorism. I worked closely with the White House to pass the original provision to bring the United States into compliance with a treaty that bans terrorist financing, but without this technical, non-controversial change, the provision may not be usable. This law is vital in stopping the flow of money to terrorists. Worse yet, at a time when the President is going before the U.N. emphasizing that our enemies are not complying with international law, by blocking this minor fix, we leave ourselves open to a charge that we are not complying with an anti-terrorism treaty.

I agree with other Members that we should do more to help the FBI Director in transforming the FBI from a crime fighting to a terrorism prevention agency and to help the FBI overcome its information technology, management and other problems to be the best that it can be. The Judiciary Committee reported unanimously the Leahy-Grassley FBI Reform Act, S. 1974, over six months ago to reach those goals, but this legislation has been blocked by an anonymous hold from moving forward. This conference report contains parts of that bipartisan legislation, but not the whole bill, which continues to this day to be blocked to this day.

Since the attacks of September 11 and the anthrax attacks last fall, we have relied on the FBI to detect and prevent acts of catastrophic terrorism that endanger the lives of the American people and the institutions of our country. Reform and improvement at the FBI was already important, but the terrorist attacks suffered by this country last year have imposed even greater urgency on improving the FBI. The Bureau is our front line of domestic defense against terrorists. It needs to be as great as it can.

Even before those attacks, the Judiciary Committee's oversight hearings revealed serious problems at the FBI that needed strong congressional action to fix. We heard about a double standard in evaluations and discipline. We heard about record and information management problems and communications breakdowns between field offices and Headquarters that led to the belated production of documents in the Oklahoma City bombing case. Despite the fact that we have poured money into the FBI over the last five years, we heard that the FBI's computer systems were in dire need of modernization.

We heard about how an FBI supervisor, Robert Hanssen, was able to sell critical secrets to the Russians undetected for years without ever getting a polygraph. We heard that there were no fewer than 15 different areas of security at the FBI that needed fixing.

The FBI Reform Act tackles these problems with improved accountability, improved security both inside and outside the FBI, and required planning to ensure the FBI is prepared to deal with the multitude of challenges we are facing.

We are all indebted to Senator GRASSLEY for his leadership in the area. Working with Republicans and Democrats on the Senate Judiciary Committee we unanimously reported

the FBI Reform Act more than six months ago only to be stymied in our bipartisan efforts by an anonymous Republican hold.

The conference report does not contain all of the important provisions in the FBI Reform Act that Senator GRASSLEY and I, and the other members of the Judiciary Committee, agreed were needed, but it does contain parts of that other bill.

Among the items that are, unfortunately, not in the conference report and are being blocked from passing in the stand-alone FBI Reform bill by an anonymous Republican hold are the following: Title III of the FBI Reform bill that would institute a career security officer program, which senior FBI officials have testified before our Committee would be very helpful;

Title IV of the FBI Reform bill outlining the requirements for a polygraph program along the lines of what the Webster Commission recommended;

Title VII of the FBI Reform bill that takes important steps to fix some of the double standard problems and support the FBI's Office of Professional Responsibility, which FBI Ethics and OPR agents say is very important; and

Title VIII to push along implementation of secure communications networks to help facilitate FISA processing between Main Justice and the FBI. These hard-working agents and prosecutors have to hand-carry top secret FISA documents between their offices because they still lack send secure e-mail systems.

The FBI Reform bill would help fix may of these problems and I would hope we would be able to pass all of the FBI Reform Act before the end of this Congress. These should not be controversial provisions and are designed to help the FBI.

During the debate on this conference report, some Members complained it included provisions that were not contained in either the Senate or House bills. Now, each of the proposals we have included are directly related to improving the administration of justice in the United States. We were asked to include many of them by Republican members of the House and Senate.

Let me give you some examples. The conference report reauthorizes the State Criminal Alien Assistance Program, which President Bush has sought to eliminate. On March 4 of this year, Senator KYL and Senator FEINSTEIN sent me a letter asking me to include an authorization for SCAAP—which was not authorized in either the House- or Senate-passed bill—in the conference report. That proposal had been considered and reported by the Judiciary Committee but a Republican hold has stopped Senate consideration and passage. I agreed with Senator KYL that we should authorize SCAAP. I still believe that it is the right thing to do.

In addition to including the reauthorization of SCAAP, the conferees also authorized an additional judge for Arizona. Members have been arguing for years that their States need more judges. We took those arguments seriously, and added another new judge for Arizona on top of the two that were added in 1998 and the third that was added in 2000. As I said before, we have added 20 additional judicial positions in this conference report.

Some have been critical of the conference report's authorization of funding for DEA police training in South and Central Asia, and for the United States-Thailand drug prosecutor exchange program. I believe that both of these are worthy programs that deserve the Senate's support.

I have listened to President Bush and others in his Administration and in Congress argue that terrorist organizations in Asia, including Al Qaeda, have repeatedly used drug proceeds to fund their operations. The conferees wanted to do whatever we could to break the link between drug trafficking and terror, and we would all greatly appreciate the Senate's assistance in that effort.

Beyond the relationship between drug trafficking and terrorism, the production of drugs in Asia has a tremendous impact on America.

For example, more than a quarter of the heroin that is plaguing the northeastern United States, including my State of Vermont, comes from Southeast Asia. Many of the governments in that region want to work with the United States to reduce the production of drugs, and these programs will help. It is beyond me why any Senator would oppose them.

Some have complained that the conference report demands too many reports from the Department of Justice and that this would interfere with the Department's ongoing counterterorism efforts. It is true that our legislation requires a number of reports, as part of our oversight obligations over the Department of Justice. I assure the Senate, however, that if the Department of Justice comes to the House and Senate Judiciary Committees and makes a convincing case that any reporting requirement in this legislation will hinder our national security, we will work out a reasonable accommodation. I think, however, that such a turn of events is exceedingly unlikely, as no one at the Department has mentioned any such concerns.

Some Members have complained that the conference report includes pieces of legislation that had not received Committee consideration. Let me deal with some of the specific proposals that have been cited.

The Law Enforcement Tribute Act was mentioned as a provision not considered by the Judiciary Committee, but this is incorrect. In reality, the Committee reported that bill favorably on May 16. Its passage has been blocked by an anonymous Republican hold.

Complaints have been made about inclusion of the motor vehicle franchise dispute resolution provision in the conference report for bypassing the Committee. But, again, that is incorrect. The Judiciary Committee fully considered this proposal and reported Senator HATCH's Motor Vehicle Franchise Contract Arbitration Fairness Act last October 31. It has been stalled from the Senate floor by anonymous Republican holds.

A section allowing FBI danger pay was cited as a proposal that bypassed Committee consideration, but, again, the Judiciary Committee did consider this proposal as part of the original DOJ Authorization bill, S. 1319.

Some have complained that the Federal Judiciary Protection Act, which is included in the conference report, had not come before the Committee, but on the contrary, this legislation, S. 1099, was passed the Judiciary Committee and the Senate by unanimous consent last year and in the 106th Congress, as well.

A complaint was raised on the floor about a provision on the U.S. Parole Commission being included in the conference report. That was included because the Bush Administration included it in its budget request.

A complaint was also raised about the conference report's provision establishing the FBI police to provide protection for the FBI buildings and personnel in this time of heightened concerns about terrorist attacks. Contrary to the critics, this proposal was considered by the Judiciary Committee as part of the FBI Reform Act, S. 1974, which was reported unanimously on a bipartisan basis but has been blocked by an anonymous hold.

Similarly, a complaint was made on the floor about bypassing the Committee with the provision in the conference report for the FBI to tell the Congress about how the FBI is updating its obsolete computer systems. Again, this is incorrect. This provision was included in the FBI Reform Act, S. 1974, which was considered by the Judiciary Committee and unanimously reported without objection.

Some critics have complained that the conference report includes intellectual property provisions that have passed neither the House or the Senate. It is not for lack of trying to pass these provisions through the Senate, but anonymous Republican holds have held up for months passage of the Madrid Protocol Implementation Act, S. 407. This legislation has passed the House on three separate times in three consecutive Congresses. Let us get it passed now in the conference report.

The conference report also contains another intellectual property matter, the Hatch-Leahy TEACH Act, to help distance learning. Contrary to the critics' statements, this passed the Senate in June, 2001.

The Intellectual Property and High Technology Technical Amendments Act, S. 320, contained in this conference report, was passed by the Senate at the beginning of this Congress,

in February, 2001. It is time to get this done.

The criticism made on the floor that the juvenile justice provisions in the conference report never passed the House or Senate is simply wrong. The conference report contains juvenile justice provisions passed by the House in September and October of last year, in H.R. 863 and H.R. 1900.

The criticism that the conference report contains criminal justice improvements that were passed by neither the House or the Senate glosses over two important points: First, that many of the provisions were indeed passed by the House, and, second, that others have been blocked from Senate consideration and passage by anonymous Republican holds. Let me give you some examples.

The conference report contains the Judicial Improvements Act, S. 2713 and HR 3892, that passed the House in July, 2002, but consideration by the Senate was blocked after the Senate bill was reported by the Judiciary Committee.

The Antitrust Technical Corrections bills, H.R. 809, had the same fate. After being passed by the House in March, 2001, and reported by the Senate Judiciary Committee, consideration was blocked in the Senate.

CONCLUSION

This conference report is a comprehensive attempt to ensure the administration of justice in our nation. It is not everything I would like or that any individual Member of Congress might have authored.

It is a conference report, a consensus document, a product of the give and take with the House that is our legislative process. It will strengthen our Justice Department and the FBI, increase our preparedness against terrorist attacks, prevent crime and drug abuse, improve our intellectual property and antitrust laws, strengthen and protect our judiciary, and offer our children a safe place to go after school.

The conference report merits the support of the United States Senate to help the Justice Department and the American people.

FY 2003 DEFENSE AUTHORIZATION CONFERENCE REPORT

Mr. SNOWE. Madam President, I rise today to speak briefly about my support for the fiscal year 2003 National Defense Authorization Conference Report and would like to particularly endorse its name as the Bob Stump National Defense Authorization Act for Fiscal Year 2003 in recognition of the chairman of the House Armed Services Committee's 25 years of distinguished service to that Committee.

I also acknowledge the senior Senator from Michigan, Mr. CARL LEVIN, the chairman of the Armed Services Committee, for the leadership he provided in support of the authorization bill, and, of course, the ranking member, Senator JOHN WARNER of Virginia, whose tireless efforts on behalf of veterans led to the final agreements that brought this bill to the floor.

Let me recognize the efforts of every Senator on the Committee. As a former member of that committee, I well understand the long hours and persistent effort needed to move this vital bipartisan legislation.

The conference report takes great strides toward improving the quality of service for our dedicated men and women of the military, modernizing our armed services, and making our homeland safe.

Because we recognize that our service members are our most valuable asset, this legislation makes a solid investment in their quality of life by increasing pay and enhancing educational and health care opportunities for our active duty military members and their family members. And that is only right, for today we are asking a great deal of our gallant young men and women as they guard our Nation at home and abroad in this dangerous and deadly post-September 11 world.

This legislation recognizes that we also owe a continuing debt to those who have served honorably by finally granting combat-wounded military retirees the same benefit available to every other retired Federal employee—the ability to collect full retirement pay and disability entitlements without offsets. There is much work to be done before we achieve the full equity of concurrent receipt for all disabled military retirees, but as Senator WARNER has appropriately noted, we have established a ''beachhead'' for this issue.

I do find it regrettable, however, that the conference report does not complete the job of overturning the ban on privately funded abortion services in overseas military hospitals for military women and dependents based overseas, which was reinstated in the Fiscal Year 1996 authorization bill.

This is a ban that, without merit or reason, puts the reproductive health of these women at risk . . . a ban that the Senate voted to overturn in June by a vote of 52–40. Sadly, this is the second time that this policy change, which has been supported by the majority of the Senate, has fallen victim to the conference committee process.

This ban continues to be a threat to more than just the freedoms of American military women overseas, it's also a threat to their health because it places them at the mercy of the local health care infrastructure in whatever country that they are based. While I support this conference report, I remain deeply disappointed that the conference did not include this critical change of policy regarding this arbitrary ban.

As for modernizing our forces, let me speak on an area that is critical to the security of the Nation—shipbuilding. We are learning that in order to effectively engage the forces of terror wherever they hide, we must have the ability to project our power immediately to any part of the globe. Today, we can do that by dispatching our forces in carrier battle groups or amphibious ready groups. However, as a former chair of the Seapower Subcommittee, I remained concerned, as I know the committee is, about the continuing decline in shipbuilding investments made by the Navy.

I note the conferees included detailed language about the Navy's ship acquisition program and completely agree with their conclusion that, without a fully vetted long range ship-building program, we will be faced with a Navy that is unable to carry out the missions assigned to them in both the short-term and the long-term.

To quote the report, ''Absent more immediate investment, DOD will have to reduce the number or scope of missions assigned to Navy ships. Witnesses have testified that, if neither course is incorporated in future Navy budget programs, the men and women of the Navy and the Marine Corps will bear the burden of these decisions through some combination of longer deployments and less time at home between deployments.''

I find that very troubling indeed in these dangerous times.

Therefore, I am encouraged this legislation mandates stronger shipbuilding funding and construction in the future years. Provisions such as section 1022 that requires the Navy to submit an annual 30 year shipbuilding plan with their budget request will not only assist us in understanding the Navy's ship recapitalization plan but will ensure that the Department of Defense and Navy are committed to buying the number and type of ships necessary to fulfill all of their missions.

I am also pleased that this authorization provides $2.4 billion for the construction of two DDG–51 *Arleigh-Burke* class destroyers and extends through fiscal year 2007 the multi-year procurement authority for that class. For it is these ships, along with cruisers and frigates, that provide protection to the carriers and amphibious ships we are deploying to the Persian Gulf to prosecute the war on terrorism. Surface combatants are the backbone of our Navy and I support section 1021 that requires the Secretary of the Navy to notify Congress should the number of active and reserve surface combatant ships drop below 116.

The legislation also looks to the future by authorizing almost $970 million for the development of technologies to be incorporated into the next generation of surface combatant, the DD(X) land attack destroyer. Moreover, it adds $5 million for the DDG Destroyer Optimized Manning Initiative, a Navy effort to enhance the operational effectiveness of Aegis destroyers with new technologies, policies and procedures to significantly reduce crew workload and improve readiness.

The legislation authorizes $10.4 billion, $376 million more than requested, for science and technology programs

including many that will be performed in Maine to protect our troops and our homeland such as the project designed to help identify and address the needs of military personnel in the event of a biowarfare attack.

Of potentially significant value to the Navy, it authorizes $1 million for research at the University of Maine aimed at developing a specialized structural reliability analysis process to optimize the use of polymers in future ship construction, and provides $5 million in funding for development of a Small Kill Vehicle Technology, aimed at improving the accuracy of missile and anti-missile technology.

Furthermore, among the more critical provisions of this legislation are those aimed at protecting our homeland. It provides the President with $10 billion for the war against terrorism including $4.3 billion for military operations and $1 billion for equipment replacement and upgrades to military capabilities.

And finally, the legislation includes almost $1 billion for Chem-Bio programs designed to provide advanced individual protection and equipment to detect and decontaminate chemical and biological agents, as well as an additional $480 million for DoD homeland security and consequence management.

This authorization provides the men and women of our armed forces with the equipment they need to accomplish their mission, the quality of life they have earned and security for their families. I have been proud to support this legislation because in a year when our Nation is facing unprecedented security challenges and dangers, we can do no less.

THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Mr. HOLLINGS. Madam President, I am pleased that last night the Senate unanimously passed pipeline safety legislation in the form of H.R. 3609, the Pipeline Safety Improvement Act of 2002. This bill is the product of over three years of bipartisan work and compromise, and I thank my colleague, Senator MCCAIN, for his leadership on this important issue.

Mr. MCCAIN. I would like to thank my many colleagues for joining us in supporting this important legislation. This bill will result in improvements in the safety regulatory program at the Department of Transportation, increased levels of safety throughout our national pipeline system, and in the communities through which pipelines run. This bill contains several important improvements, including: requirements for minimum standards for pipeline integrity management programs, requirements for public education programs, and requirements that the Office of Pipeline Safety and the Research and Special Programs Administration comply with safety recommendations made by the National Transportation Safety Board and the Department of Transportation Inspector General, many of which have already been started.

Mr. HOLLINGS. To expedite enactment of the significant pipeline safety reforms included in this bill, the leadership of the Senate Committee on Commerce, Science, and Transportation has worked with the House Committees on Transportation and Infrastructure and Energy and Commerce in developing the compromise agreement. This Joint Explanatory Statement therefore represents the views of the Chairman and Ranking Member of the Senate Commerce Committee, along with the Chairmen and Ranking Members of the Transportation and Infrastructure Committee and the Energy and Commerce Committee. This Joint Explanatory Statement will provide legislative history for interpreting this important pipeline safety legislation.

I ask unanimous consent that this statement be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; amendment of title 49, United States Code

This section designates the act as the ''Pipeline Safety Improvement Act of 2002.''

Section 2. One-call notification programs

This section requires that state one-call notification programs provide for the participation of government operators and contract excavators. Section 2 also requires that state one-call notification programs document enumerated items set forth in the statute. Additionally, the requirement that the Secretary of Transportation include certain information in reports submitted under section 60124 of Title 49 is made permanent. Authorizations for appropriations for grants to states for fiscal years 2003 through 2006 are provided at $1,000,000 per year, and grants for administration in section 6107(b) are updated for fiscal years 2003 through 2006. This section also amends section 6105 of Title 49 by requiring the Secretary of Transportation to encourage the states, operators of one-call notification programs, operators of underground facilities, and excavators (including government and contract excavators) to use the practices set forth in the best practices report entitled ''Common Ground,'' as periodically updated, and requires the Secretary of Transportation to provide technical assistance to a non-profit organization specifically established for the purpose of reducing construction-related damage to underground facilities. Authorizations for appropriations for fiscal years 2003 through 2006 are provided at $500,000 per year, but would not be derived from user fees collected under section 60301 of title 49.

Section 3. One-call notification of pipeline operators

This section provides for the enforcement of one-call notification programs by a state authority if the state's program meets the requirements set forth in the statute. The application of the term ''person'' who intends to engage in an activity necessitating the use of the one-call system is expanded to include government employees or contractors.

This section amends section 60123(d) of Title 49 by rearranging the phrase ''knowingly and willfully'' to address the problem raised when a court interpreted existing law to require a knowing and willful standard to, not only engaging in an excavation activity, but also to subsequently damaging a pipeline facility. The consequence of the court's interpretation makes prosecutions more difficult by requiring the government to show the defendant knew subsequent damages would result from excavation activity and that the defendant's conduct was willful. This section of the bill corrects the court's interpretation by now requiring that the ''knowingly and willfully'' standard apply only to engaging in an excavation activity.

This section also provides that penalties under the criminal penalties section can be reduced if the violator promptly reports a violation.

Section 4. State oversight role

This section amends section 60106 of Title 49 to allow the Secretary of Transportation to make an agreement with a state authority authorizing the state authority to participate in the oversight of interstate pipeline transportation including incident investigation, new construction, and other inspection and investigatory duties. However the Secretary shall not delegate the enforcement of safety standards for interstate pipeline facilities to a state authority. This section further provides that the Secretary may terminate agreements with the State authorities if a gap results in the State authority's oversight responsibilities of intrastate pipeline transportation, the State authority fails to meet requirements set forth in this section, or continued participation in the oversight of interstate pipeline transportation would not promote pipeline safety. Existing state agreements shall continue until a new agreement between the state and the DOT is executed or December 31, 2003, whichever is sooner.

Section 5. Public education programs

Section 5 amends section 60116 of Title 49 to include hazardous liquid pipeline facilities in this section requiring a continuing program to educate the public on the use of one-call notification systems, the possible hazards associated with unintended releases, and how to tell if an unintended release occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event. This section also requires owners and operators to review existing public education programs for effectiveness and to modify their programs as necessary. In addition, the section allows the Secretary to issue standards prescribing the elements of public education programs and develop materials for use in such programs.

Previous versions of Senate-passed pipeline safety legislation also included a provision calling for the coordination of emergency preparedness between operators of pipeline facilities and state and local officials, as well as to provide for public access to certain safety information. Agreement was not reached on how safety information could be accessed by the public in a manner that would protect security-sensitive information from distribution. The managers agreed that this issue would be better dealt with in the context of the pending homeland security legislation.

Section 6. Protection of employees providing pipeline safety information

This section adds provisions for the protection of employees who are discharged or otherwise discriminated against with respect to compensation, terms, conditions, or privileges of employment for (1) providing information to the federal government about alleged violations of Federal law relating to pipeline safety; (2) refusing to participate in any practice made illegal by Federal law relating to pipeline safety; or (3) assisting or

participating in any proceeding to carry out the purposes of pipeline safety legislation. This section establishes the procedural framework in which complaints are handled by the Secretary of Labor and the remedies available to the prevailing party.

This section contains a provision that essentially says if a preliminary order provides that an employee must be allowed to return to work, the filing of an objection by the employer ''shall not operate to stay any reinstatement remedy contained in the preliminary order.'' The intention of this language is to assure that the mere filing of an objection would not work as an automatic stay, thus precluding an employee from returning to work pending the outcome of the matter. However, this language would not preclude an employer from filing an independent motion for a stay if sufficient grounds exist for the filing of such a motion.

Section 7. Safety orders

Section 7 adds a paragraph to section 60117 of Title 49 to give the Secretary of Transportation authority to order an operator of a facility to take corrective action if the Secretary decides that a potential safety-related condition exists. The Office of Pipeline Safety (OPS) requested this provision so that corrective action could be taken immediately rather than waiting until a facility is classified as ''hazardous'' prior to requiring corrective action.

Section 8. Penalties

This section modifies the existing penalties provision set forth in section 60112 of Title 49 to allow the Secretary of Transportation to decide if the operation of a pipeline facility, is ''or would be'' hazardous to life, property, or the environment. The purpose of the modification is to give the Secretary authority to take action prior to the facility, the construction of the facility, or any component of the facility actually becoming hazardous, thereby establishing a framework of preventative actions, rather than actions only in response to an imminent hazard.

In subsection (a)(1) of section 60122, the amounts of the penalties have been increased. The per day, per incident, amount has been increased from $25,000 to $100,000. The maximum civil penalty for a related series of violations has been increased from $500,000 to $1,000,000. This section of the bill also provides that, in determining the amount of a civil penalty, the Secretary of Transportation shall consider as an additional consideration in section 60122(b) of Title 49, the adverse impact on the environment. The Secretary of Transportation may consider the economic benefit gained from the violation without reduction because of subsequent damages.

This section also modifies the enforcement section of the statute (section 60120(a)(1) of Title 49) by specifically providing that the court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and the assessment of civil penalties. The current statutory language specifying that the Attorney General may proceed only at the request of the Secretary of Transportation remains in effect.

Section 8 also requires that the Comptroller General conduct a study of the actions, policies, and procedures of the Secretary of Transportation for assessing and collecting fines and penalties.

Section 9. Pipeline safety information grants to communities

Section 9 requires the Secretary of Transportation to make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipelines in local communities. The purpose of this provision is to provide grants to communities for technical assistance such as engineering or scientific analysis of pipeline safety issues. Applicants must compete for the grants in a procedure established by the Secretary of Transportation, who shall also establish the criteria for the recipients. Additionally, the Secretary must establish procedures to ensure that the funds have been properly accounted for and spent in a manner consistent with the purpose of the grants. Any one-grant recipient may not receive more than $50,000. The grant funds cannot be used for lobbying or in direct support of litigation. This section authorizes the appropriation of $1,000,000 for each of the fiscal years 2003 through 2006.

Section 10. Operator assistance in investigations

This section requires the operator of a pipeline facility to make available information and records to the Secretary of Transportation or the National Safety Transportation Board (NTSB) in the event of an accident, subject to constitutional protections for operators and employees. Actions taken by an operator pursuant to this section shall be in accordance with the terms and conditions of any applicable collective bargaining agreement.

Section 11. Population encroachment and rights-of-way

This section requires the Secretary of Transportation, along with the Federal Energy Regulatory Commission (FERC) and other federal agencies and state and local governments, to study land use practices and zoning ordinances, as well as the preservation of environmental resources, with regard to pipeline rights-of-way. Based upon the purposes set forth in this section, a report is to be written that identifies successful practices, ordinances, and laws addressing population encroachment on pipeline rights-of-way, being mindful of protecting the public safety, pipeline workers, and the environment. The report must be completed within one year from the date of enactment and provided to Congress, appropriate federal agencies, and the States for further distribution to the appropriate local authorities.

Section 12. Pipeline integrity, safety, and reliability research and development

This section requires the heads of the participating agencies to carry out a program of research, development, demonstration, and standardization to ensure the integrity of pipelines. The Secretary of Energy, Secretary of Transportation, and the Director of the National Institute of Standards and Technology (NIST) each have defined roles. The Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology, shall prepare and submit to Congress a 5-year plan to guide the activities under this section. The plan shall also be submitted to the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee for review. The section authorizes appropriations for the fiscal years 2003 through 2006 in the following amounts: Secretary of Energy: $10,000,000; the Secretary of Transportation: $10,000,000; and the National Institute of Standards and Technology: $5,000,000. Any sums authorized pursuant to this section shall not be derived from user fees. In addition $3,000,000 from the Oil Spill Liability Trust Fund shall be transferred to the Secretary of Transportation, as provided in appropriations Acts, to carry out programs for detection, prevention, and mitigation of oil spills for each of the fiscal years 2003 through 2006.

Even though the Secretary of Transportation does not regulate gathering lines, the participating agencies are encouraged to include such lines in their research, development, demonstration, and standardization efforts on the integrity of gathering lines.

Section 13. Pipeline qualification programs

This section requires the Secretary of Transportation to require operators of pipeline facilities to develop qualification programs for their personnel who perform covered tasks (as defined in the Code of Federal Regulations). This section also requires the Secretary to have in place standards and criteria for such qualification programs, including a method for examining or testing the qualifications of individuals who perform covered tasks. Such method may include written examination, oral examination, on-the-job training, simulations, observation during on-the-job performance, and other forms of assessment. The method may not be limited to observation of on-the-job performance, except with respect to tasks where the Secretary has determined specifically that such observation is the best method of examining or testing qualifications. Further, the Secretary must ensure that the results of any such on-the-job performance observations are documented in writing. The Secretary may waive or modify requirements if not inconsistent with pipeline safety. The Secretary is required to verify each operator's qualification program, including modifications to previously verified programs. In the event the Secretary fails to establish standards and criteria as set forth in this section, pipeline facility operators are required to develop and implement qualification programs based on the requirements of this section. The Secretary is required to report to Congress within 5 years on the status and results of personnel qualification regulations. A pilot program is established for the certification of individuals who operate computer-based systems for controlling the operations of pipelines. The pilot program seeks the participation of 3 pipeline facilities.

Section 14. Risk analysis and integrity management programs for gas pipelines

This section requires operators of pipeline facilities subject to section 60109 of Title 49 to adopt and implement a written integrity management program to reduce risks to each facility. Within 12 months of the enactment of the bill, this section requires the Secretary of Transportation to prescribe standards to direct each operator's conduct of a risk analysis and adoption and implementation of an integrity management program, which must occur within 24 months from the enactment of the section. Minimum requirements are set forth in this section for integrity management programs and for the rule regulating the same, which include a baseline integrity assessment of each of an operator's facilities which must be completed within 10 years after the enactment of the section (at least 50 percent of such facilities shall be assessed no later than 5 years after the date of enactment of this section), and a reassessment of each facility at a minimum of once every 7 years, with prioritization being based on all relevant risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures.

The Secretary of Transportation is required to issue a rule on integrity management programs, and each operator of a pipeline facility subject to section 60109 of Title 49 is required to adopt and implement an integrity management program, even if the Secretary does not issue a rule. This section does not apply to natural gas distribution lines because section 60109 of Title 49 does not, nor was it intended to, apply to natural gas distribution lines.

Section 14 authorizes the Secretary of Transportation to grant waivers and modifications pursuant to section 60118(c) of Title 49 for any requirement for reassessment of a facility for reasons that may include the need to maintain local product supply or the lack of internal inspection devices. The waivers or modifications shall not be inconsistent with pipeline safety.

This section also requires that the Comptroller General conduct a study to evaluate the 7-year reassessment interval required by this section. The study is to be completed and transmitted to Congress no later than 4 years from the date of enactment.

In this section, each operator of a gas pipeline facility is required to conduct a risk analysis for facilities located in high consequence areas and to adopt and implement an integrity management program for each such facility to reduce associated risks. This section requires each operator to prioritize facilities for integrity assessment based on all risk factors, including any history of leaks, repairs, or failures, and directs the operator to give priority to facilities with the highest risks.

The Department of Transportation's Research and Special Programs Administration (RSPA) issued a final rule defining ''high consequence areas'' on August 6, 2002. The managers strongly support RSPA's regulation defining high consequence areas, although recognize that the definition could be subject to alteration by future regulatory action by RSPA.

Pipeline safety regulations have long required gas operators to survey and patrol along their pipeline rights-of-way to classify areas of population. The new definition of high consequence areas builds on the existing classification of areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property, and includes current class 3 and 4 locations, facilities with persons who are mobility impaired, confined, or hard to evacuate, and places where people gather for recreational and other purposes.

In the July 2002 Technical Pipeline Safety Standards Committee meeting to consider the proposed definition, RSPA made clear its intent to include in its definition known areas where people gather, such as the Pecos River pipeline crossing near Carlsbad, New Mexico, which was commonly used by campers and fishermen and was the location of a pipeline rupture in August 2000 that resulted in 12 fatalities. The managers support is expressed for this new definition of high consequence areas and expect RSPA to further clarify the application of the definition in the substantive rule to be issued on integrity management programs.

Section 15. National Pipeline Mapping System

Section 15 requires operators of pipeline facilities, except distribution lines and gathering lines, to provide to the Secretary of Transportation geospatial data appropriate for use in the National Mapping System, the name and address of the person with primary operational control, and a means for a member of the public to contact the operator for additional information about the facilities. There is a requirement to update the information as necessary.

Section 16. Coordination of environmental reviews

Section 16 requires the President to establish an interagency committee for the purpose of developing and ensuring the implementation of a coordinated environmental review and permitting process in order for pipeline operators to complete all activities necessary to carry out pipeline repairs within any time periods specified by rule by the Secretary of Transportation.

The chairman of the Council on Environmental Quality shall chair the Interagency Committee, which shall consist of representatives of Federal agencies with responsibilities relating to pipeline repair projects. The Interagency Committee shall evaluate Federal permitting requirements and shall examine the access, excavation, and restoration practices of the pipeline industry for the purpose of developing a compendium of best practices used by the industry to access, excavate, and restore the site of a pipeline repair. Based upon the evaluation conducted, the members of the Interagency Committee shall enter into, by unanimous consent, a memorandum of understanding to provide for the coordinated and expedited pipeline repair permit review process so that pipeline operators may commence and complete pipeline repairs within any time periods imposed on the repair projects by rules promulgated by the Secretary of Transportation. Each agency represented on the Interagency Committee is required to revise its regulations to implement the provisions of the memorandum of understanding.

This section also provides for the implementation of alternative mitigation measures to be used by operators of pipeline facilities until all applicable permits have been granted. To the extent necessary, the Secretary of Transportation is required to revise the regulations of the Department to accommodate such implementation. However, such revisions shall not allow an operator of a pipeline facility to implement alternate mitigation measures unless to do so would be consistent with the protection of human health, public safety, and the environment; the operator has applied for and is diligently and in good faith pursuing all required Federal, state, and local permits necessary to carry out the repair project; and is compatible with pipeline safety.

The Secretary of Transportation is required to designate an ombudsman to assist in expediting pipeline repairs and resolving disagreements between Federal, state, and local permitting agencies and the operator of a pipeline facility. The actions of the ombudsman must be consistent with the protection of human health, public safety, and the environment.

The Secretary of Transportation is required to encourage states and local governments to consolidate their respective permitting processes for pipeline repair projects that are subject to any time periods for repairs specified by rule by the Secretary of Transportation.

Section 17. Nationwide toll-free number system

Section 17 requires the Secretary of Transportation to work in conjunction with the Federal Communications Commission (FCC), facility operators, excavators, and one-call notification system operators for the establishment of a nationwide toll-free 3-digit telephone number system to be used by state one-call notification systems.

Section 18. Implementation of Inspector General recommendations

Section 18 requires the Secretary of Transportation to respond to each of the recommendations of the Department of Transportation Inspector General contained in RT–2000–069 every 90 days and to submit the responses to the appropriate committees of Congress.

Section 19. NTSB safety recommendations

Section 19 requires RSPA and OPS to respond to recommendations received from the NTSB within 90 days from receipt of such recommendations. Such responses shall state the intentions of the OPS with respect to the recommendations and shall state the timetable for completing the procedures and reasons for refusals to do so. The responses shall be made available to the public. The OPS is required to submit an annual report describing each recommendation received and the OPS response to each recommendation for the previous year.

Section 20. Miscellaneous amendments

Section 20 amends section 60102(a) of Title 49 by adding language expressing that the purpose of the chapter is to provide adequate protection against risks to life and property posed by pipeline transportation pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

This section also modifies the qualifications of the individuals selected to serve on the Technical Safety Standards Committees pursuant to section 60115 of Title 49 so that none of the individuals selected for committee membership from the general public ''may have a significant financial interest in the pipeline, petroleum, or gas industry.'' The intent of this provision is to prevent industry employees and individuals with a sizable stake in the pipeline industry from serving as representatives from the general public, not prevent service from individuals who have pipeline, petroleum, or gas industry stock interests in their retirement plans.

Section 21. Technical amendments

Section 21 makes technical amendments to correct previous drafting errors in the existing legislation.

Section 22. Authorization of appropriations

Section 22 authorizes appropriations for the Department of Transportation and state grants for safety programs for the fiscal years 2003 through 2006.

Section 23. Inspections by direct assessment

Section 23 requires the Secretary of Transportation to issue regulations prescribing standards for inspections of a pipeline facility by direct assessment.

Section 24. State pipeline safety advisory committees

Section 24 requires the Secretary of Transportation to respond within 90 days after receiving recommendations from advisory committees appointed by the Governor of any state.

Section 25. Pipeline bridge risk study

Section 25 requires the Secretary of Transportation to conduct a study to determine whether cable-suspension pipeline bridges pose structural or other risks. The Secretary may only use funds specifically appropriated to carry this section.

Section 26. Study and Report on Natural Gas Pipeline and Storage Facilities in New England

Section 26 requires the Federal Energy Regulatory Commission, in consultation with the Department of Energy, to conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network and report back to the relevant House and Senate Committees within a year of the date of enactment.

AVERTING A BREAKDOWN IN FEDERAL TAX ENFORCEMENT

Mr. LEVIN. Madam President, many have said they want the next Congress to work on tax reform. Any tax reform effort we undertake, however, needs to address the grave warning recently provided by IRS Commissioner Charles O. Rossotti about the need for immediate steps to avert a breakdown in federal tax enforcement.

Mr. Rossotti has just completed 5 years of work to restore confidence in the effectiveness and fairness of the IRS. He left the administration last week after submitting a report to the IRS Oversight Board summarizing his efforts and the current state of the IRS. His overall conclusion was that, while the IRS made significant progress over the last 5 years in revamping its procedures and improving interactions with average taxpayers, the IRS is ''losing the war'' on stopping tax cheats.

Mr. Rossotti wrote that while the size and the complexity of the Tax Code have continued to increase, IRS enforcement resources have continue to diminish. He described the IRS as ''outnumbered'' and facing a huge and growing gap ''between the number of taxpayers whom the IRS knows are not filing, not reporting or not paying what they owe, and our capacity to require them to comply.'' Using specific facts and figures, he provides data supporting the shocking statistic that four out of five U.S. tax cheats will likely escape detection and correction action due to the IRS' limited resources to enforce the tax laws.

Mr. Rossotti also summarized what is happening among tax professionals to enable so-called sophisticated taxpayers to escape paying their fair share, and what the likely consequence is for honest taxpayers left footing the bill. Here is what he said:

> Recognizing the IRS' diminished capacity, promoters and some tax professionals are selling a wide range of tax schemes and devices designed to improperly reduce taxes to taxpayers based on the simple premise that they can get away with it. When this perception becomes increasingly widespread, the essential pillar or our tax system is lost—namely, the belief of honest taxpayers that if someone does not pay what he or she owes, then the IRS will do something about it.

Mr. Rossotti's full analysis appears in the report he filed with the IRS Oversight Board, and I ask unanimous consent for the complete text of that report to appear in the record following my remarks.

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

(See exhibit 1.)

Mr. LEVIN. This report not only sets out the scope and causes of the growing enforcement problems at the IRS, it also identifies practical and immediate steps that can be taken by Congress to avert an enforcement breakdown. Essentially, it comes down to Congress' providing the IRS with a steady increase of 2 percent per year over the next 5 years in resources for audits, investigators, and enforcement actions. This increase is not only modest, the numbers show that it will more than pay for itself through the collection of taxes that have improperly been withheld.

Federal tax reform is an important goal, but any reform effort must include a clear-eyed recognition of the growing problem of tax compliance and the need to revitalize the agency charged with ensuring all Americans pay their fair share. Mr. Rossotti was scheduled to bring the enforcement problem to the attention of Congress at a hearing in October, but that hearing was cancelled after, according to press reports, he was asked by the administration not to disclose his report or recommendation for increased enforcement resources.

To further contribute to an understanding of the scope and nature of tax noncompliance, my staff on the Permanent Subcommittee on Investigations has been digging into the problems of offshore tax evasion and tax promoters shopping improper tax shelters. I hope to have more to report on these issues early next year.

In the meantime, I urge all my colleagues to read Mr. Rossotti's report in full and take its warnings and advice to heart as we approach tax reform issues in the coming year.

EXHIBIT 1

REPORT TO THE IRS OVERSIGHT BOARD—ASSESSMENT OF THE IRS AND THE TAX SYSTEM

As the Board requested, and as my term of office draws to a close, I want to share with you my thoughts on the current state of the IRS, our tax administration system, as well as the opportunities and challenges that the agency and new commissioner will face.

The IRS is today capable of executing its mission with increasing effectiveness and efficiency. We made measurable progress on a number of high priority areas, such as e-filing, telephone and in-person taxpayer service, protection of taxpayer rights and burden reduction. We stabilized and refocused our key compliance activities to make the best use of our limited resources and are identifying and attacking systematic areas of noncompliance, such as the promotion and use of abusive tax devices. Financial management improved, as evidenced by unqualified audit opinions. Internal morale, which was heavily affected by criticism and internal and external change, turned around. Perhaps most importantly, we regained the confidence of the public and other stakeholders.

For the longer term, the IRS created a firm foundation upon which to make further progress. It includes: a modern organization structure with clear accountability for meeting the widely varying needs of specific taxpayer segments; information systems and support organizations capable of supporting operations efficiently while managing modernization; and a planning and management process for allocating resources, assigning goals to managers and measuring progress.

Our Business System Modernization Plan is beginning to deliver tangible benefits to taxpayers and practitioners. Equally important, we have a complete vision and architecture to guide the continuing modernization of every IRS business process and supporting technology.

The plans in place for FY 2003 and FY 2004 reflect aggressive but achievable productivity gains, exceeding those that were historically achieved in the private financial sector.

Taken together, these achievements demonstrate the progress we made over the past five years in the entire way we serve taxpayers, although finishing the job will still take the full decade I originally projected.

However, amidst what I believe is justified optimism for continued improvements in the performance of the IRS lies a critical problem. We are winning the battle, but losing the war. Over the last ten years, the size and complexity of the tax system increased enormously. Beyond the simple increase in number of taxpayers and revenue dollars, the majority of tax revenues now come from sources that are more subject to manipulation by those who wish to pay less than the law requires and much more difficult and time consuming for our agents to uncover. Meanwhile, the size of the IRS declined, not just relatively but in absolute terms, because of budget constraints.

The cumulative effect of these conflicting trends over a 10-year period has been to create a huge gap between the number of taxpayers whom the IRS knows are not filing, not reporting or not paying what they owe, and our capacity to require them to comply.

Recognizing the IRS' diminished capacity, promoters and some tax professionals are selling a wide range of tax schemes and devices designed to improperly reduce taxes to taxpayers based on the simple premise they can get away with it. When this perception becomes increasingly widespread, the essential pillar of our tax system is lost—namely, the belief of honest taxpayers that if someone does not pay what he or she owes, then the IRS will do something about it.

If the trend of the last ten years is allowed to continue, it is only a matter of time until this problem will emerge into the forefront of public consciousness, likely leading to an eruption of criticism such as has occurred periodically in the last 50-year history of the IRS.

Fortunately, it is not too late to solve this problem, nor is it an open-ended problem. In fact, in the past year we succeeded in quantifying better than ever the resources we need. Modernization and internal productivity improvements will provide a major part of the needed gains. However, these alone will not be sufficient to close the gap, even if we assume greater productivity gains than the private sector was able to achieve over a decade.

To succeed, we need more trained personnel to close the known compliance gap while continuing to protect taxpayer rights and provide essential services. Specifically, we must add approximately 2 percent annual net increase in staffing over five years. Even with this increase, the size of the IRS by 2010 would be smaller than it was 20 years earlier in 1990 while the economy will have increased 86 percent.

Over the same period, we must also fund adequate increases for computer modernization programs to accelerate the delivery of key projects and benefits that will provide for greater service, efficiency and productivity.

Together with effective management of the IRS, this modest level of resources can reverse the dangerous trend the tax system is currently taking—but only if it is consistently provided. If, on the other hand, the trend of the past ten years is maintained, in which the demands on tax administration increase and the capacity of the IRS declines, the eventual cost for our nation is certain to be enormous.

STARTING POINT

Before I discuss the opportunities and challenges that lie ahead, it is helpful to place them in their proper historical context.

By the mid-1990s, the public, Congress and most key stakeholders had lost confidence in the IRS. According to the Roper Starch surveys, favorable public opinion of the IRS steadily declined since the early 1980s, reaching an all-time low of 32 percent in 1998. The results of the American Customer Satisfaction Index of key federal agencies were similarly alarming. The IRS measured the lowest of any agency or institution in both surveys.

Taxpayers were not alone in their negative perceptions. Congress and many of our

stakeholders also lost confidence in the agency's ability to do its job at an acceptable level. In 1995, the Tax Systems Modernization program was terminated after several billion dollars were spent. Handling complaints about IRS treatment of constituents became a time-consuming duty in many congressional offices, and many stakeholders, especially those representing small business, had an adversarial relationship with the agency.

Poor quality service to taxpayers over the telephone or in person contributed to the public's low perceptions. At the nadir in the mid-1990s, the IRS registered 400 million busy signals a year on its toll-free lines, and when taxpayers did reach the IRS, the likelihood of getting an accurate answer or resolution to a problem was low.

A number of external factors also buffeted the IRS. Budget and staff cuts, rapid economic growth and the shift in the tax base from middle-income wage earners and domestic corporations to upper-income entrepreneurs, passthrough entities and global corporations, all contributed to a diminished capacity to cope with service and compliance demands.

The IRS responded to this pressure by emphasizing enforcement revenue and statistics as a way of justifying its budget. The IRS measured the success of its compliance activities by direct enforcement revenues. This is like a police department assessing its success by the number of traffic tickets written rather than by the safety and security of the community it serves. As we well know from the ensuing fallout, this grave mistake further alienated the public, yet failed to address the systematic, emerging compliance and budget problems.

While emphasizing enforcement statistics, the IRS was also slow to update its compliance practices, such as models used to select returns for audits and the management of the exam and collection processes. Until we changed it recently, $100,000 was the highest income class used by the IRS in assigning exam cases, although people with incomes over $100,000 pay more than 60 percent of the income tax.

Moreover, although exam coverage was declining, many of these examinations concentrated on relatively straightforward issues of deductions or timing differences, such as the use of cash versus accrual accounting by small businesses. Very little emphasis was placed on partnerships and trusts, high-income individuals or offshore accounts, although vast sums of income flow through these entities. There was no specific program to identify and combat promoters of abusive tax devices. The IRS succeeded in winning some tax shelter court cases, but there was no overall strategy for dealing with corporate tax shelters.

ACHIEVING A TURNAROUND

The IRS addressed, although certainly not completely solved, the major problems and internal constraints it faced five years ago. Some are resolved; clear plans are in place to correct the remaining ones over the next five years. This work provided the foundation for steady improvement in the effectiveness and efficiency with which the IRS carries out its mission.

Public confidence in the IRS rebounded. The Roper Starch surveys found our rating increased each of the past three years after 1998's historic low. The University of Michigan's American Customer Satisfaction Index survey released in December 2001 showed greatly improved customer satisfaction among individual taxpayers—the largest favorable gain of the 30 federal agencies surveyed.

In May 2002, the Federal Performance Project, a collaboration of Government Executive Magazine and George Washington University's Department of Public Administration, released its scorecard on federal agencies. The IRS earned a ''B-'', as compared to a ''C'' three years ago. While the trend is good, much more remains to be done. The IRS can be and should be managed at the ''A'' level and is on its way to achieving this.

This turnaround in public confidence reflects the clear progress in five distinct areas: (1) customer service, (2) stakeholder relations, (3) compliance, (4) internal management, and (5) technology and modernization.

Customer service

The customer service improvements were the most visible to individual taxpayers. The upward trend in telephone service was particularly important given how far we had to climb. By the end of the 2002 filing season, taxpayers were receiving correct responses to 83.6 percent of tax law questions and 89.9 of account questions. Access to service and time spent waiting, while still below private sector standards, improved substantially. Average wait time is down 26 percent from the previous year. Assistor access rose from 56 percent only two years ago to nearly 70 percent this year.

Last year, Web site usage smashed all records with 2.7 billion hits and 336 million files downloaded. We are well on our way to a new record this year. Also, in January 2002, we introduced a newly designed and more accessible Web site.

E-filing tripled over the past five years, and this filing season, was up 16 percent over the previous one. We are systematically removing the remaining barriers to e-filing. For example, this year, virtually all 1040 forms and schedules could be filed electronically, and no paper signature document was required. Improved electronic tax administration is also critical to better serving business taxpayers, especially given the number of forms and payments they must file and make. In September 2001, we launched Electronic Federal Tax Payment System On-Line that allows businesses large and small to save precious time by making their federal payments on-line.

We are also building a new e-file system that will grow and serve taxpayers for years to come. Scheduled to start in 2004, it will address the current system's problems. For example, it will accept complex business returns, such as 1120s, eliminate software barriers and resolve standardization issues, such as reject codes and validations.

Service in local taxpayer assistance centers, which was extremely poor in many places, improved in both quality and consistency. However, it will still take several more years to reach fully acceptable standards. Taxpayers can now schedule appointments in more than 400 locations for face-to-face meetings with IRS employees to resolve account or case problems. This helps make the well-received idea of ''Problem Solving Days'' a regular part of IRS everyday operations. While making these improvements, we are also requiring fewer personnel details from the compliance functions to filing season duty—an expensive and very unpopular practice.

Within the limits of a complex and changing Tax Code, the IRS acted to reduce taxpayer burden. For example, we simplified forms, such as the Schedule D for reporting capital gains. We also rewrote and simplified procedures, such as those for distributions from qualified retirement plans. We removed 2.6 million small business taxpayers from the time-consuming reporting and record-keeping requirements of reconciling tax returns with balance sheets. We eliminated the need for most small businesses to use the more burdensome accrual method of accounting for tax purposes. We implemented a new and much more reliable way of measuring taxpayer burden. In the newly created Office of Taxpayer Burden Reduction, we also have an organization dedicated to continuously measuring and reducing burden.

The IRS implemented 71 taxpayer rights provisions of RRA 98, including such major provisions as collection due process, expanded innocent spouse relief, third party notification and expanded opportunities for offers in compromise. The Taxpayer Advocate Service was established as an effective independent entity within the IRS. It assists taxpayers with hardship cases and makes recommendations to improve the way IRS works for them. Because of these efforts, the number of taxpayers with serious unresolved cases, such as those that generate a need for intervention by a congressional office, declined. More generally, our improved service helped to reduce the numbers of cases needing TAS intervention. In 2002, case receipts fell from 194,790 to 169,390 compared with the same 9-month period in 2001.

Stakeholder relations

In the past, relations with IRS stakeholders were often strained and adversarial. Through improved communications and frequent, substantive meetings, our relationship with Congress, oversight bodies and business groups—especially small businesses—greatly improved. Congressional hearings, once contentious, have been almost universally positive and constructive—although not without tough questioning. Much closer relationships were formed with organizations representing practitioners and small businesses. A consortium was forged with the software industry on the thorny issue of no-cost e-filing.

One of our basic strategies is to develop the kind of stakeholder relationships that can improve the efficiency and effectiveness of our services. Over the past few years, we developed a method of engaging stakeholders as part of our decision-making process. We call the new approach, ''Engage and Then Decide'' as contrasted with ''Decide and Then Explain.'' Seriously engaging key stakeholders as a regular part of the decision-making process has shown that it improves the final product, shortens the time for decisions and implementation, and strengthens relationships.

Although we successfully used this engagement approach, and have much experience with the hazards and costs of the opposite approach, IRS top management must continue to work hard to ensure that it is employed in all decision-making processes because it is so different from traditional practice in the federal government.

Compliance

As the Board is well aware, we do not have the resources to attack every case of noncompliance. Therefore, we must apply our resources to where non-compliance is greatest while still maintaining adequate coverage in other areas. We must also use carefully, but effectively, the enforcement tools available to us.

After careful study, we identified some of the most serious and current compliance problem areas. These include: (1) promoters of tax schemes of all varieties, (2) the misuse of devices such as trusts and offshore accounts to hide or improperly reduce income, (3) abusive corporate tax shelters, (4) underreporting of tax by higher-income individuals, and (5) accumulation and the failure to file and pay large amounts of employment taxes by some employers.

To address these problems, we revamped our compliance programs to refocus our resources and to use a full scope of tools and

techniques. They range from educating the public, to systematically identifying promoters and participants, to reinvigorating enforcement actions such as summons enforcement, injunctions and criminal investigation of promoters.

If we can eliminate confusion and errors before a return or form is ever filed, America's taxpayers will be spared countless numbers of notices and communications with the IRS. If we can warn taxpayers not to participate in ''too good to be true'' tax schemes, we can save taxpayers from penalties and more. Moreover, the agency will be in a better position to use its limited compliance resources on the most serious cases of non-compliance.

To achieve these purposes, we created dedicated taxpayer education and pre-filing organizations in our operating divisions, e.g., TEC and SPEC in SB/SE and W&I respectively, and pre-filing technical staffs in LMSB and TEGE. We also created new pre-filing tools, such as pre-filing agreements and industry issue resolution published guidance. We greatly stepped up our output of traditional forms of published guidance, including revenue rulings and notices, by increasing their emphasis in Chief Counsel and forging an effective working relationship with Treasury's Office of Tax Policy.

For example, this past year, both the TEC and SPEC organizations worked to raise public awareness about the slavery reparation schemes. Materials were distributed nationally and locally to African-American churches and religious coalitions, fraternities, sororities and associations, including the NAACP and the Urban League. As a result, the average weekly number of incoming slavery reparation claims declined from 1,538 in CY 2001 to 63 this year.

Although these preventive measures hold great promise, we must still detect, correct and deter non-compliance. We must focus resources, improve efficiency and use our enforcement powers appropriately, all of which we are doing.

As identified through our research and strategic planning, both SB/SE and LMSB are directing their examination resources at the most important cases and issues. Exam and collection reengineering are focused on improving the efficiency with which these cases are carried out. For example, SB/SE is tackling business tax cases, such as unpaid, in-trust taxes, including employment and withholding taxes, much earlier than in the past.

Within two years, our new Filing and Payment compliance modernization program will begin to reduce from several years to six months or less the time required to resolve most collection cases.

Other initiatives, first outlined in our Strategic Plan, are taking effect. Earlier this year, we began matching information reported on Schedule K–1 with income or losses reported on Form 1040 and other schedules. We also reinvigorated the use of long dormant enforcement tools that are needed to deal with serious cases of non-compliance, and especially, promoted tax schemes. For example, we are aggressively identifying promoters and schemes through summonses of records, including John Doe summonses on credit card accounts in offshore tax havens and vendor summonses to refine that data.

Multiple approaches were taken to aggressively attack the use of abusive tax shelters. The LMSB organization initiated 43 contacts of promoters to uncover lists of taxpayers participating in their shelters. In addition, a tax shelter disclosure initiative was launched earlier this year. As of August 1, 2002, the IRS processed 1,664 disclosures from 1,206 taxpayers who came forward. These disclosures cover 2,264 tax returns and involved more than $30 billion in claimed losses or deductions. Moreover, we announced a new policy in June 2002 to request tax accrual work papers when we audit returns that claim a tax benefit from certain tax avoidance transactions that we identified as abusive.

Civil and Criminal Lead Development Centers (LDC) were also established to identify cases of abusive tax promoters. For example, the Civil LDC works leads received from within the IRS, or from external sources, and conducts Internet searches looking for abusive tax promoters and promotional materials.

Also, the Webster Report gave a detailed blueprint for making Criminal Investigation a more effective component of tax administration. The need to refocus CI's resources on tax cases was the centerpiece of this report. CI's top priority is now investigating promoters and participants in illegal tax schemes. We also established a closer working relationship between field counsel and the operating divisions on compliance work.

This new emphasis on action against promoters has already shown results. The numbers of actions related to promoters went from ''none'' to a vigorous program. As of July 8, 2002, we had nine promoter injunctions granted, 11 promoter injunctions pending in District Court and three pending at the Department of Justice, 150 promoter exams and information requests underway, and 51 ongoing criminal investigations (numbers are for FY 01 through 02).

Also, key to successfully executing our compliance program is better data. As I discussed, the IRS failed to detect new areas of non-compliance in part because of a reliance on increasingly obsolete data from the old Taxpayer Compliance Measurement Program. (TCMP was last conducted in 1988.) In addition, we designed and are now implementing a National Research Program that will obtain the essential information with far less burden on the taxpayer. New scoring models are being developed using 21st century techniques, with interim models already deployed.

Obviously, our success in compliance also depends on a cadre of highly qualified trained individuals to perform tasks that require a high level of judgment. After a freeze of nearly six years, recruitment for professional occupations, such as revenue agent and revenue officer, restarted; training was completely revamped and improved; and employee engagement became part of balanced measures and everyday management.

Internal management

The IRS successfully made the transition to a modern customer-focused organization in which a management team has clear responsibility for meeting the needs of a specific set of taxpayers. The service needs and compliance issues of the 90 million taxpayers with wage and investment income are vastly different from those of large and mid-sized businesses, which in turn are different from those of small businesses and tax-exempt organizations. One team now works full time to understand and meet the needs of each set of taxpayers and has nationwide authority to execute its plans, eliminating the historically deep and counterproductive organizational separation between the ''field'' and the ''national office.''

Supporting these operating divisions are specialized functional units and shared services organizations to provide information technology and common support services throughout the organization.

As part of the reorganization, the number of management layers was reduced and the role of executives and senior managers is being redirected towards substantive engagement in tax administration, rather than predominantly administrative duties. A new model of executive recruitment was successfully established, which includes a recruitment of a limited number of highly experienced top executives from private industry and other government agencies to complement our internally-developed executives.

Many specialized programs, ranging from processing business returns to handling innocent spouse claims to answering tax law calls, are being consolidated into fewer locations with fewer management layers. This enables greater standardization and faster implementation of improvements.

An entirely new system of balanced measures has been designed and implemented, aligning goals throughout the organization down to the territory and site level.

The gains in service and the widespread redirection of compliance programs over the last two years reflect the benefits of a more customer-focused and accountable organization. The major benefits are still to come, in the form of continuous improvements in productivity and quality in every major program.

The improvements in customer service and other programs can also be linked to increased employee engagement in our mission and goals, increased and improved training and heightened focus on employee concerns. Among the most important of these concerns was the fair and careful administration of Section 1203—the so called ten deadly sins—so that no employee was wrongly disciplined under this section. In addition, legislative proposals were formulated and are under consideration by Congress to alleviate employee anxiety over Section 1203.

Because of these actions and focus, and according to a recent Gallup survey of IRS employees, the level of engagement within the Service increased from 49th to the 56th percentile of all public sector organizations tracked by the organization.

The IRS is also the steward of massive taxpayer revenue and budget and financial resources, and we are expected to properly account for the government's money and property. To this end, internal accounting standards were raised to a higher level. For the past two fiscal years, we received unqualified GAO opinions on our financial statements for both the Revenue and Administrative accounts. This year, we have plans in place to close the books months earlier than in prior years and to address remaining material weaknesses over the next two years.

As our FY 2003 and 2004 budget requests demonstrate, strategic planning, budgeting, resource allocation and performance goals were aligned. For the first time, we fully integrated development of our budget with the establishment of performance measures.

Technology and modernization

Critical to our success was better managing our massive technology and Business Systems Modernization program. From 15 separate information systems operations, we created one MITS organization that has the job of serving all of our operating units and managing our modernization program.

As part of this major transition, standards were established and largely implemented for hardware and software. We consolidated mainframes from 12 centers to three and established one standard for desktop and laptop hardware and software. We implemented a nationwide e-mail and voice messaging systems, standard office automation software, and security certifications and standards. We deployed important interim applications systems, including Intelligent Call Routing, Integrated Case Processing and the Integrated Collection System.

Business Systems Modernization laid the foundation for success of this massive program. Both the long-term vision and enterprise architecture were established and embedded as a living blueprint for all business and technology improvement programs.

BSM began delivering projects with tangible and meaningful benefits to taxpayers, such as moving the first set of taxpayers to a modern, reliable database early next year. Over the next five years, all individual taxpayers will be moved to it, cutting times for refunds on e-filed returns to less than a week and allowing us to provide taxpayer and employees with up-to-the-minute accuracy on their accounts. Of paramount importance, we implemented the first project on our new security system, which provides one standard for ensuring the security of all future IRS data and systems.

All major management processes, which are needed to manage this program on a continuing basis, were improved. Our goal is to obtain certification in the near future as only the second agency in the federal government to reach Level Two in the Software Engineering Institutions Capability Maturity Model.

STEADY PROGRESS CAN CONTINUE YEAR AFTER YEAR

The aforementioned progress and achievements do not mean that the IRS solved all of its problems, or that there are no more opportunities to improve. Rather, it means that the IRS addressed the major impediments and obstacles that previously stood in the way of progress and has a clear committed plan to continually reach even higher levels of performance. There should be no doubt that the IRS can be raised to a level of quality and efficiency comparable to the best managed financial services organizations.

WINNING THE BATTLE BUT LOSING THE WAR

Despite significant improvements in the management of the IRS, the health of the federal tax administration system is on a serious long-term downtrend. This is systematically undermining one of the most important foundations of the American economy.

The source of this problem is two conflicting long-term trends: one, ever increasing demands on the tax administration system due to rapid growth in the size and complexity of the economy; and two, a steady decline in IRS resources due to budget constraints. The cumulative effect of these conflicting trends over a 10–year period has been to create a huge gap between the number of taxpayers who are not filing, not reporting or not paying what they owe, and the IRS' capacity to require them to comply.

As seen in the next chart, ''Trends in Indicators of IRS Workload and Resources,'' from 1992 to 2001, weighted average returns filed, a measure of overall IRS workload, increased by 16 percent because of the economy's growth. However, during this same period, FTEs dropped 16 percent from 115,205 in FY 1992 to 95,511 in FY 2001. Since more and more of the IRS' declining resources are required to perform essential operational functions—such as processing returns, issuing refunds and answering taxpayer mail—a disproportionate reduction occurred in Field Compliance personnel, falling 28 percent from 29,730 in FY 1992 to 21,421 in FY 2002.

In assessing these trends, it is extremely important to recognize a critical fact: tax administration workload increases every year because of increased filings by taxpayers related to the long-term growth of the economy. These workload increases affect every facet of tax administration, from processing returns to answering correspondence to collecting delinquent returns to accounting for payments and refunds. In addition to this growth related to the economy, tax legislation often adds additional workload.

Looking more closely at the most recent five years (see chart), we see that the number of income tax returns increased by 12 million, while 19 tax bills were passed that changed 292 tax code sections and required 515 changes to forms and instructions. On the average, IRS workload grows at a compounded rate of 1.8 percent per year. Therefore, just to handle this increased workload, the IRS would either have to add staff—which is what occurred fairly consistently for the 45-year period from 1950 through 1995—or would have to increase productivity by 1.8 percent per year just to stay even.

FEDERAL TAX SYSTEM HAS BEEN GROWING AND CHANGING RAPIDLY FROM 1997 THROUGH 2002

Volume of activity has been growing rapidly

Income Tax Returns: 12 Million Increase—9.4%.

IRS Gross Collections: $527 Billion Increase—32.5%.

IRS Refunds Issued: $121 Billion Increase—61.3%.

Tax Code has been changing rapidly

19 Public Laws passed.

293 Tax Code provisions changed.

171 (58%) of provisions with concurrent or retroactive effective dates.

515 completed changes to forms and/or instructions.

Restructuring and Reform Act added many taxpayer rights

71 taxpayer rights.

1,900 implementing actions.

Hundreds of thousands of new transactions per year.

Innocent spouse.

Collection due process.

Offers in compromise.

Third party notification.

Section 1203 allegations.

Special events created additional activity and change

Century date change required massive three year project.

Advance rate reduction credit—126 million notices, 91 million taxpayers, $39 billion.

Returns of political organizations (section 527)—new reporting to IRS.

September 11th terrorist attack—victims relief, IRS security response, money laundering task forces.

Anthrax threat—rapid response required prior to 2002 Filing Season.

Globalization is increasing international tax activity

U.S. controlled foreign corporations up 25%.

Foreign controlled corporations up 31%.

Resources have been shrinking

IRS full-time equivalent personnel: −2,952.

This is no different from a car company producing 1.8 percent more cars or a hospital servicing 1.8 percent more patients. But, rather than increasing staff, IRS staff decreased during this period, creating a major gap in IRS capacity to administer the tax system.

In addition to growth in raw numbers, the tax revenue stream is now dominated by sources that provide greater opportunities for manipulation by those who wish to take advantage of the decline in IRS compliance resources. For example, returns for taxpayers with incomes exceeding $100,000 grew by 342 percent over 1991 levels. The enormous amounts of money that flow through ''passthrough'' entities—such as partnerships, trusts and S-corporations—also adds to the complexity of tax administration and increases the opportunities for underreporting of income. In Tax Year 2000, these ''passthrough'' entities filed 4.78 million returns with gross revenue of $6 trillion and income to partners/shareholders of more than $660 billion.

The IRS Restructuring and Reform Act of 1998 added major new or expanded taxpayer rights programs, such as innocent spouse relief, third party notification and collection due process. The rights are very important to taxpayers but created very substantial additional resource demands on the IRS to process hundreds of thousands of new transactions and additional steps in existing audits and collection actions.

Business globalization creates another administration complexity and more opportunities for reducing U.S.-reported income. From 1997–2002, U.S.-controlled foreign corporations and foreign-controlled corporations grew respectively by 25 and 31 percent.

Looking at this imbalance, one fact emerges. The IRS is simply out-numbered when it comes to dealing with the compliance risks. As noted, IRS employment (FTEs), and in particular, Field Compliance FTE steadily declined. With the decline in personnel came a decline in the coverage of all types of returns (see chart). Even after we refocus on the most egregious non-compliance cases, we can only handle a small fraction of them.

COVERAGE OF ALL TYPES PLUMMETED 60–70%

[Number of cases per thousand returns]

Fiscal year	Document matching	Correspondence exam (non-EITC)	In person exam of individuals	Exam of passthrough entities*
1992	33.1	4.0	5.8	5.1
1993	23.7	2.6	6.3	5.5
1994	23.3	2.0	6.8	5.0
1995	23.6	3.5	6.0	4.6
1996	16.6	2.6	5.6	4.7
1997	7.9	3.5	5.8	5.5
1998	14.3	2.8	4.7	5.7
1999	14.4	1.1	3.1	4.5
2000	10.8	0.9	2.0	3.6
2001	9.1	1.2	1.5	2.9

*Primarily Partnerships, S-Corporations and Fiduciaries.

The effect of these trends was to create a gap in what work the IRS should be doing and what it had the capacity to do. In the last two years, the IRS made progress in quantifying this gap, which is summarized below. As noted, the majority of the workload gap is in compliance.

SELECTED TAX ADMINISTRATION PROGRAMS WORK DONE AND NOT DONE

[Dollars in millions]

	Known workload in contacts or cases/yr				Direct revenue loss per year	Direct cost to fill gap	
	Required	Done	Gap	%Gap		FTEs	Dollars
Service To Compliant Taxpayers:							
Phone Service Level of Service	87.5	71.5	16.0	18	NA	$2,274	$114.8
In-Person Service	NA	NA	NA	NA	NA	3,084	196.7

SELECTED TAX ADMINISTRATION PROGRAMS WORK DONE AND NOT DONE—Continued

[Dollars in millions]

	Known workload in contacts or cases/yr				Direct revenue loss per year	Direct cost to fill gap	
	Required	Done	Gap	%Gap		FTEs	Dollars
Total	NA	NA	NA	NA	NA	5,358	311.5
Collection of Known Tax Debts:							
Field and Phone Accounts Receivable (TDA)	4,506,060	1,816,713	2,689,347	60	9,470	5,450	296.4
Identification and Collection of Taxes from Non-Filers:							
Non-Filer Cases (TDI)	2,490,749	625,025	1,865,724	75	1,693	2,016	101.5
Collection of Underreported Tax:							
Document Matching	13,300,000	2,926,980	10,373,020	78	6,960	4,740	229.2
Identification and Collection of Underreported Tax:							
Cases of Abusive Devices to Hide Income	82,100	17,000	65,100	79	447	3,418	272.1
Individuals Over 100,000 Income	123,006	54,468	68,538	56	266	2,603	207.2
Individuals Under 100,000 Income	843,380	296,986	546,394	65	4,492	7,435	430.1
Small Corporations	39,659	29,721	9,938	25	54	640	50.9
Mid and Large Corporations	24,523	17,684	6,839	28	6,526	1,812	180.0
Total	1,112,668	415,859	696,809	63	11,786	15,908	1,140.3
Tax Exempt:							
Reporting Compliance	20,690	6,780	13,910	67	NA	1,192	101.6
Grand Total	NA	NA	NA	NA	29,909	34,664	2,180

For each category of compliance, the IRS computed the number of known cases of taxpayers who did not file or pay, or who substantially underreported their taxes. These numbers, therefore, represent not general estimates or assumptions, but specific taxpayer cases. Based on the information available to the IRS, they should and could be treated as cases of non-compliance through collection, audit or other actions.

However, as can be seen from the chart, only a fraction of each category of case, even the most serious, can be worked with available resources. The ''gap'' represents the number of cases that should be, but cannot be worked because of resource limitations. These cases represent tens of billions of dollars per year that could be, but are not collected. More importantly, they represent a failure of fairness to the millions of honest taxpayers whose commitment to paying their taxes is based on the assumption that the IRS will act if they or their neighbors do not pay their fair share.

Tax professionals, promoters, sophisticated taxpayers and even some ordinary taxpayers are becoming more aware of our deteriorating ability to deal with compliance. Increasingly, this issue is being reported by publications ranging from The Wall Street Journal, the New York Times, Fortune and Forbes, and even on national television.

Recognizing the IRS' diminished capacity, promoters and some tax professionals are selling a wide range of schemes and devices to taxpayers based on the simple premise they can probably get away with it. When this perception becomes increasingly widespread, the essential pillar of the fairness of our tax system is lost.

Our John Doe summonses of records for credit cards issued by offshore banks in tax haven countries revealed one facet of the problem. Just one of these summons, issued in 2000 to MasterCard, yielded a large database of transactions by those using cards issued by banks in Antigua, Barbuda, the Bahamas and the Cayman Islands. Many of these taxpayers were solicited through various channels by a variety of promoters.

Indeed, some sophisticated tax professionals, including those in accounting and law firms and investment banks, are aggressively marketing tax shelters to their clients. Some of these turn out to be abusive tax avoidance transactions prohibited by the Treasury Department.

Demand is also driving up supply. There is widespread anecdotal evidence from honest practitioners about clients demanding that their return preparer find a way to reduce reported income, to the point of refusing advice from honest professionals to comply with required reporting and disclosure. In effect, they are saying, ''Get me one of these deals or I will take my business elsewhere.'' This has reached the point where recently a former IRS Commissioner was faxed a solicitation from a ''Senior Investment Manager'' that began, ''As we approach December 31st, you may have a large income tax liability for the year 2002. The amount you pay could be up to you.''

Although it is impossible to prove conclusively that attitudes towards tax compliance shifted, we must make informed judgments about behavior and trends. The only responsible conclusion I can draw is that the trend in attitudes of taxpayers and tax professionals poses a real threat to the health of the tax system and ultimately to the American economy.

If these problems and conditions are left unaddressed, we could face an enormous crisis in confidence in the tax administration system. It would not be surprising if this problem emerged into the forefront of public concern, causing an eruption about the IRS similar to those that occurred periodically over the last 50 years. The long-term impact on the economy and our nation of not reversing this trend will be extremely high.

WHAT IS NEEDED

What is the answer? Fortunately, the problem is not open-ended and can be solved with a reasonable amount of resources. We need what the National Commission on Restructuring the IRS argued for five years ago: a steady and consistent budget. It must consist of two items over the next five years. The first is a steady growth in staff in the range of 2 percent per year. The second is steadily increased funding for modernization until this program levels off several years from now.

Together with aggressive increases in productivity, as called for by the IRS Strategic Plan, this combination can solve the problem by the end of this decade. In fact, as shown in the ''Closing the Gap'' chart below, a combination of 2 percent per year staff growth with 3 percent per year productivity growth will keep up with increasing demand and close the gap by 2010. But without both elements—modest but steady staff growth and aggressive productivity increases—the trend will not be reversed.

Computer systems alone, even with the most aggressive reasonable assumptions about the productivity gains from modernization, cannot solve the problem. Trained and effective staff is also required. However, modernization will allow the IRS to perform the tax administration function with proportionately fewer staff than in the past. If the IRS staff grew by 2 percent per year through 2010, the total staff would still be smaller than it was 20 years earlier (1990), while the economy is projected to be 86 percent larger in real GDP and the tax system far more complex.

There is another critical point. Sufficient funding must be provided to fund the actual projected staffing. There is no ''extra'' funding lying around to ''absorb'' items that are mandated, but not paid for. As shown below, the IRS dollar budget consistently underfunded advertised staffing levels. The actual number of FTEs is lower every year than proposed in the budget. This is the effect of making unrealistically optimistic assumptions about such items as pay raises, inflation and other mandates, including specific mailing and notification requirements.

IRS DOLLAR BUDGET HAS CONSISTENTLY UNDER-FUNDED ADVERTISED STAFFING LEVEL

[Full Time Equivalent [FTE] Personnel without EITC]

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
FY 2000 President's Budget	96,767	.....	.....	.....	.....
FY 2001 President's Budget	95,523	98,051	*99,873	.....	.....
FY 2002 President's Budget	95,155	97,273	99,116	.....	.....
FY 2003 President's Budget	.....	95,511	97,548	98,727	.....
FY 2004 Treasury Submission	.....	.....	97,423	96,182	98,182

*Includes 1,822 FTE for STABLE Annualization.

Our plan already requires very rapid and sustained productivity growth of over 3 percent per year—in excess of the 2 to 2.4 percent achieved in the private sector. It supposes complete success of BSM, aggressive reallocation of internal resources, such as eliminating some submissions processing centers, rapid growth of e-filing, and use of productivity enhancing techniques, such as competitive sourcing for some activities. These items make it possible to cope with growth in filings and filling the gap in required workload with very limited staff growth, but do not make it possible in addition to ''absorb'' unfunded but required line items.

SIMPLIFYING THE TAX CODE

Most informed observers are justifiably horrified at the complexity of the Tax Code. The cost of taxpayer compliance with this code is over $80 billion per year, more than eight times the cost of the IRS budget. The sheer size and complexity in itself can be a source of disrespect for the law. Therefore, it is a worthy, though difficult and uncertain, challenge to pursue simplification to the maximum extent possible.

However, there is no proposal that has been seriously advanced for simplification that would have any significant effect in the foreseeable future on the problem of IRS resources.

Apart from the fact that even simplifying changes take time and effort to develop, pass in Congress and to implement, the reality is that the gap in IRS resources is so large that nearly all of our resources are required to perform the basic operations of the tax system and to pursue the clearest and most important cases of non-compliance.

With the exception of some resources in the large corporate sector, the IRS redirected nearly all compliance resources away from less significant technical tax issues to cope with current operational requirements and the most serious cases of non-filing, nonpayment or underreporting of income. Even then, resources are far below what is required.

The only reasonable course is to pursue parallel paths: to address the practical problem the tax administration system faces by gradually closing the gap in the capacity of the IRS to perform its essential tasks, while pursuing a parallel path attempting tax simplification.

CONCLUSION

Five years ago, the IRS embarked on a new direction. Following it, we achieved much progress for America's taxpayers, although we have much more left to do to improve the entire way the IRS works. Today, we are faced with a growing crisis—in our ability to do our job and the fairness of our tax system. We cannot turn our back on this crisis or believe that it will go away, because it will not. But like five years ago, I believe the problem is solvable. We know the right course of action and we should have the courage and resolve to take it.

ADDITIONAL STATEMENTS

TRIBUTE TO GUIDE DOGS

• Mrs. CLINTON. Madam President, after reading an article in The Saturday Evening Post about the Germans training dogs to aid veterans blinded during World War I, a blind man living in Tennessee named Morris Frank wrote to the author, ''Thousands of blind like me abhor being dependent on others. Help me and I will help them. Train me and I will bring back my dog and show people here how a blind man can be absolutely on his own.'' The author, Dorothy Harrison Eustis agreed to Mr. Frank's request, and Mr. Frank's dog Buddy became the first guide dog in America.

That was 1929 and today, there are more than 7,000 guide dogs serving in America, and two performed miracles in New York on September 11.

That morning, Roselle, a yellow Labrador Retriever and her owner, Michael Hingson, went to the office on the 78th floor of the World Trade Center. While Mr. Hingson worked, Roselle slept underneath his desk. Then the plane hit the South Tower, and what she did next was nothing short of heroic. She guided Mr. Hingson through the smoke and to the stairwell. Not only did Roselle help Mr. Hingson down 78 flights of stairs, but another woman who had been blinded by debris clutched Roselle's harness until they reached safety.

There was another yellow lab in the World Trade Center named Salty. His owner, Omar Rivera, worked on the 71st floor of the Port Authority. After the planes hit, Salty refused to leave Omar's side and walked through the smoke-filled stairway, broken glass and debris to get Mr. Rivera and a coworker to safety. Even as the North Tower collapsed and the debris cloud filled the streets, Salty remained calm, loyal, and focused on guiding Mr. Rivera to a place free from danger.

These two guide dogs performed their jobs under the most extreme circumstances. But what they did that day reinforced what guide dogs do every day—they provide independence to individuals who are blind and visually impaired so that they can live their life free from constraints. To serve as another's set of eyes, to navigate busy city streets, and to keep their owners from harm's way is a responsibility that only a loyal dog would welcome with no questions asked.

Thorughout the United States and around the world, Guide Dog Schools have given more than one hundred thousand people the chance to move about the world with freedom and dignity. Each school offers their guide dogs at no cost to the owners. All they have to do is apply, attend training, and promise to care for their dog for the rest of his or her life. The success of each school is dependent upon thousands of staff, volunteers, and generous supporters. Many people volunteer to raise puppies, socialize them and then give them up at the end of the year. And we see these dogs every day sitting patiently on the subway, stopping at walk lights, and maneuvering people around hazards that prevent a safe, straight path. They wear bright colored vests that read ''Guide Dog in Training.''

Not only did Morris Frank bring the first guide dog to America, he opened the first school in 1929, The Seeing Eye. Now in every State, guide dog schools provide an invaluable service. In California, The Guide Dog School just celebrated its 60th Anniversary, and in New York, The Guide Dog Foundation in Smithtown, has assisted New Yorkers and others from around the world since 1946. And Guiding Eyes for the Blind in Yorktown Heights has graduated more than 5,000 dogs and owners since 1954.

Each success story is testament that one good idea can transform the lives of many. But the success of the guide dog schools would not have occurred without two key components: those who believed that the blind and visually impaired could lead more independent lives with the right kind of help, and the dogs, the Labrador Retrievers, the Golden Retrievers, the German Shepherds, and other breeds that are ready, willing, and able to guide their owners through the world.

Every day, thousands of people grab on to the harness and place their trust in their companion. Some have acted with remarkable heroism like those on September 11, and we have all heard the stories about guide dogs waking their owners in the event of a fire and blocking them from the path of a speeding car. But most go through their days with quiet dignity and they deserve our utmost respect. Whether they are named Roselle or Salty or Buddy, they all respond in the same way. That harness goes on, their eyes open, and they show us that it is possible to walk through this world with a profound desire to help another so that life is limitless.•

RECOGNIZING MOTT CHILDREN'S HEALTH CENTER

• Mr. LEVIN. Madam President, I wish to express my heartfelt congratulations to the Mott Children's Health Center (MCHC), in Flint, MI, which has been selected by the American Lung Association of Michigan-Genesee Valley Region as the 2002 Corporate Health Advocate of the Year.

The American Health and Lung Association of Michigan-Genesee Valley Region grants this prestigious award to an organization that aspires to restrict or ban smoking, offers employee programs for smoking cessation, or exhibits respect and sensitivity to those suffering with lung disease. Winners must demonstrate financial support to local non-profit agencies as well as encourage employees to sit on local boards of directors for community based nonprofit organizations. Recipients also need to display a commitment to improving the quality of life of Genesee Valley's residents. MCHC has not only met but far surpassed the American Health and Lung Association's criteria and is a worthy recipient of this award.

Founded in 1939 by Charles Stuart Mott, MCHC's mission is to better the lives of Genesee County's at-risk youth through health services and community advocacy. As a health service provider, MCHC offers the Genesee County

community both emotional and physical pediatric health services, educates families on health-related issues, and supports local schools and neighborhoods with on-site health care. In order to inform community decision makers on issues related to Genesee County's children's health needs, MCHC sponsors events on matters affecting children's health, supports various state and local children's advocacy organizations, and develops educational materials on children's issues. In its 63-year history, MCHC has expanded to become a principal in child health advocacy in the Genesee Valley community and throughout Michigan.

MCHC is a recognized leader in the battle against childhood asthma, an illness that affects 15 percent of Genesee County's children. As part of the Childhood Asthma Task Force, (CATF), MCHC provides staff and other resources, including a home to CATF's three Mini Asthma Resource Centers. MCHC nurses, who dedicate themselves to educating families about asthma and available treatments, staff these CATF centers. Additionally, in its continuing effort to highlight children's respiratory health issues, last year MCHC sponsored the 29th Annual Tuuri Day Conference, which addressed topics such as ''New Approached to Pediatric Asthma'' and ''Smoking Among Children and Families.''

MCHC has a long and impressive history of advocacy for the children of Genesee Valley. I know my colleagues join me in congratulating Mott Children's Health Center for being named the 2002 Corporate Health Advocate of the Year and wishing them continued success.●

RECOGNIZING GLORIA R. BOURDON

● Mr. LEVIN. Madam President, I wish to express my sincerest congratulations to Gloria R. Bourdon of Michigan who has recently been recognized by the American Lung Association of Michigan-Genessee Valley Region as the 2002 Individual Health Advocate of the Year.

The American Lung Association of Michigan-Genesee Valley Region awards this honor to an individual who has served as board member on a health association or participated in a health related activity for at least 5 years. Recipients must contribute to the community's health, education, and general well-being. The individual must have been involved in promoting health care research, contributing to articles on health care, and involved in lung health care advocacy. Gloria Bourdon has not only met these criteria but has far exceeded them; for this she is a worthy recipient of this prestigious award.

Gloria Bourdon's promotion of children's health issues began in 1970 as a teacher in Pinconning and Linden Areas Schools, where she taught students to lead healthy lifestyles. As the Director of Health, Safety and Nutrition Services for the Genesee Intermediate School District, Gloria is now responsible for the health and safety of the children in 55 public schools, public academies, and private schools. She is also an active member of the community. She supports many coalitions including Priority Children, Childhood Asthma Task Force, and the Genesee County Curriculum Council. Her outstanding work and dedication have been recognized by various organizations. Most recently, Gloria received the Genesee County Child Advocacy Award, the Michigan Association of School Board's Health and Safety Award, and the Rainmaker Award from HealthPlus.

Gloria's dedication to children's health is evident in her writing and fundraising efforts. In 1998, she authored a Health Action Team Manual for Substance Abuse Education, Physical Activity, Nutrition Education, and Safe and Drug Free School Zones. She has assisted the American Lung Association in efforts regarding asthma, tobacco and air-quality awareness. Gloria also encourages her nursing and teaching staff to support the Association's goals.

I join the American Lung Association of Michigan-Genesee Valley Region in congratulating Gloria on her great accomplishments in promoting the health and safety of the children in Genesee County and surrounding areas. I know that my colleagues in the Senate will support me in thanking Gloria Bourdon for her efforts and wishing her well in her future endeavors.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:36 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5710. An act to establish the Department of Homeland Security, and for other purposes:

At 4:08 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 bill, in which it requests the concurrence of the Senate:

H.R. 3758. An act for the relief of So Hyun Jun.

At 8:46 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5708. An act to reduce preexisting PAYGO balances, and for other purposes.

At 9:19 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, with amendments.

At 9:52 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. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

At 10:25 p.m., a message from the House of Representatives, delivered by Ms. Niland, 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 (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 124. Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–9469. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the Fiscal Year 2001 operations of the Office of Workers' Compensation Programs; to the Committee on Health, Education, Labor, and Pensions.

EC–9470. A communication from the Administrator, General Services Administration, transmitting the report of lease prospectuses that support the General Services Administration's Fiscal Year 2003 Capital Investment and Leasing Program; to the

Committee on Environment and Public Works.

EC–9471. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's monthly report on the status of licensing and regulatory duties for July 2002; to the Committee on Environment and Public Works.

EC–9472. A communication from the Deputy Administrator, General Services Administration, transmitting, pursuant to law, a Report of Building Project Survey, Charlotte, NC; to the Committee on Environment and Public Works.

EC–9473. A communication from the Deputy Administrator, General Services Administration, transmitting, pursuant to law, a Report of Building Project Survey, U.S. Court of Appeals, Atlanta, GA; to the Committee on Environment and Public Works.

EC–9474. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Partial Withdrawal of Approval of 34 Clean Air Act Part 70 Operating Permits Programs in California; Announcement of a Federal Operating Permits Program'' received on October 16, 2002; to the Committee on Environment and Public Works.

EC–9475. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollution for Friction Materials Manufacturing Facilities'' received on October 16, 2002; to the Committee on Environment and Public Works.

EC–9476. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on Local Officials' Participation in Transportation Planning and Programming; to the Committee on Environment and Public Works.

EC–9477. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the Bureau of Justice Assistance's annual report for fiscal year 2001; to the Committee on the Judiciary.

EC–9478. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to the Refugee Resettlement Program for the period from October 1, 1999 through September 30, 2000; to the Committee on the Judiciary.

EC–9479. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tax Shelter Disclosure Statements'' (RIN 1545–BB32) received on October 28, 2002; to the Committee on Finance.

EC–9480. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters'' (RIN 1545–BB33) received on October 28, 2002; to the Committee on Finance.

EC–9481. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—August 2002'' (Rev. Rul. 2002–64) received on October 7, 2002; to the Committee on Finance.

EC–9482. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—November 2002'' (Rev. Rul. 2002–74) received on October 21, 2002; to the Committee on Finance.

EC–9483. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 1.446–4(e)(4) hedges of Debt Instruments'' ((Rev. Rul. 2002–71) (Rev. Rul. 2002–71)) received on October 28, 2002; to the Committee on Finance.

EC–9484. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modification of Rev. Rul. 2002–46'' (Rev. Rul. 2002–73) received on October 21, 2002; to the Committee on Finance.

EC–9485. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Certain Reinsurance Arrangements'' (Rev. Rul. 2002–70) received on October 28, 2002; to the Committee on Finance.

EC–9486. A communication from the Chief, Regulation Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Lease-in/Lease-out (LILO) transactions'' received on October 21, 2002; to the Committee on Finance.

EC–9487. A communication from the Chief, Regulations Branch, U.S. Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States'' received on October 28, 2002; to the Committee on Finance.

EC–9488. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2003'' received on October 21, 2002; to the Committee on Finance.

EC–9489. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on Waiver Exception for Medicare + Choice Provider Sponsored Organizations; to the Committee on Finance.

EC–9490. A communication from the Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Electioneering Communications'' received on October 16, 2002; to the Committee on Rules and Administration.

EC–9491. A communication from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''31 CFR Parts 351, 357, 359, 360, 363, Regulations Governing Treasury Securities'' received on October 9, 2002; to the Committee on Finance.

EC–9492. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Interest Rates and Appropriate Foreign Loss Payment Patterns for Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(i)'' received on October 9, 2002; to the Committee on Finance.

EC–9493. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Notice 2002–63; Sales of Frequent Flyer Miles'' received on October 9, 2002; to the Committee on Finance.

EC–9494. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Ruling 2002–60 ; Application of Section 426(e)(3)'' received on October 9, 2002; to the Committee on Finance.

EC–9495. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rev. Proc. 2002–16, Revision of'' (Rev. Proc. 2002–68) received on October 9, 2002; to the Committee on Finance.

EC–9496. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Announcement 2002–96; Termination of Appeals Settlement Initiative for Corporate Owned Life Insurance (COLI)'' received on October 9, 2002; to the Committee on Finance.

EC–9497. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Settlement of Section 351 Contingent Liability Tax Shelter Cases'' received on October 9, 2002; to the Committee on Finance.

EC–9498. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Settlement Initiative for Settlement 302/318 Basis-Shifting Transactions'' received on October 9, 2002; to the Committee on Finance.

EC–9499. A communication from the Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Electioneering Communications'' received October 16, 2002; to the Committee on Rules and Administration.

EC–9500. A communication from the Assistant General Counsel for Regulations, Office of the Secretary, Department of Housing and Urban Affairs, transmitting, pursuant to law, the report of a rule entitled ''HOME Investment Partnerships Program'' received on October 28, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9501. A communication from the Assistant Secretary for Administration and Management, Department of Health and Human Services, transmitting, pursuant to law, a report on the Department's commercial activities inventor; to the Committee on Governmental Affairs.

EC–9502. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Executive Branch Fails to Implement The Telephone Fraud Amendment Act''; to the Committee on Governmental Affairs.

EC–9503. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Certification Review of the Sufficiency of the Washington Convention Center Authority's Projected Revenue and Excess Reserve to Meet Projected Operating and Debt Service Expenditures and Reserve Requirements for Fiscal Year 2003''; to the Committee on Governmental Affairs.

EC–9504. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Audit of Advisory Neighborhood Commission 6B for Fiscal Years 1999 Through 2002, as of June 30th''; to the Committee on Governmental Affairs.

EC–9505. A communication from the Director, Office of Compensation Administration, Office of Personnel Management, transmitting pursuant to law, the report of a rule entitled ''Basic Pay for Employees Temporary Organizations'' received October 28, 2002; to the Committee on Governmental Affairs.

EC–9506. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled

''Statistical Programs of the United States Government: Fiscal Year 2003''; to the Committee on Governmental Affairs.

EC–9507. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–462, ''General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2002–2007 Authorization Act of 2002''; to the Committee on Governmental Affairs.

EC–9508. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–463, ''Mobile Telecommunications Sourcing Conformity Act of 2002''; to the Committee on Governmental Affairs.

EC–9509. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–465, ''Department of Insurance and Securities Regulation Merger Review Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9510. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–466, ''Ward Redistricting Residential Permit Parking Extension Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9511. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–464, ''Religious Organization Exemption Amendment Temporary Act 2002''; to the Committee on Governmental Affairs.

EC–9512. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–468, ''Washington Metropolitan Area Transit Authority Property Dedication Transfer Tax Exemption Temporary Act 2002''; to the Committee on Governmental Affairs.

EC–9513. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–467, ''Other-Type Funds Temporary Act of 2002''; to the Committee on Governmental Affairs.

EC–9514. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–469, ''Motor Vehicle Registration and Operator's Permit Issuance Enhancement Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9515. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–471, ''Transfer of Jurisdiction of Reservation 19 and 124 Temporary Act of 2002''; to the Committee on Governmental Affairs.

EC–9516. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–470, ''Freedom Forum Real Property Tax Exemption and Equitable Real Property Tax Relief Temporary Act of 2002''; to the Committee on Governmental Affairs.

EC–9517. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–486, ''Solid Waste Transfer Station Service and Settlement Agreements Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9518. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–487, ''Solid Waste Facility Permit Phase-Out Extension Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9519. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–483, ''Tax Clarity and Related Amendments Temporary Act of 2002''; to the Committee on Governmental Affairs.

EC–9520. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–474, ''Automated Traffic Enforcement Fund Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9521. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–482, ''Inheritance and Estate Tax Temporary Act of 2002''; to the Committee on Governmental Affairs.

EC–9522. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–472, ''Council Review of Existing Convention Center Site Redevelopment Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9523. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–473, ''Capitol Hill Business Improvement District Temporary Amendment Act of 2002''; to the Committee on Governmental Affairs.

EC–9524. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''Debt Collection'' (RIN3095–AA77) received on October 16, 2002; to the Committee on Governmental Affairs.

EC–9525. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''Researcher Identification Cards'' (RIN3095–AB14); to the Committee on Governmental Affairs.

EC–9526. A communication from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Commission of Capitol Crimes'' received on October 28, 2002; to the Committee on Veterans' Affairs.

EC–9527. A communication from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Loan Guaranty: Net Value and Pre-Foreclosure Debt Waivers'' received on October 28, 2002; to the Committee on Veterans' Affairs.

EC–9528. A communication from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Recoupment of Severance Pay from VA Compensation'' received on October 15, 2002; to the Committee on Governmental Affairs.

EC–9529. A communication from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Enrollment-Provision of Hospital and Outpatient Care to Veterans'' received on October 15, 2002; to the Committee on Governmental Affairs.

EC–9530. A communication from the Director of the Office of Insular Affairs, Department of the Interior, transmitting, pursuant to law, the report entitled ''Financial and Social Impacts of the Compacts of Free Association on the United States Insular Areas and the State of Hawaii''; to the Committee on Energy and Natural Resources.

EC–9531. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease'' (Doc No. 01Q–0313) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9532. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Secondary Direct Food Additives Permitted in Food for Human Consumption'' (Doc. No. 02F–0042) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9533. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''White Chocolate; Establishment of a Standard of Identity'' (Doc. No. 86P–0297 and 93P–0091) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9534. A communication from the Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Rule Relating to Civil Penalties Under ERISA Section 502(2)(7) and Conforming Technical Changes On Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5), and 502(c)(6)'' ((RIN1210–AA91)(1210–AA93)) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9535. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' received on October 15 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9536. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the implementation of the Age Discrimination Act during fiscal year 2001; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

H.R. 3180: A bill to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

H.R. 3988: A bill to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion..

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1655: A bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

By Mr. LEAHY, from the Committee on the Judiciary, with amendments:

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.

From the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2520: A bill to amend title 18, United States Code, with respect to the sexual exploitation of children.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 2541: A bill to amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

S. 2934: A bill to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment and with a preamble:

S. Con. Res. 94: A concurrent resolution expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Michael W. McConnell, of Utah, to be United States Circuit Judge for the Tenth Circuit.

Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Kevin J. O'Connor, of Connecticut, to be United States Attorney for the District of Connecticut for the term of four years.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

NOMINATIONS DISCHARGED

The following nominations were discharged from the Committee on Commerce, Science, and Transportation pursuant to the order of November 14, 2002:

Coast Guard nomination of Dana B. Reid.

Coast Guard nominations beginning Douglas A. Ash and ending Warren E. Soloduk, which nominations were received by the Senate and appeared in the Congressional Record on October 17, 2002.

Coast Guard nominations beginning Anthony J. Alarid an ending Michael B. Zamperini, which nominations were received by the Senate and appeared in the Congressional Record on November 12, 2002.

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. BARKLEY (for himself, Mr. DAYTON, Mr. DASCHLE, Mr. LOTT, Mr. AKAKA, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BREAUX, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BYRD, Mr. CAMPBELL, Ms. CANTWELL, Mrs. CARNAHAN, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FITZGERALD, Mr. FRIST, Mr. GRAHAM, Mr. GRAMM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mr. HELMS, Mr. HOLLINGS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Mr. MILLER, Mr. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. REED, Mr. REID, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN):

S. 3156. A bill to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila; considered and passed.

By Mr. BUNNING:

S. 3157. A bill to expand the boundaries of the Fort Donelson National Battlefield, to authorize the acquisition of land associated with the campaign that resulted in the capture of Fort Donelson in 1862, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REED (for himself and Mr. DEWINE):

S. 3158. A bill to establish a grant program to provide comprehensive eye examinations to children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. LINCOLN:

S. 3159. A bill to amend the Immigration and Nationality Act to render inadmissible to the United States the extended family of international child abductors, and for other purposes; to the Committee on the Judiciary.

By Mr. NELSON of Nebraska:

S. 3160. A bill to provide emergency disaster assistance to agricultural producers; to the Committee on Agriculture, Nutrition, and Forestry.

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

S. 3161. A bill to provide a definition of a prevailing party for Federal fee-shifting statutes; to the Committee on the Judiciary.

By Mr. DURBIN (for himself, Mr. NELSON of Florida, Mr. CLELAND, and Mr. EDWARDS):

S. 3162. A bill to amend title 49, United States Code, to enhance the security of transporting high-level nuclear waste and spent nuclear fuel, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DEWINE:

S. 3163. A bill to establish a grant program to enable institutions of higher education to improve schools of education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE:

S. 3164. A bill to amend the Higher Education Act of 1965 to improve the loan forgiveness program for child care providers, including preschool teachers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 3165. A bill to provide loan forgiveness to social workers who work for child protective agencies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 3166. A bill to amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. LIEBERMAN):

S. 3167. A bill to provide grants to States and outlying areas to encourage the States and outlying areas to enhance existing or establish new statewide coalitions among institutions of higher education, communities around the institutions, and other relevant organization or groups, including anti-drug or anti-alcohol coalitions, to reduce underage drinking and illicit drug-use by students, both on and off campus; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DODD:

S. 3168. A bill to improve funeral home, cemetery, and crematory inspections systems, to establish consumer protections relating to funeral service contracts, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. LANDRIEU:

S. 3169. A bill to provide for military charters between military installations and local school districts, to provide credit enhancement initiatives to promote military charter school facility acquisition, construction, and renovation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DASCHLE (for himself and Mr. LOTT):

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DAYTON:

S. Res. 356. A resolution paying a gratuity to Trudy Lapic; considered and agreed to.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. Res. 357. A resolution commending and congratulating the Anaheim Angels for their remarkable spirit, resilience, and athletic discipline in winning the 2002 World Series; considered and agreed to.

ADDITIONAL COSPONSORS

S. 486

At the request of Mr. LEAHY, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 650

At the request of Mrs. BOXER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 650, a bill to amend the Mineral Leasing Act to prohibit the exportation of Alaska North Slope crude oil.

S. 987

At the request of Mr. TORRICELLI, the name of the Senator from Oregon (Mr.

WYDEN) was added as a cosponsor of S. 987, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV.

S. 1304

At the request of Mr. KERRY, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 1304, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of oral drugs to reduce serum phosphate levels in dialysis patients with end-stage renal disease.

S. 2035

At the request of Mr. JEFFORDS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2035, a bill to provide for the establishment of health plan purchasing alliances.

S. 2445

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 2445, a bill to establish a program to promote child literacy by making books available through early learning, child care, literacy, and nutrition programs, and for other purposes.

S. 2577

At the request of Mr. FITZGERALD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2577, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime.

S. 2752

At the request of Mr. JEFFORDS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2752, a bill to amend title XVIII of the Social Security Act to provide for the establishment of medicare demonstration programs to improve health care quality.

S. 2903

At the request of Mr. JOHNSON, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors 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. 2922

At the request of Ms. LANDRIEU, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 2922, a bill to facilitate the deployment of wireless telecommunications networks in order to further the availability of the Emergency Alert System, and for other purposes.

S. 3081

At the request of Mr. JOHNSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 3081, a bill to amend the Internal Revenue Code of 1986 to suspend the tax-exempt status of designated terrorist organizations, and for other purposes.

S.J. RES. 50

At the request of Mr. MCCAIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S.J. Res. 50, A joint resolution expressing the sense of the Senate with respect to human rights in Central Asia.

S. RES. 339

At the request of Mrs. MURRAY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. Res. 339, A resolution designating November 2002, as ''National Runaway Prevention Month''.

S. CON. RES. 52

At the request of Mr. CORZINE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Con. Res. 52, A concurrent resolution expressing the sense of Congress that reducing crime in public housing should be a priority, and that the successful Public Housing Drug Elimination Program should be fully funded.

S. CON. RES. 155

At the request of Mr. SANTORUM, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. Con. Res. 155, A concurrent resolution affirming the importance of a national day of prayer and fasting, and expressing the sense of Congress that November 27, 2002, should be designated as a national day of prayer and fasting.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. DEWINE):

S. 3158. A bill to establish a grant program to provide comprehensive eye examinations to children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, I rise today to introduce the ''Children's Vision Improvement and Learning Readiness Act.'' I am pleased to be joined by my colleague from Ohio, Senator DEWINE, in this effort. Vision disorders are the fourth most common disability in the United States and the most prevalent handicapping condition among children. This is a startling fact when one considers that eighty percent of what children learn is acquired through vision processing information and the quality of children's eye health has a direct impact on their learning and achievement.

It is estimated that almost ten percent of children have clinically significant vision impairment, which are associated with developmental delays and the need for special education, vocational, and social services. Specifically, studies have found that among the twenty percent of school age children who have a learning disability in reading, seventy percent have some form of visual impairment, such as ocular motor, perceptual or binocular dysfunction, that could interfere with their reading skills. The ''Children's Vision Improvement and Learning Readiness Act'' recognizes the importance of diagnosing vision disorders in children at an early age so as to allow intervention at a time when these disorders are highly responsive to treatment.

Unfortunately, too many children in school today live with an undiagnosed vision impairment and too many times these same children have not had a comprehensive eye examination prior to entering school. In fact, only one-third of all children have had an eye examination or vision screening prior to entering school despite evidence that the earlier a vision problem is diagnosed and corrected, the less the potential negative impact it may have on a child's development.

In addition, undiagnosed visual problems impose economic costs on our Nation. In 1995, the economic impact of visual disorders and disabilities was approximately $38.4 billion. Yet, early, comprehensive eye exams in children can help reduce the economic and social costs associated with undiagnosed eye disorders. Providing comprehensive eye examinations to children before they enter school helps to decrease long-term medical expenditures, prevent inappropriate placement of children in special education programs, and avoid social welfare spending by improving children's ability to learn and achieve a greater degree of educational and economic attainment.

The ''Children's Vision Improvement and Learning Readiness Act'' gives the Secretary of Health and Human Services the authority to provide grants to States for a variety of educational and outreach activities related to improving and safeguarding the eye health and academic success of our nation's children. Grants may be used for the development of a voluntary statewide school-based comprehensive eye examination program for elementary school age children; the development of State-based education programs to increase public awareness of the benefits of comprehensive eye examinations; and the flexibility of providing comprehensive eye examinations through other related federal programs, such as Head Start, the Individuals with Disabilities Education Act, the Child Care Block Grant, and the Consolidated Health Centers programs.

This important measure will help ensure that our nation's children have access to comprehensive eye examinations from qualified health professionals so they can start school prepared for a lifetime of learning and achievement. I urge my colleagues to join me and Senator DEWINE in supporting this legislation that will help to boost the well-being and academic achievement of our nation's school children.

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

S. 3161. A bill to provide a definition of a prevailing party for Federal fee-shifting statutes; to the Committee on the Judiciary.

Mr. FEINGOLD. Madam President, I am pleased today to introduce the Settlement Encouragement and Fairness Act of 2002. This bill provides that when plaintiffs bring a lawsuit that acts as a catalyst for a change in position by the opposing party, they will be considered the ''prevailing party'' for purposes of recovering attorneys' fees under Federal law. The bill will help ensure that people who are the victims of civil rights, environmental, and worker rights' abuses can obtain legal representation to enforce their rights.

Over the course of our history, Congress has often enacted laws encouraging private litigants to implement public policy through our court system. An integral part of many such laws are provisions that help individuals obtain adequate legal representation by providing that the defendants will pay the plaintiffs' attorneys' fees in cases where the plaintiff prevails. In laws involving public accommodations, housing, labor, disabilities, age discrimination, violence against women, voting rights, pollution, and other areas, Congress has acted over and over again to empower private litigants in their pursuit of justice. Currently, there are over two hundred statutory fee-shifting provisions that allow for some sort of payment of attorneys' fees to a prevailing plaintiff.

Until last year, in interpreting these fee-shifting statutes in cases where a settlement was reached before trial, nine circuit courts of appeals embraced the ''catalyst theory'' to determine whether attorneys' fees could be obtained. The catalyst theory required the payment of fees where the lawsuit caused a change in the position or conduct of the defendant. Only one circuit court, the Fourth Circuit, applied a more narrow definition of prevailing party, requiring a judgment or a court approved settlement in order for a plaintiff to obtain attorneys' fees.

In Buckhannon Board of Care & Home Inc. v. West Virginia Department of Health and Human Services, 2001, a case arising out of the Fourth Circuit, the U.S. Supreme Court ruled, in a 5–4 decision, that plaintiffs may recover attorneys' fees from defendants only if they have been awarded relief by a court, not if they prevailed through a voluntary change in the defendant's behavior or a private settlement. The Buckhannon ruling eliminated the catalyst theory for all fee shifting statutes in federal law.

The bill I introduce today restores the catalyst theory that the vast majority of courts had approved prior to the Buckhannon decision as a basis for seeking attorneys fees under Federal fee shifting statutes. It provides a new definition of ''prevailing party'' for all such statutes to encompass the common situation where defendants alter their conduct after a lawsuit has commenced but without waiting for a court order requiring them to do so. This critical change in the definition of ''prevailing party'' will allow attorneys representing clients who cannot otherwise afford to hire a lawyer to recover their costs and to be paid a reasonable rate for their work.

The Buckhannon case itself illustrates the need for this legislation. Buckhannon Board and Care Home in West Virginia, an operator of assisted living residences, failed a state inspection because some residents were incapable of ''self-preservation'' as defined by State law. After receiving orders to close its facilities, Buckhannon sued the State seeking declaratory and injunctive relief that the ''self-preservation'' requirement violated the Fair Housing Amendments Act and the Americans with Disabilities Act. While the lawsuit was pending but before the court ruled, the state legislature eliminated the ''self-preservation'' requirement.

Imagine how the plaintiffs felt when they learned that their lawsuit had forced a change in the law not only for their own case but also for all of the other individuals who had been subject to the improper self-preservation doctrine. If ever there was a complete and total victory caused by litigation, this was it. But, as Casey Stengel once said, ''It ain't over 'till it's over.'' Once the State legislature changed the law, the District Court granted defendant's motion to dismiss the case as moot and denied Buckhannon's request for attorneys' fees. The court ruled that the legislative action did not amount to a judicially required change in position that would permit Buckhannon to be considered a ''prevailing party'' in the case. On appeal, the Court of Appeals for the Fourth Circuit and then the U.S. Supreme Court denied attorneys' fees for the plaintiffs, ruling that because the change in the defendants' conduct was voluntary rather than ordered by the court, Buckhannon was not a prevailing party.

I believe the narrow definition of 'prevailing party' endorsed by the Buckhannon decision will result in many injustices going unchallenged. Indeed, in calculating whether to take a case, an attorney for a plaintiff will have to consider not only the chances of losing, but the chances of winning too easily. If businesses or individuals are able to engage in egregious conduct, refuse to change their behavior without a lawsuit being filed against them, and then avoid paying attorneys' fees by changing their conduct on the eve of trial, the effect will be that some lawyers will decide that they cannot afford to take a case even if the claims are very strong.

Imagine a case involving a legitimate claim of housing discrimination where, after many months, perhaps even years of work, as the attorney for the plaintiff prepares into the evening for opening statements, the attorney learns that the defendant has admitted its wrongful conduct and offered substantial compensation and a promise to change its practices. This offer came about only because of the spotlight the lawsuit put on the defendant and the possibility of a large jury verdict. This would be a complete victory for the plaintiff, but under Buckhannon, the attorney who labored for years to bring about this result may not be paid. Later, if the same defendant returns to discriminatory practices, the next plaintiff might very well not be able to find competent counsel who will take the case.

Ironically, the failure to correct the Buckhannon decision could lead to plaintiffs' attorneys dragging out law suits out far beyond a point in time where the parties could reach a fair settlement, in order to insure that they meet the Buckhannon definition of ''prevailing party.'' This will increase the costs of litigation and discourage settlement. Simply put, Buckhannon creates unnatural tensions between attorneys and clients and may even push attorneys to not act in the best interest of their clients.

Certainly we can do better. Congress has passed important laws to protect the public in the work place and in our communities; we must ensure that these laws can be enforced, when necessary, in court. The Settlement Encouragement and Fairness Act of 2002 will help insure that all our citizens have the ability to meaningfully challenge injustice.

By Mr. DURBIN (for himself, Mr. NELSON of Florida, Mr. CLELAND, and Mr. EDWARDS):

S. 3162. A bill to amend title 49, United States Code, to enhance the security of transporting high-level nuclear waste and spend nuclear fuel, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DURBIN. Mr. President, I rise today to introduce legislation to improve the safety of nuclear waste transportation across our Nation. This bill, the Nuclear Waste Transportation Security Act of 2002, seeks to address the concerns raised by the Congress' decision earlier this year to transport spent nuclear fuel to Yucca Mountain, NV, for underground storage. Joining me in its introduction are Senators CLELAND, EDWARDS, and NELSON.

I voted in favor of moving nuclear waste to Yucca Mountain. My decision was not a simple one; rather its ramifications required serious consideration. At that time, I predicated my 'yes' vote on the waste being transported safely and securely through my home State of Illinois and across our Nation, and I indicated that I would introduce legislation to improve that safety and security. This is that legislation.

The Nuclear Waste Transportation Security Act directs the Secretary of

Transportation to establish a comprehensive transportation safety program that considers terrorist threats and other potential dangers to the safe transportation of this spent fuel. The Department of Transportation, the regulator of these shipments, will consult with numerous cabinet and sub-cabinet offices, including the soon to be created Department of Homeland Security, to develop this program. After one year, the Secretary will deliver a progress report to Congress on the program's development and implementation.

To better assist State, local, and tribal governments in implementing this program, our bill establishes a grant program at DOT related to the transportation of nuclear spent fuel. First responders will be eligible for these grants, which will emphasize frequently used routes. The grants will be used for infrastructure improvements, drills and training, and other activities as determined by the Secretary. DOE and the Federal Radiological Preparedness Coordinating Committee, FRPCC, of FEMA will consult on the grant program. For this purpose, the bill authorizes $3,000,000 for fiscal year 2003 and additional funds as necessary for fiscal years 2004 through 2012.

A key component of spent nuclear fuel transportation is ensuring the safety and security of routes nationwide. Much of this fuel is likely to be transported through my own State of Illinois, right through the center of Chicago and Springfield, our State capitol. I want to be certain that its transport does not endanger my constituents in any way. The Department of Energy ranks Illinois seventh in truck shipments under what is called the ''mostly truck scenario,'' and sixth in rail shipments in the ''mostly rail scenario.'' Nearly half of Illinois' electricity is generated from nuclear power. With seven nuclear power plants and two nuclear research reactors Illinois produces more nuclear waste than any other State and is home to some of the busiest transportation corridors in the Nation. The safety of Illinoisans is at stake. These stakes are too high for us to gamble. Safety must be a top priority.

To ensure this safety, my bill requires that the DOT consult with State governments in establishing routes and provide 14-days' notice to governors of shipments through their States. The bill requires dedicated trains for the waste with trained guards stationed at the front and rear ends of each train. The bill provides the Secretary of Transportation and the Director of Homeland Security with waiver authority for national or homeland security. Under my legislation, trains must be equipped with communication systems providing continuous access to first responders and must be equipped with the best available technology, including appropriate health monitoring systems. Finally, to ensure the safe transportation of passengers and shippers on our nation's waterways, nuclear waste shipments may not be made via the inland waterways or on the Great Lakes unless waived for national or homeland security purposes. This is critical to adequately protect these important natural resources.

Once the infrastructure is established and the routing determined, employees must be certified to handle any such emergencies that may result from this transportation and to mitigate their impact on local populations. My bill amends certification requirements for hazmat employees, requiring that certification be renewed every three years. Currently, this certification, without renewals, is required by regulation but not codified in statute.

The bill directs hazmat employers to submit training programs to DOT for review and approval and expands the definition of covered employees to include those who may be among the first responders to an accident but who do not receive training under current regulations. To provide funding for this additional training, the bill reauthorizes the training grant program for hazmat instructors who train hazmat employees, and enables it to cover hazmat employee training as well. Appropriations are authorized at $3,000,000 for fiscal year 2003 and for such sums as necessary for fiscal years 2004–2012.

The maximum civil penalties for violating hazmat laws regarding radioactive materials are increased from $25,000 to $100,000.

As a means of involving the public in these decisions affecting safety and security, the bill establishes a public outreach program to protect public health and safety. The program will be developed by FEMA in coordination with other agencies. In addition, the bill requires the EPA and the Centers for Disease Control and Prevention to conduct a study and report to Congress regarding the effects on public health of routine transportation of nuclear waste and accidents involving its transportation. The report is due one year after the date of enactment.

Especially important to my legislation is the establishment of requirements for casks. Also known as packages, these casks contain the spent nuclear fuel that is being shipped. The bill requires the Nuclear Regulatory Commission, which has authority over the casks, to execute a comprehensive testing program in conjunction with DOT and DHS, and requires them to conduct a survey of potential terrorist and other threats that may be posed to casks. The NRC and DOT must jointly certify the safety of the casks, which must be designed to handle head-on collisions at any speed at which they will be transported, attempted puncture by armor-piercing ammunition, falls of the maximum distance to which the package could fall on likely routes, submersion in water to the maximum depth to which the package could be submerged, continuous exposure to the maximum temperature to which the package is likely to be subjected in an event involving fire, and other threats that may be identified. The agencies involved in this effort must report to Congress every two years on these activities.

Finally, the bill amends current statute to exclude DOT and NRC contractors from participating on the Nuclear Waste Technical Review Board and enables the Board to review the activities of the DOT and NRC and to obtain documents from them as part of its existing investigative powers. This provision will prevent any conflicts of interest between the reviewers and implementers of this law. The Board's termination date is extended from one year after nuclear waste begins to be deposited at a national repository to 10 years after such waste begins to be deposited.

I believe that our legislation alleviates many of the concerns of shippers, hazmat employees, the federal government, and affected citizens regarding the transportation of nuclear spent fuel across our Nation. In the course of its development, we consulted with shippers, railroads, labor unions, the nuclear industry, federal regulators, the environmental community, and our colleagues in the Senate. The bill seeks to address the real threats we face and to take economic and safety concerns into account, with the primary goal of increasing the safety and security of these materials during their transportation to Yucca Mountain. I appreciate the assistance that these groups have provided. I remain open to their further input and look forward to working with them to enact this critical legislation.

Mr. NELSON. Mr. President, I am pleased to join my colleagues, Senator DURBIN, Senator EDWARDS and Senator CLELAND in introducing the Nuclear Waste Transportation Security Act.

Ensuring the safe and secure transportation of our high-level nuclear waste across this country is of paramount importance. The greatest concern I had voting for the Yucca Mountain Resolution was the safe transportation of our waste to Yucca.

This piece of legislation is the first step in what I see as Congress' ongoing duty to oversee and evaluate our Nation's transport of nuclear waste.

Specifically, this bill directs the Department of Transportation to develop and carry out a comprehensive safety program that considers, among other things, terrorist threats.

State and Federal cooperation is required. States must be consulted by DOT in making routing decisions and notified when shipments are traveling through their State.

Dedicated trains, armed escorts and state of the art communication systems must be employed.

Full-scale testing of casks to withstand the maximum temperature, water depth and piercing likely to be encountered must also be carried out.

The EPA and CDC must conduct a study and report to Congress on the effects, if any, on public health of routine transportation of nuclear waste and accidents involving the transportation of nuclear waste.

And, the Federal Emergency Management Agency must administer a public outreach program on nuclear waste to educate the public on appropriate means of responding to an accident or attack involving high-level nuclear waste.

Employing the expertise of the DOT, NRC, FEMA, EPA and CDC to protect the American people from any potential danger posed by nuclear waste transport is the aim and goal of this legislation and I hope my colleagues will support it.

The first shipments of nuclear waste to Yucca Mountain will not take place until 2010. We need to use the time between now and then to ensure that the transportation system that will carry this waste is a safe as it can possibly be.

By Mr. DEWINE:

S. 3163. A bill to establish a grant program to enable institutions of higher education to improve schools of education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE:

S. 3164. A bill to amend the Higher Education Act of 1965 to improve the loan forgiveness program for child care providers, including preschool teachers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 3165. A bill to provide loan forgiveness to social workers who work for child protective agencies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 3166. A bill to amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. LIEBERMAN):

S. 3167. A bill to provide grants to States and outlying areas to encourage the States and outlying areas to enhance existing or establish new statewide coalitions among institutions of higher education, communities around the institutions, and other relevant organization or groups, including anti-drug or anti-alcohol coalitions, to reduce underage drinking and illicit drug-use by students, both on and off campus; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I join several of my colleagues today to introduce a series of bills related to the reauthorization of the Higher Education Act, HEA. These five bills emphasize a number of issues that are vital to higher education, including teacher quality; loan forgiveness for social workers, family lawyers, and early childhood teachers; and the reduction of drug use and underage drinking at our colleges and universities.

The quality of a student's education is the direct result of the quality of that student's teachers. If we don't have well trained teachers, then future generations of our children will not be well educated. That is why I am introducing a bill that would provide $200 million in grants to our schools of education to partner with local schools to ensure that our teachers are receiving the best, most, extensive training available before they enter the classroom.

The Secretary of Education's annual report on teacher quality reported that a majority of graduates of schools of education believe that the traditional teacher preparation program left them ill prepared for the challenges and rigors of the classroom. Part of the responsibility for this lies in the hands of our schools of education. However, Congress also has a responsibility to give our schools of education the tools they need to make necessary improvements. This new bill would create a competitive grant program for schools of education, which partner with low income schools to create clinical programs to train teachers. Additionally, it would require schools of education to make internal changes by working with other departments at the university to ensure that teachers are receiving the highest quality education in core academic subjects. Finally, it would require the college or university to demonstrate a commitment to improving their schools of education by providing matching funds.

Another complex issue affecting the teaching force is the high percentage of disillusioned beginning teachers who leave the field. Our bill would help combat this issue, as well. Schools of education receiving these grants would be responsible for following their graduates and continuing to provide assistance after they enter the classroom. The more we invest in the education of teachcers especially once they have entered the profession the more likely they will remain in the classroom.

Today, I also would like to reintroduce the Early Care and Education Loan Forgiveness Act that Senator Wellstone and I had included in the last higher education reauthorization bill. We had been working on this legislation together before Paul's tragic death. I know he cared deeply about this issue and about making sure that all children receive a quality education. He was passionate about that. And, in his memory, I would like to rename our bill the ''Paul Wellstone Early Educator Loan Forgiveness Act.''

This bill would expand the loan forgiveness program so that it benefits not just childcare workers, but also early childhood educators. This loan forgiveness program would serve as an incentive to keep those educators in the field for longer periods of time.

Paul Wellstone knew how important early learning programs are in preparing our children for kindergarten and beyond. Research shows that children who attend quality early childcare programs when they were three or four years old scored better on math, language arts, and social skills in early elementary school than children who attended poor quality childcare programs. In short, children in early learning programs with high quality teachers, teachers with a bachelor's degree or an associate's degree or higher, do substantially better.

When we examine the number and recent growth of pre-primary education programs, it becomes difficult to differentiate between early education and childcare settings because they are so often intertwined, especially considering that 11.9 million children younger than age five spend part of their time with a care provider other than a parent and demand for quality childcare and education is growing as more mothers enter the workforce.

Because the bill targets loan forgiveness to those educators working in low-income schools or childcare settings, we can make significant strides toward providing high quality education for all of our young children, regardless of socioeconomic status. The bill would serve a two-fold function. First, it would reward professionals for their training. Second, it would encourage professionals to remain in the profession over longer periods of time, since more time in the profession leads to higher percentages of loans forgiveness. The bill would result in more educated individuals with more teaching experience and lower turnover rates, each of which enhances student performance.

I encourage my colleagues to join me in this effort to ensure that truly no children, especially our youngest children, are left behind.

I also am working on two bills with my friend and colleagues from West Virginia, Senator JAY ROCKEFELLER. These bills would provide loan forgiveness to students who dedicate their careers to working in the realm of child welfare, including social workers, who work for child protective services, and family law experts.

Currently, there aren't enough social workers to fill available jobs in child welfare today. Furthermore, the number of social work job openings is expected to increase faster than the average for all occupations through 2010. The need for highly qualified social workers in the child protective services is reaching crisis level.

We also need more qualified individuals focusing on family law. The wonderful thing about family law is its

focus on rehabilitation, that is the rehabilitation of families by helping them through life's transitions, whether it is a family going through a divorce, a family dealing with their troubled teenager in the juvenile system, or a child getting adopted and becoming a member of a new family.

Across the United States, family, juvenile, and domestic relations courts are experiencing a shortage of qualified attorneys. As many of my colleagues and I know, law school is an expensive investment. In the last 20 years, tuition has increased more than 200 percent. Currently, the average rate of law school debt is about $80,000 per graduate. To be sure, few law school graduates can afford to work in the public sector because debts prevent even the most dedicated public service lawyer from being able to take these low-paying jobs. This results in a shortage of family lawyers.

The shortage of family law attorneys also disproportionately impacts juveniles. The lack of available representation causes children to spend more time in foster care because cases are adjourned or postponed when they simply cannot find an attorney to represent their rights or those of the parent or guardian. Furthermore, the number of children involved in the court system is sharply increasing. We need to make sure the interests of these children are taken care of by making sure they have an advocate, someone working solely on their behalf.

By offering loan forgiveness to those willing to purpose careers in the child welfare field, we can increase the number of highly qualified and dedicate individuals who work in the realm of child welfare and family law.

Finally, I am introducing a bill today with my friend and colleague from Connecticut, Senator LIEBERMAN, that would help address an epidemic, the epidemic of underage drinking, binge drinking, and drug-related problems on college and university campuses across the United States. Our bill would provide grants to states to establish statewide partnerships among colleges and universities and the surrounding communities to work together to reduce underage and binge drinking and illicit drug use by students.

According to a study by Boston University, over 1,400 students aged 18–24 died in 1998 from alcohol-related injuries, more than 600,000 students were assaulted by another student, and another 500,000 were unintentionally injured while under the influence of alcohol. According to a 1999 Harvard University study, 40 percent of college students are binge drinkers and according to the Department of Health and Human Services, nearly 10.5 million current drinkers were under the legal age of 21, and of these, over 5 million were binge drinkers.

Currently, 28 States, including my home State of Ohio, have coalitions that deal specifically with the culture of alcohol and drug abuse on our Nation's college campuses. They work with the surrounding communities, including local residents, bar, restaurant and shop owners, and law enforcement officials, toward a goal of changing the pervasive culture of drug and alcohol abuse. They provide alternative alcohol-free events, as well as support groups for those who choose not to drink. They also educate students about the dangers of alcohol and drug-use.

Furthermore, the coalitions recognize that while it is important to promote an alcohol aware and drug-free campus community, if the community surrounding the campus does not promote these initiatives, there will be no long-term solutions. Therefore, these coalitions also have worked to establish regulations both on and off campus, which will help our nation's youth to stay healthy, alive, and get the most out of their time at college. Some of these regulations include the registration of kegs. This provides accountability for both the store and the student. This is just an example of one step that colleges, local communities, and organizations can take.

To help start the expansion of these coalitions, our bill would provide $50 million dollars in grants. This is an important demonstration project that would help lead to positive effects for our young people. It is up to us to change the culture, which has been perpetuated by years of complacency and a dismissal tone of ''that's just the way it is in college.'' We must protect the health and education of our young people by changing this culture of abuse—and that is exactly what this bill would do.

Next year when we consider the reauthorization of the Higher Education Act, I encourage my colleagues to join in support of these initiatives.

By Mr. DODD:

S. 3168. A bill to improve funeral home, cemetery, and crematory inspections systems to establish consumer protections relating to funeral service contracts, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DODD. Mr. President, I rise today to introduce the Federal Death Care Inspection and Disclosure Act of 2002, a bill which I believe will go a long way in restoring the trust that Americans place in the funeral and death care industries.

None of us like to think about death and dying. It is a painful and uncomfortable subject, and most Americans, understandably, choose not to confront matters related to the death of a loved one until the death actually occurs. And when a loved one does pass on, we turn to our friends and family to grieve. Certainly, the last thing anyone wants to do at such a painful time is to spend hours or days negotiating or shopping for a funeral, casket, or other goods and services. Instead, we leave most of these arrangements in the hands of funeral service providers, turning to them to ensure that our loved ones are cared for and treated with respect and dignity after their passing.

We place a great deal of trust in funeral service providers. A funeral, after all, represents one of the largest purchases many consumers will ever make, just behind a home, college education, and a car. However, unlike these transactions, the purchase of funeral services is most often done under intense emotional duress, with very little time to spare, and without the benefit of the type of consumer information generally available when making such a large purchase. As a result, we trust funeral service providers to give us fair prices, to represent goods and services accurately, and to not take advantage of us during our moments of greatest grief and vulnerability.

For the most part, this trust is well deserved. I have no doubt, that the majority of individuals working in the funeral industry are good men and women who practice their profession with the honor and gravity it demands. However, recent revelations of abuses in the industry have shown us that not all members of the death care industry are honest and upstanding. We all remember hearing, earlier this year of the discovery of over 200 bodies strewn in the woods near a crematorium in Noble, GA. There is also recent evidence of desecration of graves and remains at cemeteries in Florida, California, Hawaii, and my own State of Connecticut. These incidents, as well as developments in the funeral industry as a whole, compel us to reexamine the regulatory structure we currently have in place for this industry.

Currently, the death care industry is regulated by a patchwork of State and local laws. These regulations may have been sufficient years ago, but the character of the industry has changed substantially since many of these laws were passed. The industry has become surprisingly large and diverse. Today, the death care industry generates annual revenues of over $15 billion and employ over 104,000 Americans. The 1990s saw the rise of multi-state ''consolidators'' who purchased local funeral homes across the country. Even for small local firms, the business has become increasingly complex. As more and more Americans travel and live in places far from where they were born, the industry has become one that frequently does business across State and county lines.

There have also been changes in Americans' cultural expectations of funeral services. For example, the percentage of cremations has risen from 5 percent in the 1970s to 25 percent today. However, only 12 States have substantive laws which cover cremation. In fact, in the case in Georgia I mentioned earlier, the crematorium in question was statutorily exempt from inspection, allowing the abuses to continue undiscovered.

The only significant Federal regulation of the industry exists in the Federal Trade Commission's Funeral Rule, promulgated nearly 20 years ago. Again, this rule has not kept up with the nature of the industry. Perhaps most importantly, the rule does not cover numerous sectors of the industry such as cemeteries, crematories, and casket makers. It also does not effectively regulate prepaid funeral contracts, which have become an increasingly popular option in recent years.

Earlier this year, I chaired a hearing of the Subcommittee on Children and Families in which we examined developments in the industry and how they have impacted American families. Since that hearing, I have worked with both consumer and industry groups to craft legislation to protect Americans from potential abuse by funeral service providers. The Federal Death Care Inspection and Disclosure Act of 2002 would provide Federal funding to allow States to hire and train inspectors and give consumers the right to legal action against those who violate regulatory standards. In order to be eligible for funding, states would have to adhere to standards which are outlined in the legislation. The act would also codify and strengthen the existing FTC regulations governing licensing and registration, recordkeeping, inspection, resolution of consumer complaints, and enforcement of State laws in the industry. It would clarify regulations to prevent deceptive trade practices in the industry and ensure that consumers can make informed decisions as they make funeral arrangements. Finally, the FTC rules would be expanded to cover all segments of the death care industry.

I am aware that as we are in the closing days of this Congress, the Senate will not have the opportunity to consider this legislation this year. However, I would like to take this opportunity to raise this issue with colleagues today in the hope that we will be able to move on this issue when we reconvene for the 108th Congress. This legislation is bipartisan. A House companion bill is being sponsored by Representative FOLEY of Florida. He has been a leader in the effort to ensure that dignity and respect prevail in all aspects of death care services. I look forward to working with him and all of our colleagues in the 108th Congress to advance this same worthy objective.

By Ms. LANDRIEU:

S. 3169. A bill to provide for military charters between military installations and local school districts, to provide credit enhancement initiatives to promote military charter school facility acquisition, construction, and renovation, and for other purposed; to the committee on Health, Education, Labor, and Pensions.

Ms. LANDRIEU. Mr. President, I rise to offer a bill which addresses a growing population who seek a distinct supportive voice: our military dependent children.

Education is an issue which many Senators on both sides of the aisle have worked very hard to improve in every State in our union. This bill, however, is unique in that it strives to increase the quality of education for hundreds of thousands of our children of members of the Armed Services by catering to their specific needs and frequent moves.

Let me begin by expressing my thanks to most members of this body for always working diligently to introduce and pass great initiatives for education. I firmly believe that we, at this juncture in our Nation's great history, have continued to bring family issues, such as education and the economy to the forefront of our discussion. Further, amid our continued discussion of the possibility of sending our military men and women into harm's way in Iraq, there is no better time to concentrate on their children, children who have the added burden of worrying about a deployed parent, or who must move to a new school many times as their parent or parents move to new assignments around the country.

This bill, I am proposing, will provide Stable Transitions I Education for our Active Duty Youth. It is called the STEADY Act and is the first step to a smoother educational career for military dependent children.

When I last spoke of this bill, I said that we in ''Congress are becoming wiser and wiser on the issue of education'' by recognizing that our future and our economy depend on the education of our children.

It truly is an issue of strengthening our Nation. We cannot have an economically strong and militarily secure Nation moving in a progressive way without an excellent school system. No matter where a child is born, rural or urban, on the east coast or west coast, if we do not do a better job as a Nation of giving our children a quality education, the future of our Nation will not be as bright, and it could put us in jeopardy.

I also make the argument that for our military, the same holds true. it is not just about providing our military with the most extraordinary weapons. it is not just about training our military men and women tot he highest levels. It is not just providing them the basics.

We have an obligation to recognize that when our men and women sign up to be in our military, they have willingly made sacrifices, but their families' quality of life should not be one of those sacrifices. We need to provide them, between the Department of Defense and the Department of Education, a quality education for their children.

When we send our soldiers into battle, we want them focused on the battle and mission at hand. We do not want them worried, as they naturally would be, about spouses and dependents at home, about their happiness, about their comfort, about their security. It makes our military stronger when we provide good, quality-of-life initiatives for their families at home. One of the ways we can do that is by improving the schools for military dependents. There are over 800,000 children who are military dependents out of an overall force strength of 1.4 million adults connected to the military. Many of them are school-age children. Because of the specific demands of our military, which are very unlike the civilian sector, many move every 2 years. Some military members move from the east coast to the west coast, moving families with them. it is very difficult providing an excellent education generally, and yet the military has even more challenges.

What is the solution? I offer this bill to strengthen our military schools in the United States in a creative way. This bill will set up the a pilot program to help create military charter schools around the Nation in partnership with local public school systems to provide an opportunity not only for our military dependents, but this framework will also help communities who have a large military presence. The benefit overall is that the community gets a better school, a school that has the opportunity to provide an excellent education, while being extremely flexible to accommodate the unique needs of a military dependent student.

The second benefit is that it gives children whose families might not have any connection to the military, an introduction into who military people and what military life can be like.

This is a partnership. It is a pilot program that will help establish charter schools, will give important consideration to military children as they move from community to community, and will create for the first time what we call an academic passport.

An academic passport will help to stabilize and standardize the curriculum without micromanaging, without dictating what the curriculum should be. It sets up a new approach or a new framework for our local elementary and secondary schools throughout the country to set up a standardized curriculum to address the vast peaks and valleys encountered by military dependent students as they move from one district to another. To illustrate: one school district might require 3 years of a foreign language or 2 years of algebra or 1 year of algebra, or a whole different curriculum. That is part of this bill. It is something about which military families feel very strongly. I hope that with this new pilot program to help create charter schools with a new academic passport, we can begin to focus some of our resources, again, not all within the Department of Defense; some of this is within the jurisdiction of the Department of Education, to create something exciting and wonderful for these 800,000 children.

Madam President, 600,000 of these children are in public schools today, at

great stress to those public districts; 100,000 of these children are either in private schools or are home schooled; and only 32,000 of the 800,000 are in Department of Defense schools. These schools are concentrated in a few States. There are only 32,000 children, as I said, of 800,000 dependents in DDESS schools in New York, Kentucky, Virginia, North Carolina, South Carolina, Georgia, and Alabama.

As my colleagues can see, dependent children of military personnel are in public schools throughout the country. Sometimes they are good public schools; sometimes they are not so good. We are working hard to make every public school excellent, but I think we have a special obligation to our military families to make sure that those children, with the added burdens they face, are getting an excellent education.

If you look at the general population, non-officers in our military, 91.5 percent have a high school degree or GED, 91 percent. In our general population, it is about 80 percent. This is a very upwardly mobile group of Americans. Theses are men and women with great discipline, great patriotism, great commitment to the Nation. Obviously, they are serving their country, but they are committed to their families, their communities, and their education.

As one can see, the officers exceed the general population at large. Almost 40 percent have advanced degrees; 99 percent or more have bachelor degrees. This is also a very upwardly mobile population. If we can provide excellent schools and opportunities for the children of this 91 percent, I think we will be doing a very good job in helping to strengthen our military but also helping our country be a better place. It is truly something on which we should focus more.

In conclusion, let me tell you of a school of which I am very proud. It might be one of the first military charters, if not the first, in the Nation. This is a school which opened in September and is an even larger success than we anticipated. This is a state-of-the-art, brand new charter school in Plaquemines Parish, which serves the military and civilian community there. It has alleviated a huge burden on the local school district, and is ready for its first expansion.

I think we can work all day long on pay raises, on building more ships, on buying more tanks, and on building a stronger Air Force, but truly I think focusing on educational opportunities for military dependent children, will help us build morale, help us improve retention, will help us strengthen our military in the intermediate and the long term, and it is something that, with a little creativity, a little bit of thinking outside of the box, I am convinced we could finance the construction of these schools through means laid out in the bill, and end up coming out with some excellent facilities around this Nation to serve both our military and our nonmilitary families and do a great job for our Defense Department and a great job for our country. That is what this bill would accomplish: again, it sets up a pilot program to establish military charter schools in the neediest areas of the Nation. I would hope that it would be met with enthusiasm from my colleagues who consistently support good education initiatives, and from all of us who know the value of military service to our great Nation.

''Every few years you make new friends, Then you're gone. You do it all the time. I keep in touch. My best friend and I email, and write back and forth.''—Military dependent student.

By Mr. DASCHLE (for himself and Mr. LOTT):

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress; considered and passed.

S.J. RES. 53

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundred Eighth Congress shall begin at noon on Tuesday, January 7, 2003.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 357—COMMENDING AND CONGRATULATING THE ANAHEIM ANGELS FOR THEIR REMARKABLE SPIRIT, RESILIENCE, AND ATHLETIC DISCIPLINE IN WINNING THE 2002 WORLD SERIES

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. RES. 357

Whereas the Anaheim Angels have won the first World Championship in the 42 year history of the franchise;

Whereas the Anaheim Angels completed their best season in franchise history with 99 wins, staging one of the most significant team improvements in Major League Baseball since the 2001 season;

Whereas the 2002 World Series was the Anaheim Angels' first appearance in the Fall Classic;

Whereas the Anaheim Angels have fielded such superstars as Nolan Ryan, Rod Carew, Bobby Grich, Reggie Jackson, Jim Abbott, Wally Joyner, Brian Downing, Jim Edmonds, Gary DiSarcina, and now Troy Percival, Jarrod Washburn, Garret Anderson, Troy Glaus, and Tim Salmon;

Whereas third baseman Troy Glaus received the World Series Most Valuable Player Award for his stellar defensive plays, .385 batting average, and 3 home runs during the series;

Whereas pitcher Francisco Rodriguez became the youngest pitcher to win a World Series game and tied the postseason record for games won with 5 outstanding wins;

Whereas Manager Mike Scioscia won his first World Series title as a manager;

Whereas Tim Salmon made his first playoff appearance in 10 seasons as a major league baseball player, the only current player to have played that long without having reached the postseason;

Whereas the spirit of Gene Autry, the ''Singing Cowboy'' and former owner of the Angels, was undoubtedly ever-present with the Anaheim players throughout the series as he was an inspirational force to all who played for him and knew of his legacy;

Whereas the Anaheim Angels battled another California team deserving of acknowledgement: the San Francisco Giants;

Whereas the San Francisco Giants were a worthy rival for the Anaheim Angels and set the stage for an exciting and suspenseful World Series that was watched with great interest by many Californians;

Whereas the Anaheim Angels epitomize California pride with their incredible focus, dedication to winning, team cohesiveness, and devotion to playing America's pastime with class, athleticism, and enthusiasm; and

Whereas the Anaheim Angels demonstrate the rewards of perseverance, discipline, teamwork, and championship as they prepare to defend their title of World Champions: Now, therefore, be it

Resolved, That the Senate congratulates the Anaheim Angels on winning the 2002 Major League Baseball World Series title.

SENATE RESOLUTION 356—PAYING A GRATUITY TO TRUDY LAPIC

Mr. DAYTON submitted the following resolution; which was considered and agreed to:

S. RES. 356

Resolved, That the Secretary of the Senate is authorized and directed to pay, from appropriations under the subheading ''MISCELLANEOUS ITEMS'' under the heading ''CONTINGENT EXPENSES OF THE SENATE'', to Trudy Lapic, widow of Thomas Lapic, a loyal employee of the Senate for 9 years, a sum equal to 8 months of compensation at the rate Thomas Lapic was receiving by law during the last month of his Senate service, that sum to be considered inclusive of funeral expenses and all other allowances.

AMENDMENTS SUBMITTED & PROPOSED

SA 4906. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes.

SA 4907. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4908. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4909. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4910. Mr. LIEBERMAN submitted an amendment intended to be proposed to

amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4911. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4912. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4913. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4914. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4915. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4916. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4917. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4918. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4919. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4920. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4921. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4922. Mr. JEFFORDS (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4923. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. THOMPSON, Mr. BARKLEY, AND MR. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4924. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4925. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4926. Mr. CORZINE (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4927. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4928. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4929. Mr. REID submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4930. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4931. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4932. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4933. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4934. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4935. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4936. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4937. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4938. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4939. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4940. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4941. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4942. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4943. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4944. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4945. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4946. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4947. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4948. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4949. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4950. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4951. Mr. DODD proposed an amendment to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra.

SA 4952. Mr. INOUYE 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 4953. Mr. LIEBERMAN 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 4954. Mr. REID (for Ms. CANTWELL (for herself, Mr. GRASSLEY, Mr. ENZI, and Mr. KOHL)) proposed an amendment to the bill S. 1742, to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

SA 4955. Mr. REID (for Mr. HELMS (for himself and Mr. LEAHY)) proposed an amendment to the bill H.R. 5469, To amend title 17, United States Code, with respect to the statutory license for webcasting.

SA 4956. Mr. REID (for Mr. HAGEL (for himself, Mr. BIDEN, and Mr. HELMS)) proposed an amendment to the bill S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

SA 4957. Mr. REID (for Mr. KERRY (for himself, Mr. BROWNBACK, and Mr. HOLLINGS)) proposed an amendment to the bill S. 2869, 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.

SA 4958. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, Mr. HOLLINGS, and Mr. FRIST)) proposed an amendment to the bill H.R. 4664, An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.

SA 4959. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 4664, supra.

SA 4960. Mrs. CLINTON (for herself, Mr. FITZGERALD, Ms. CANTWELL, and Mr. SPECTER) proposed an amendment to the bill H.R. 3529, to provide tax incentives for economic recovery and assistance to displaced workers.

SA 4961. Mr. REID (for Mr. BAUCUS) proposed an amendment to the bill H.R. 5557, to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

TEXT OF AMENDMENTS

SA 4906. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; 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 4907. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 28, line 13, insert ''and in accordance with an information systems interoperability architecture or other requirements developed by the Office of Management and Budget,'' after ''Department,''.

SA 4908. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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. . 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 4909. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 260, line 1, strike all through line 23 and insert the following:

(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.

SA 4910. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. Barkley, and Mr. VOINOVICH)) 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 90, line 5, strike all through page 91, line 10.

SA 4911. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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, add the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).

(2) Section 311(i).

(3) Subtitle G of title VIII.

(4) Section 871.

(5) Section 890.

(6) Section 1707.

(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

SA 4912. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 244, line 14, beginning with the comma strike all through ''occur'' on line 16.

SA 4913. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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; and follows:

On page 302, line 21, strike all through page 303, line 19.

SA 4914. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proosed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was orderd to lie on the table; as follows:

On page 280, line 8, strike all through page 281, line 8.

SA 4915. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 268, line 19, strike all through page 280, line 5.

SA 4916. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 477, line 11, strike all through line 16.

SA 4917. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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, line 12, strike all through line 14.

SA 4918. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 482, line 22, strike all through page 484, line 12.

SA 4919. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM) for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 60, line 8, strike all through ''(5 U.S.C. App.))'' on line 9.

SA 4920. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 29, strike line 13 and insert the following:

(19) On behalf of the Secretary, subject to disapproval by the President, to direct the agencies described under subsection (f)(2) to provide intelligence information, analyses of intelligence information, and such other intelligence-related information as the Assistant Secretary for Information Analysis determines necessary.

(20) To perform such other duties relating to

SA 4921. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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. 841. 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 by the Secretary.
''9702. Establishment of human resources management system by the President.

''§ 9701. Establishment of human resources management system by the Secretary

''(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, 72, 73, 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 title 5, United States Code; 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 such title 5;

''(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 such title 5 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.

''(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 fully 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 801 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 and section 9702) shall cease to be available.

''§ 9702. Establishment of human resources management system by the President

The authority under section 9701 to establish a human resources management system shall be exercised only when the President issues an order determining that—

''(1) the affected agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work;

''(2) the provisions of chapter 43, 51, 53, 71, 75, or 77 cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations;

''(3) the mission and responsibilities of the affected agency or subdivision have materially changed; and

''(4) a majority of the employees within that agency or subdivision have, as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.''.

(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. 842. LABOR-MANAGEMENT RELATIONS.

(a) EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, 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 such chapter 71 cannot be applied to that agency or subdivision in a matter consistent with national security requirements and considerations.

(2) ADDITIONAL DETERMINATION.—In addition to the requirements under paragraph (1), the President may issue an order excluding any executive agency, or subdivision thereof, transferred to the Department under this Act, from coverage under chapter 71 of title 5, United States Code, only if the President determines that—

(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.

(3) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) or (2) 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.—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 under this Act, continue to be so recognized for such purposes, unless—

(1) the mission and responsibilities of the personnel in such unit (or subdivision), or the threats of domestic terrorism being addressed by the personnel in such unit (or subdivision), materially change; and

(2) a substantial number of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(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.

SA 4922. Mr. JEFFORDS (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM, (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 36, strike line 5 and all that follows through page 48, line 16, and insert the following:

Subtitle B—Protection of Voluntarily Furnished Confidential Information

SEC. 211. 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.

SA 4923. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 145, strike line 16 and all that follows through page 148, line 5.

SA 4924. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 200, strike line 3 and all that follows through page 208, line 7, and insert the following:

SEC. 501. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to 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 and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 502. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 503. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

SA 4925. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 208, between lines 7 and 8, insert the following:

Subtitle B—First Responder Terrorism Preparedness

SEC. 5___1. SHORT TITLE.

This subtitle may be cited as the ''First Responder Terrorism Preparedness Act of 2002''.

SEC. 5___2. 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. 5___3. 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. 5___4. 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. 5___5. 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. 5___6. 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 5___5(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. 5___7. 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 5___6) 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. 5___8. 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 4926. Mr. CORZINE (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 II, add the following:

Subtitle E—Chemical Security

SEC. 241. SHORT TITLE.

This subtitle may be cited as the ''Chemical Security Act of 2002''.

SEC. 242. FINDINGS.

Congress finds that—

(1) the chemical industry is a crucial part of the critical infrastructure of the United States—

(A) in its own right; and

(B) because that industry supplies resources essential to the functioning of other critical infrastructures;

(2) the possibility of terrorist and criminal attacks on chemical sources (such as industrial facilities) poses a serious threat to public health, safety, and welfare, critical infrastructure, national security, and the environment;

(3) the possibility of theft of dangerous chemicals from chemical sources for use in terrorist attacks poses a further threat to public health, safety, and welfare, critical infrastructure, national security, and the environment; and

(4) there are significant opportunities to prevent theft from, and criminal attack on, chemical sources and reduce the harm that such acts would produce by—

(A)(i) reducing usage and storage of chemicals by changing production methods and processes; and

(ii) employing inherently safer technologies in the manufacture, transport, and use of chemicals;

(B) enhancing secondary containment and other existing mitigation measures; and

(C) improving security.

SEC. 243. DEFINITIONS.

In this subtitle:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) CHEMICAL SOURCE.—The term ''chemical source'' means a stationary source (as defined in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2))) that contains a substance of concern.

(3) COVERED SUBSTANCE OF CONCERN.—The term ''covered substance of concern'' means a substance of concern that, in combination with a chemical source and other factors, is designated as a high priority category by the Administrator under section 244(a)(1).

(4) EMPLOYEE.—The term ''employee'' means—

(A) a duly recognized collective bargaining representative at a chemical source; or

(B) in the absence of such a representative, other appropriate personnel.

(5) SAFER DESIGN AND MAINTENANCE.—The term ''safer design and maintenance'' includes, with respect to a chemical source that is within a high priority category designated under section 244(a)(1), implementation, to the extent practicable, of the practices of—

(A) preventing or reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern through use of inherently safer technology;

(B) reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern through use of well-maintained secondary containment, control, or mitigation equipment;

(C) reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern by implementing security measures; and

(D) reducing the potential consequences of any vulnerability of the chemical source to an unauthorized release of a covered substance of concern through the use of buffer zones between the chemical source and surrounding populations (including buffer zones between the chemical source and residences, schools, hospitals, senior centers, shopping centers and malls, sports and entertainment arenas, public roads and transportation routes, and other population centers).

(6) SECURITY MEASURE.—

(A) IN GENERAL.—The term ''security measure'' means an action carried out to increase the security of a chemical source.

(B) INCLUSIONS.—The term ''security measure'', with respect to a chemical source, includes—

(i) employee training and background checks;

(ii) the limitation and prevention of access to controls of the chemical source;

(iii) protection of the perimeter of the chemical source;

(iv) the installation and operation of an intrusion detection sensor; and

(v) a measure to increase computer or computer network security.

(7) SUBSTANCE OF CONCERN.—

(A) IN GENERAL.—The term ''substance of concern'' means—

(i) any regulated substance (as defined in section 112(r) of the Clean Air Act (42 U.S.C. 7412(r))); and

(ii) any substance designated by the Administrator under section 244(a).

(B) EXCLUSION.—The term ''substance of concern'' does not include liquefied petroleum gas that is used as fuel or held for sale as fuel at a retail facility as described in section 112(r)(4)(B) of the Clean Air Act (42 U.S.C. 7412(r)(4)(B)).

(8) UNAUTHORIZED RELEASE.—The term ''unauthorized release'' means—

(A) a release from a chemical source into the environment of a covered substance of concern that is caused, in whole or in part, by a criminal act;

(B) a release into the environment of a covered substance of concern that has been removed from a chemical source, in whole or in part, by a criminal act; and

(C) a release or removal from a chemical source of a covered substance of concern that is unauthorized by the owner or operator of the chemical source.

(9) USE OF INHERENTLY SAFER TECHNOLOGY.—

(A) IN GENERAL.—The term ''use of inherently safer technology'', with respect to a chemical source, means use of a technology, product, raw material, or practice that, as compared with the technologies, products, raw materials, or practices currently in use—

(i) reduces or eliminates the possibility of a release of a substance of concern from the chemical source prior to secondary containment, control, or mitigation; and

(ii) reduces or eliminates the threats to public health and the environment associated with a release or potential release of a substance of concern from the chemical source.

(B) INCLUSIONS.—The term ''use of inherently safer technology'' includes input substitution, catalyst or carrier substitution, process redesign (including reuse or recycling of a substance of concern), product reformulation, procedure simplification, and technology modification so as to—

(i) use less hazardous substances or benign substances;

(ii) use a smaller quantity of covered substances of concern;

(iii) reduce hazardous pressures or temperatures;

(iv) reduce the possibility and potential consequences of equipment failure and human error;

(v) improve inventory control and chemical use efficiency; and

(vi) reduce or eliminate storage, transportation, handling, disposal, and discharge of substances of concern.

SEC. 244. DESIGNATION OF AND REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.

(a) DESIGNATION AND REGULATION OF HIGH PRIORITY CATEGORIES BY THE ADMINISTRATOR.—

(1) IN GENERAL.—Not later than December 31, 2002, the Administrator, in consultation with the Secretary and State and local agencies responsible for planning for and responding to unauthorized releases and providing emergency health care, shall promulgate regulations to designate certain combinations of chemical sources and substances of concern as high priority categories based on the severity of the threat posed by an unauthorized release from the chemical sources.

(2) FACTORS TO BE CONSIDERED.—In designating high priority categories under paragraph (1), the Administrator, in consultation with the Secretary, shall consider—

(A) the severity of the harm that could be caused by an unauthorized release;

(B) the proximity to population centers;

(C) the threats to national security;

(D) the threats to critical infrastructure;

(E) threshold quantities of substances of concern that pose a serious threat; and

(F) such other safety or security factors as the Administrator, in consultation with the Secretary, determines to be appropriate.

(3) REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the Secretary, the United States Chemical Safety and Hazard Investigation Board, and State and local agencies described in paragraph (1), shall promulgate regulations to require each owner and each operator of a chemical source that is within a high priority category designated under paragraph (1), in consultation with local law enforcement, first responders, and employees, to—

(i) conduct an assessment of the vulnerability of the chemical source to a terrorist attack or other unauthorized release;

(ii) using appropriate hazard assessment techniques, identify hazards that may result from an unauthorized release of a covered substance of concern; and

(iii) prepare a prevention, preparedness, and response plan that incorporates the results of those vulnerability and hazard assessments.

(B) ACTIONS AND PROCEDURES.—A prevention, preparedness, and response plan required under subparagraph (A)(iii) shall include actions and procedures, including safer design and maintenance of the chemical source, to eliminate or significantly lessen the potential consequences of an unauthorized release of a covered substance of concern.

(C) THREAT INFORMATION.—To the maximum extent permitted by applicable authorities and the interests of national security, the Secretary, in consultation with the Administrator, shall provide owners and operators of chemical sources with threat information relevant to the assessments and plans required under subsection (b).

(4) REVIEW AND REVISIONS.—Not later than 5 years after the date of promulgation of regulations under each of paragraphs (1) and (3), the Administrator, in consultation with the Secretary, shall review the regulations and make any necessary revisions.

(5) ADDITION OF SUBSTANCES OF CONCERN.—For the purpose of designating high priority categories under paragraph (1) or any subsequent revision of the regulations promulgated under paragraph (1), the Administrator, in consultation with the Secretary, may designate additional substances that pose a serious threat as substances of concern.

(b) CERTIFICATION.—

(1) VULNERABILITY AND HAZARD ASSESSMENTS.—Not later than 1 year after the date of promulgation of regulations under subsection (a)(3), each owner and each operator of a chemical source that is within a high priority category designated under subsection (a)(1) shall—

(A) certify to the Administrator that the chemical source has conducted assessments in accordance with the regulations; and

(B) submit to the Administrator written copies of the assessments.

(2) PREVENTION, PREPAREDNESS, AND RESPONSE PLANS.—Not later than 18 months after the date of promulgation of regulations under subsection (a)(3), the owner or operator shall—

(A) certify to the Administrator that the chemical source has completed a prevention, preparedness, and response plan that incorporates the results of the assessments and complies with the regulations; and

(B) submit to the Administrator a written copy of the plan.

(3) 5-YEAR REVIEW.—Not later than 5 years after each of the date of submission of a copy of an assessment under paragraph (1) and a plan under paragraph (2), and not less often than every 3 years thereafter, the owner or operator of the chemical source covered by the assessment or plan, in coordination with local law enforcement and first responders, shall—

(A) review the adequacy of the assessment or plan, as the case may be; and

(B)(i) certify to the Administrator that the chemical source has completed the review; and

(ii) as appropriate, submit to the Administrator any changes to the assessment or plan.

(4) PROTECTION OF INFORMATION.—

(A) DISCLOSURE EXEMPTION.—Except with respect to certifications specified in paragraphs (1) through (3) of this subsection and section 245(a), all information provided to the Administrator under this subsection, and all information derived from that information, shall be exempt from disclosure under section 552 of title 5, United States Code.

(B) DEVELOPMENT OF PROTOCOLS.—

(i) IN GENERAL.—The Administrator, in consultation with the Secretary, shall develop such protocols as are necessary to protect the copies of the assessments and plans required to be submitted under this subsection (including the information contained in those assessments and plans) from unauthorized disclosure.

(ii) REQUIREMENTS.—The protocols developed under clause (i) shall ensure that—

(I) each copy of an assessment or plan, and all information contained in or derived from the assessment or plan, is maintained in a secure location;

(II) except as provided in subparagraph (C), only individuals designated by the Administrator may have access to the copies of the assessments and plans; and

(III) no copy of an assessment or plan or any portion of an assessment or plan, and no information contained in or derived from an assessment or plan, shall be available to any person other than an individual designated by the Administrator.

(iii) DEADLINE.—As soon as practicable, but not later than 1 year after the date of enactment of this Act, the Administrator shall complete the development of protocols under clause (i).

(C) FEDERAL OFFICERS AND EMPLOYEES.—An individual referred to in subparagraph (B)(ii) who is an officer or employee of the United States may discuss with a State or local official the contents of an assessment or plan described in that subparagraph.

SEC. 245. ENFORCEMENT.

(a) REVIEW OF PLANS.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary, shall review each assessment and plan submitted under section 244(b) to determine the compliance of the chemical source covered by the assessment or plan with regulations promulgated under paragraphs (1) and (3) of section 244(a).

(2) CERTIFICATION OF COMPLIANCE.—

(A) IN GENERAL.—The Administrator shall certify in writing each determination of the Administrator under paragraph (1).

(B) INCLUSIONS.—A certification of the Administrator shall include a checklist indicating consideration by a chemical source of the use of 4 elements of safer design and maintenance described in subparagraphs (A) through (D) of section 243(6).

(C) EARLY COMPLIANCE.—

(i) IN GENERAL.—The Administrator, in consultation with the head of the Office, shall—

(I) before the date of publication of proposed regulations under section 244(a)(3), review each assessment or plan submitted to the Administrator under section 244(b); and

(II) before the date of promulgation of final regulations under section 244(a)(3), determine whether each such assessment or plan meets the consultation, planning, and assessment requirements applicable to high priority categories under section 244(a)(3).

(ii) AFFIRMATIVE DETERMINATION.—If the Administrator, in consultation with the head of the Office, makes an affirmative determination under clause (i)(II), the Administrator shall certify compliance of an assessment or plan described in that clause without requiring any revision of the assessment or plan.

(D) SCHEDULE FOR REVIEW AND CERTIFICATION.—

(i) IN GENERAL.—The Administrator, after taking into consideration the factors described in section 244(a)(2), shall establish a schedule for the review and certification of assessments and plans submitted under section 244(b).

(ii) DEADLINE FOR COMPLETION.—Not later than 3 years after the deadlines for the submission of assessments and plans under paragraph (1) or (2), respectively, of section 244(b), the Administrator shall complete the review and certification of all assessments and plans submitted under those sections.

(b) COMPLIANCE ASSISTANCE.—

(1) DEFINITION OF DETERMINATION.—In this subsection, the term ''determination'' means a determination by the Administrator that, with respect to an assessment or plan described in section 244(b)—

(A) the assessment or plan does not comply with regulations promulgated under paragraphs (1) and (3) of section 244(a); or

(B)(i) a threat exists beyond the scope of the submitted plan; or

(ii) current implementation of the plan is insufficient to address—

(I) the results of an assessment of a source; or

(II) a threat described in clause (i).

(2) DETERMINATION BY ADMINISTRATOR.—If the Administrator, after consultation with the Secretary, makes a determination, the Administrator shall—

(A) notify the chemical source of the determination; and

(B) provide such advice and technical assistance, in coordination with the Secretary and the United States Chemical Safety and Hazard Investigation Board, as is appropriate—

(i) to bring the assessment or plan of a chemical source described in section 244(b) into compliance; or

(ii) to address any threat described in clause (i) or (ii) of paragraph (1)(B).

(c) COMPLIANCE ORDERS.—

(1) IN GENERAL.—If, after the date that is 30 days after the later of the date on which the Administrator first provides assistance, or a chemical source receives notice, under subsection (b)(2)(B), a chemical source has not brought an assessment or plan for which the assistance is provided into compliance with regulations promulgated under paragraphs (1) and (3) of section 244(a), or the chemical source has not complied with an entry or information request under section 246, the Administrator may issue an order directing compliance by the chemical source.

(2) NOTICE AND OPPORTUNITY FOR HEARING.—An order under paragraph (1) may be issued only after notice and opportunity for a hearing.

(d) ABATEMENT ACTION.—

(1) IN GENERAL.—Notwithstanding a certification under section 245(a)(2), if the Secretary, in consultation with local law enforcement officials and first responders, determines that a threat of a terrorist attack exists that is beyond the scope of a submitted prevention, preparedness, and response plan of 1 or more chemical sources, or current implementation of the plan is insufficient to address the results of an assessment of a source or a threat described in subsection (b)(1)(B)(i), the Secretary shall notify each chemical source of the elevated threat.

(2) INSUFFICIENT RESPONSE.—If the Secretary determines that a chemical source has not taken appropriate action in response to a notification under paragraph (1), the Secretary shall notify the chemical source, the Administrator, and the Attorney General that actions taken by the chemical source in response to the notification are insufficient.

(3) RELIEF.—

(A) IN GENERAL.—On receipt of a notification under paragraph (2), the Administrator or the Attorney General may secure such relief as is necessary to abate a threat described in paragraph (1), including such orders as are necessary to protect public health or welfare.

(B) JURISDICTION.—The district court of the United States for the district in which a threat described in paragraph (1) occurs shall have jurisdiction to grant such relief as the Administrator or Attorney General requests under subparagraph (A).

SEC. 246. RECORDKEEPING AND ENTRY.

(a) RECORDS MAINTENANCE.—A chemical source that is required to certify to the Administrator assessments and plans under section 244 shall maintain on the premises of the chemical source a current copy of those assessments and plans.

(b) RIGHT OF ENTRY.—In carrying out this subtitle, the Administrator (or an authorized representative of the Administrator), on presentation of credentials—

(1) shall have a right of entry to, on, or through any premises of an owner or operator of a chemical source described in subsection (a) or any premises in which any records required to be maintained under subsection (a) are located; and

(2) may at reasonable times have access to, and may copy, any records, reports, or other information described in subsection (a).

(c) INFORMATION REQUESTS.—In carrying out this subtitle, the Administrator may require any chemical source to provide such information as is necessary to—

(1) enforce this subtitle; and

(2) promulgate or enforce regulations under this subtitle.

SEC. 247. PENALTIES.

(a) CIVIL PENALTIES.—Any owner or operator of a chemical source that violates, or fails to comply with, any order issued may, in an action brought in United States district court, be subject to a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CRIMINAL PENALTIES.—Any owner or operator of a chemical source that knowingly violates, or fails to comply with, any order issued shall—

(1) in the case of a first violation or failure to comply, be fined not less than $2,500 nor more than $25,000 per day of violation, imprisoned not more than 1 year, or both; and

(2) in the case of a subsequent violation or failure to comply, be fined not more than $50,000 per day of violation, imprisoned not more than 2 years, or both.

(c) ADMINISTRATIVE PENALTIES.—

(1) PENALTY ORDERS.—If the amount of a civil penalty determined under subsection (a) does not exceed $125,000, the penalty may be assessed in an order issued by the Administrator.

(2) NOTICE AND HEARING.—Before issuing an order described in paragraph (1), the Administrator shall provide to the person against which the penalty is to be assessed—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the notice is received by the person, a hearing on the proposed order.

SEC. 248. NO EFFECT ON REQUIREMENTS UNDER OTHER LAW.

Nothing in this subtitle affects any duty or other requirement imposed under any other Federal or State law.

SEC. 249. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

SA 4927. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 86, strike lines 18 through 23, and insert the following:

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies;

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities; and

(D) to support the development of—

(i) methods to increase the ability of the Customs Service to inspect, or target for inspection, merchandise carried on any vessel that will arrive or has arrived at any port or place in the United States;

(ii) equipment to accurately detect explosives, or chemical and biological agents that could be used to commit terrorist acts against the United States;

(iii) equipment to accurately detect nuclear materials, including scintillation-based detection equipment capable of attachment to spreaders to signal the presence of nuclear materials during the unloading of containers;

(iv) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including ''smart sensors'' that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit such information to the appropriate authorities at a remote location;

(v) tools to mitigate the consequences of a terrorist act at a port of the United States, including a network of sensors to predict the dispersion of radiological, chemical, or biological agents that might be intentionally or accidentally released; and

(vi) applications to apply existing technologies from other industries to increase overall port security.

SA 4928. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 246, line 21, strike ''and'' and insert ''or''.

On page 246, line 24, strike ''and'' and insert ''or''.

SA 4929. Mr. REID submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 208, insert between lines 7 and 8 the following:

SEC. 510. JOINT SPONSORSHIP ARRANGEMENTS.

The Secretary may enter into joint sponsorship arrangements under section 309(b) for sites used for emergency preparedness and response training.

SA 4930. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 248, line 1, between ''59,'' and ''72,'' add ''71,''.

SA 4931. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 the amendment strike from page 248 through page 260 and insert the following:

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

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, 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 title 5, United States Code; 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 such title 5;

''(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 such title 5 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 participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security 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 30 calendar 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) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

''(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

''(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

''(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

''(C) IMPLEMENTATION.—

''(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

''(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

''(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

''(D) 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 as internal rules of departmental procedure which shall not be subject to review. 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;

''(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

''(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(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) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

''(h) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 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) TECHNICAL AND CONFORMING 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 under 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 1 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.

SA 4932. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 268, strike line 19 and all that follows through page 280, line 5.

SA 4933. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 302, strike line 21 and all that follows through page 303, line 19.

SA 4934. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 60, line 8, strike all through ''(5 U.S.C. 2 App.))'' on line 9.

SA 4935. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 280, beginning on line 11, strike ''An advisory committee established under this section'' and all that follows through line 24.

SA 4936. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 244, strike line 19 and all that follows through page 260, line 23, and insert the following:

SEC. 841. 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 by the Secretary.
''9702. Establishment of human resources management system by the President.

''§ 9701. Establishment of human resources management system by the Secretary

''(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, 72, 73, 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 title 5, United States Code; 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 such title 5;

''(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 such title 5 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 fully 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 1501 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 and section 9702) shall cease to be available.

''§ 9702. Determination by the President

''The authority under section 9701 to establish or impose a human resources management system shall be exercised only when the President issues an order determining that—

''(1) the affected agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work;

''(2) the provisions of chapter 43, 51, 53, 71, 75, or 77 or of the imposed agreement cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations;

''(3) the mission and responsibilities of the affected agency or subdivision have materially changed; and

''(4) a majority of the employees within that agency or subdivision have, as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.''.

(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. 842. LABOR-MANAGEMENT RELATIONS.

(a) EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, 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 such chapter 71 cannot be applied to that agency or subdivision in a matter consistent with national security requirements and considerations.

(2) ADDITIONAL DETERMINATION.—In addition to the requirements under paragraph (1), the President may issue an order excluding any executive agency, or subdivision thereof, transferred to the Department under this Act, from coverage under chapter 71 of title 5, United States Code, only if the President determines that—

(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.

(3) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) or (2) 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.—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 under this Act, continue to be so recognized for such purposes, unless—

(1) the mission and responsibilities of the personnel in such unit (or subdivision), or the threats of domestic terrorism being addressed by the personnel in such unit (or subdivision), materially change; and

(2) a substantial number of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(c) WAIVER.—If the President determines that the application of subsections (a) and (b), would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) 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.

SA 4937. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 451, strike line 17 and all that follows through page 452, line 12, and insert the following:

(d) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (g)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(e) 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 the officer's official capacity or in relation to the discharge of the officer's 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.

(f) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (g) through (j) 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 resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)); 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.

(g) TERMS OF RESOLUTION.—For the purposes of subsections (f) through (j), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (c). The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than 1 reorganization plan.

(h) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (g), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(i) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (h)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(j) 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 (i)) from further consideration of, a resolution with respect to a reorganization plan, 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 resolution. 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 resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, 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 resolution 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 a resolution with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

SA 4938. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 222, strike line 18 and all that follows through page 225, line 12, and insert the following:

SEC. 811. 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 Officer for Civil Rights and Civil Liberties of any complaints of violations of civil rights or civil liberties, and consult with the Officer for Civil Rights and Civil Liberties 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 and the appropriate committees or subcommittees of Congress, 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 4939. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 13, strike lines 8 and 9, and insert the following: This Act shall not take effect until the Congress provides for an effective date for this Act in subsequent legislation.

SA 4940. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINVICH)) 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 208, between lines 7 and 8, insert the following:

SEC. 510. GRANTS FOR FIREFIGHTING PERSONNEL.

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) DURATION.—In awarding grants for hiring firefighting personnel in accordance with subsection (b)(3)(A), the Director shall award grants extending over a 3-year period.

''(2) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(3) FEDERAL SHARE.—

''(A) IN GENERAL.—A grant under this subsection 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.

''(4) APPLICATION.—An application for a grant under this subsection, shall—

''(A) meet the requirements under subsection (b)(5);

''(B) include an explanation for the applicant's need for Federal assistance; and

''(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(5) MAINTENANCE OF EFFORT.—Grants awarded under this subsection 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) SUPPLEMENTAL APPROPRIATION.—In addition to the authorization provided in paragraph (1), there are authorized to be appropriated $1,000,000,000 for each of fiscal years 2003 and 2004 for the purpose of providing personnel grants described in subsection (c). Such sums may be provided solely for the purpose of hiring employees engaged in fire protection (as defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203)), and shall not be subject to the provisions of paragraphs (10) or (11) of subsection (b).''.

SA 4941. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 255 after line 17, insert the following:

''(f) NONAPPLICATION OF CERTAIN AUTHORITIES TO CHAPTER 71.—No authority under this chapter to waive, modify, or otherwise affect law shall apply to chapter 71.

SA 4942. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 Section 303(1)(D).

SA 4943. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 Section 308(c)(2) through 308(c)(4).

SA 4944. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 Section 309(a)(1)(B).

SA 4945. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 Section 309(c).

SA 4946. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKELY, and Mr. VOINOVICH)) 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 Section 309(f) and insert the following:

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—Funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy.

SA 4947. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKELY, and Mr. VOINOVICH)) 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 303, paragraph 1, after the word ''thereto'', insert the following: ''That as directly related to homeland security''

SA 4948. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 title XI and insert the following:

TITLE XI—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) INDEPENDENT REGULATORY AGENCY.—The Agency shall be an independent regulatory agency with the Department of Justice.

(c) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

(d) STATUTORY CONSTRUCTION.—Nothing in title XI, or any amendment made by that 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 title XI.

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; and

(2) 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 Attorney General, in consultation with the Director and 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.

(h) REFERRAL OF CASE TO THE DIRECTOR OF THE AGENCY FOR IMMIGRATION HEARINGS AND APPEALS.—

(1) IN GENERAL.—The Board shall refer to the Director of the Agency for Immigration Hearings and Appeals for review of its decision all cases which—

(A) the Director, in consultation with the Attorney General, directs the Board to refer to him;

(B) the Chairman or a majority of the Board believes should be referred to the Director of the Agency for Immigration Hearings and Appeals for review; and

(C) the Under Secretary of Homeland Security for Immigration Affairs or the Attorney General requests be referred to the Director for review.

(2) DECISION OF THE DIRECTOR.—In any case in which the Director of the Agency for Immigration Hearings and Appeals reviews the decision of the Board, the decision of the Director of the Agency for Immigration Hearings and Appeals shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided by regulations.

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 Attorney General, in consultation with the Director and 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.

SA 4949. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 Title IV, subtitles D, E, and F and insert the following:

—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

"CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

"SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

''(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following new paragraphs:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

"SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(D) RISK ANALYSIS AND RISK MANAGEMENT.—Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Policy. Under the authority of the Under Secretary, the Chief of Policy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Under Secretary of Homeland Security for Immigration Affairs'' and ''Under Secretary'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''UNDER SECRETARY'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary of Homeland Security for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

''SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Security of Homeland Security for Enforcement and Border Affairs, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

''SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

''SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review (or its successor entity), on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement and Border Affairs.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to ensure the faithful execution of the Under Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 1202. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the

record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Attorneys involved in such activities should be reported to their State bar associations for disciplinary action.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential

needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 1222 or 1231; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the

Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the ''Agency'').

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono

Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Director, in consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

''§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of

title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

''§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies; and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''14. Chief Human Capital Officers ..... 1401''.

SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

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

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

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

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

(C) by adding at the end the following:

''(3) authority for agencies to appoint, without regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

''§ 3319. Alternative ranking and selection procedures

''(a)(1) the Office, in exercising its authority under section 3304; or

''(2) an agency to which the Office has delegated examining authority under section 1104(a)(2);

may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islander; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Director of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in the case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT''; and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.
''3522. Agency plans; approval.
''3523. Authority to provide voluntary separation incentive payments.
''3524. Effect of subsequent employment with the Government.
''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is

undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors;''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 Stat. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENT.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a,'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the Senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policymaking, or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.— Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and''.

SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

SA 4950. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) 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 5, in the item relating to section 801, insert '', Tribal,'' after ''State''.

On page 9, line 21, insert ''tribal,'' after ''State,''.

On page 10, between lines 9 and 10, insert the following:

(9) 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 10, line 10, strike ''(9)'' and insert ''(10)''.

On page 10, strike lines 22 through 24 and insert the following:

(B) an Alaska Native village or organization; and

On page 11, line 3, strike ''(11)'' and insert ''(12)''.

On page 11, line 7, strike ''(12)'' and insert ''(13)''.

On page 11, line 9, strike ''(13)'' and insert ''(14)''.

On page 11, line 11, strike ''(14)'' and insert ''(15)''.

On page 11, line 17, strike ''(15)'' and insert ''(16)''.

On page 12, strike line 9 and insert the following:

(17) TRIBAL COLLEGE OR UNIVERSITY.—The term ''tribal college or university'' has the meaning given the term ''tribally controlled college or university'' in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(18) TRIBAL GOVERNMENT.—The term ''tribal government'' means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.

(19)(A) UNITED STATES.—The term ''United States, when used

On page 15, line 3, insert ''tribal,'' after ''States,''.

On page 16, line 9, insert '', Tribal,'' after ''State''.

On page 16, line 11, insert '', tribal,'' after ''State''.

On page 17, line 14, insert '', tribal,'' after ''State''.

On page 17, line 21, insert '', tribal,'' after ''State''.

On page 17, line 1, insert '', tribal,'' after ''State''.

On page 23, line 10, insert '', tribal,'' after ''State''.

On page 24, line 11, insert '', tribal,'' after ''State''.

On page 25, line 9, insert '', tribal,'' after ''State''.

On page 25, line 20, insert '', tribal,'' after ''State''.

On page 26, line 4, insert '', tribal,'' after ''State''.

On page 26, line 10, insert '', tribal,'' after ''State''.

On page 27, line 1, insert '', tribal,'' after ''State''.

On page 27, line 21, insert ''tribal,'' after ''State,''.

On page 28, line 24, insert '', tribal,'' after ''State''.

On page 29, line 7, insert ''tribal,'' after ''State,''.

On page 36, line 3, insert '', tribal,'' after ''State''.

On page 37, line 5, insert ''tribal,'' after ''State,''.

On page 38, line 22, insert ''tribal,'' after ''State,''.

On page 42, line 9, insert ''tribal,'' after ''State,''.

On page 42, line 11, strike ''or State'' and insert '', State, or tribal''.

On page 43, line 9, insert '', tribal,'' after ''State''.

On page 43, line 12, insert '', tribal,'' after ''State''.

On page 43, line 15, insert '', tribal,'' after ''State''.

On page 45, line 1, insert ''tribal,'' after ''State,''.

On page 46, line 17, insert '', tribal,'' after ''State''.

On page 50, line 13, insert '', tribal,'' after ''State''.

On page 54, line 22, insert ''tribal,'' after ''State,''.

On page 60, line 1, insert ''tribal,'' after ''State,''.

On page 60, line 11, insert ''tribal,'' after ''State,''.

On page 60, line 17, insert ''tribal,'' after ''State,''.

On page 61, line 12, insert ''tribal,'' after ''State,''.

On page 62, line 7, insert '', tribal,'' after ''State''.

On page 62, line 19, insert '', tribal,'' after ''State''.

On page 63, line 6, insert '', tribal,'' after ''State''.

On page 63, line 12, insert '', tribal,'' after ''State''.

On page 65, line 2, insert ''tribal,'' after ''State,''.

On page 71, line 10, strike ''state,'' and insert ''State, tribal,''.

On page 97, line 3, insert '', tribal,'' after ''State''.

On page 105, line 11, insert ''tribal colleges and universities,'' after ''education,''.

On page 106, line 16, insert ''tribal,'' after ''State,''.

On page 107, line 3, insert ''tribal,'' after ''State,''.

On page 107, line 17, insert '', tribal,'' after ''State''.

On page 147, line 1, insert '', tribal,'' after ''State''.

On page 154, line 7, insert '', tribal,'' after ''State''.

On page 201, line 22, insert ''tribal,'' after ''State,''.

On page 204, line 8, insert ''tribal,'' after ''State,''.

On page 214, line 7, insert ''tribal,'' after ''State,''.

On page 221, line 21, insert '', TRIBAL,'' after ''STATE''.

On page 221, line 24, insert '', Tribal,'' after ''State''.

On page 222, line 1, insert '', tribal,'' after ''State''.

On page 222, line 6, insert '', tribal,'' after ''State''.

On page 222, line 8, insert '', tribal,'' after ''State''.

On page 222, line 10, insert '', tribal,'' after ''State''.

On page 222, line 14, insert '', tribal,'' after ''State''.

On page 280, line 4, insert '', tribal,'' after ''State''.

On page 285, line 9, insert '', TRIBAL,'' after ''STATE''.

On page 285, line 11, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 285, line 12, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 289, line 10, insert ‘‘, Tribal,’’ after ‘‘State’’.
On page 289, line 13, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 289, line 16, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 289, line 19, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 289, line 22, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 290, line 6, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 290, line 13, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 291, line 6, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 301, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 4, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 12, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 14, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 23, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 305, line 3, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 305, line 5, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 305, line 9, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 305, line 12, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 305, line 23, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 306, line 5, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 306, line 19, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 307, line 19, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 308, line 15, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 309, line 23, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 310, line 20, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 2, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 6, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 9, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 23, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 312, line 4, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 312, line 3, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 312, line 17, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 312, line 20, insert ‘‘tribally or’’ after ‘‘other’’.
On page 312, line 22, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 313, line 1, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 313, line 18, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 316, line 15, strike ‘‘federal, state,’’ and insert ‘‘Federal, State, tribal,’’.
On page 316, line 24, strike ‘‘state,’’ and insert ‘‘State, tribal,’’.
On page 318, line 4, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 318, line 18, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 319, line 17, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 319, line 23, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 320, line 19, insert ‘‘or Indian tribe’’ after ‘‘subdivision)’’.
On page 321, line 4, insert ‘‘or Indian tribe’’ after ‘‘subdivision)’’.
On page 376, line 22, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 476, line 2, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 476, line 8, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 476, line 10, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 476, line 12, insert ‘‘, tribal,’’ after ‘‘State’’.

SA 4951. Mr. DODD proposed an amendment to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN OF NEBRASKA) TO THE AMENDMENT SA 4901 PROPOSED BY MR. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

At the end insert the following:

SEC. 510. GRANTS FOR FIREFIGHTING PERSONNEL.

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) DURATION.—In awarding grants for hiring firefighting personnel in accordance with subsection (b)(3)(A), the Director shall award grants extending over a 3-year period.

‘‘(2) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

‘‘(3) FEDERAL SHARE.—

‘‘(A) IN GENERAL.—A grant under this subsection 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.

‘‘(4) APPLICATION.—An application for a grant under this subsection, shall—

‘‘(A) meet the requirements under subsection (b)(5);

‘‘(B) include an explanation for the applicant’s need for Federal assistance; and

‘‘(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

‘‘(5) MAINTENANCE OF EFFORT.—Grants awarded under this subsection 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) SUPPLEMENTAL APPROPRIATION.—In addition to the authorization provided in paragraph (1), there are authorized to be appropriated $1,000,000,000 for each of fiscal years 2003 and 2004 for the purpose of providing personnel grants described in subsection (c). Such sums may be provided solely for the purpose of hiring employees engaged in fire protection (as defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203)), and shall not be subject to the provisions of paragraphs (10) or (11) of subsection (b).’’.

SA 4952. Mr. INOUYE 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 5, in the item relating to section 801, insert ‘‘, Tribal,’’ after ‘‘State’’.
On page 9, line 21, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 10, between lines 9 and 10, insert the following:
(9) 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 10, line 10, strike ‘‘(9)’’ and insert ‘‘(10)’’.
On page 10, strike lines 22 through 24 and insert the following:
(B) an Alaska Native village or organization; and
On page 11, line 3, strike ‘‘(11)’’ and insert ‘‘(12)’’.
On page 11, line 7, strike ‘‘(12)’’ and insert ‘‘(13)’’.
On page 11, line 9, strike ‘‘(13)’’ and insert ‘‘(14)’’.
On page 11, line 11, strike ‘‘(14)’’ and insert ‘‘(15)’’.
On page 11, line 17, strike ‘‘(15)’’ and insert ‘‘(16)’’.
On page 12, strike line 9 and insert the following:
(17) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘‘tribal college or university’’ has the meaning given the term ‘‘tribally controlled college or university’’ in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).
(18) TRIBAL GOVERNMENT.—The term ‘‘tribal government’’ means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.
(19)(A) UNITED STATES.—The term ‘‘United States, when used
On page 15, line 3, insert ‘‘tribal,’’ after ‘‘States,’’.
On page 16, line 9, insert ‘‘, Tribal,’’ after ‘‘State’’.
On page 16, line 11, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 16, line 14, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 16, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 17, line 1, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 23, line 10, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 24, line 11, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 25, line 9, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 25, line 20, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 26, line 4, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 26, line 10, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 27, line 1, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 27, line 21, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 28, line 24, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 29, line 7, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 36, line 3, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 37, line 5, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 38, line 22, insert ‘‘tribal,’’ after ‘‘State,’’.

On page 42, line 9, insert ''tribal,'' after ''State,''.
On page 42, line 11, strike ''or State'' and insert '', State, or tribal''.
On page 43, line 9, insert '', tribal,'' after ''State''.
On page 43, line 12, insert '', tribal,'' after ''State''.
On page 43, line 15, insert '', tribal,'' after ''State''.
On page 45, line 1, insert ''tribal,'' after ''State,''.
On page 46, line 17, insert '', tribal,'' after ''State''.
On page 50, line 13, insert '', tribal,'' after ''State''.
On page 54, line 22, insert ''tribal,'' after ''State,''.
On page 60, line 1, insert ''tribal,'' after ''State,''.
On page 60, line 11, insert ''tribal,'' after ''State,''.
On page 60, line 17, insert ''tribal,'' after ''State,''.
On page 61, line 12, insert ''tribal,'' after ''State,''.
On page 62, line 7, insert '', tribal,'' after ''State''.
On page 62, line 19, insert '', tribal,'' after ''State''.
On page 63, line 6, insert '', tribal,'' after ''State''.
On page 63, line 12, insert '', tribal,'' after ''State''.
On page 65, line 2, insert ''tribal,'' after ''State,''.
On page 71, line 10, strike ''state,'' and insert ''State, tribal,''.
On page 97, line 3, insert '', tribal,'' after ''State''.
On page 105, line 11, insert ''tribal colleges and universities,'' after ''education,''.
On page 106, line 16, insert ''tribal,'' after ''State,''.
On page 107, line 3, insert ''tribal,'' after ''State,''.
On page 107, line 17, insert '', tribal,'' after ''State''.
On page 147, line 1, insert '', tribal,'' after ''State''.
On page 154, line 7, insert '', tribal,'' after ''State''.
On page 201, line 22, insert ''tribal,'' after ''State,''.
On page 204, line 8, insert ''tribal,'' after ''State,''.
On page 204, line 12, insert ''and Indian Health Service'' after ''Health Service''.
On page 214, line 7, insert ''tribal,'' after ''State,''.
On page 221, line 21, insert ''**, tribal,**'' after ''**state**''.
On page 221, line 24, insert '', Tribal,'' after ''State''.
On page 222, line 1, insert '', tribal,'' after ''State''.
On page 222, line 6, insert '', tribal,'' after ''State''.
On page 222, line 8, insert '', tribal,'' after ''State''.
On page 222, line 10, insert '', tribal,'' after ''State''.
On page 222, line 14, insert '', tribal,'' after ''State''.
On page 280, line 4, insert '', tribal,'' after ''State''.
On page 285, line 9, insert '', TRIBAL,'' after ''STATE''.
On page 285, line 11, insert '', tribal,'' after ''State''.
On page 285, line 12, insert '', tribal,'' after ''State''.
On page 289, line 10, insert '', Tribal,'' after ''State''.
On page 289, line 13, insert ''tribal,'' after ''State,''.
On page 289, line 16, insert ''tribal,'' after ''State,''.
On page 289, line 19, insert ''tribal,'' after ''State,''.
On page 289, line 22, insert ''tribal,'' after ''State,''.
On page 290, line 6, insert ''tribal,'' after ''State,''.
On page 290, line 13, insert ''tribal,'' after ''State,''.
On page 291, line 6, insert '', tribal,'' after ''State''.
On page 301, line 21, insert '', tribal,'' after ''State''.
On page 304, line 4, insert '', tribal,'' after ''State''.
On page 304, line 12, insert '', tribal,'' after ''State''.
On page 304, line 14, insert '', tribal,'' after ''State''.
On page 304, line 21, insert '', tribal,'' after ''State''.
On page 304, line 23, insert ''tribal,'' after ''State,''.
On page 305, line 3, insert '', tribal,'' after ''State''.
On page 305, line 5, insert '', tribal,'' after ''State''.
On page 305, line 9, insert '', tribal,'' after ''State''.
On page 305, line 12, insert ''tribal,'' after ''State,''.
On page 305, line 23, insert ''tribal,'' after ''State,''.
On page 306, line 5, insert ''tribal,'' after ''State,''.
On page 306, line 19, insert '', tribal,'' after ''State''.
On page 307, line 19, insert '', tribal,'' after ''State''.
On page 308, line 15, insert '', tribal,'' after ''State''.
On page 309, line 23, insert '', tribal,'' after ''State''.
On page 310, line 20, insert '', tribal,'' after ''State''.
On page 311, line 2, insert '', tribal,'' after ''State''.
On page 311, line 6, insert '', tribal,'' after ''State''.
On page 311, line 9, insert '', tribal,'' after ''State''.
On page 311, line 21, insert '', tribal,'' after ''State''.
On page 311, line 23, insert '', tribal,'' after ''State''.
On page 312, line 4, insert ''tribal,'' after ''State,''.
On page 312, line 17, insert '', tribal,'' after ''State''.
On page 312, line 20, insert ''tribally or'' after ''other''.
On page 312, line 22, insert '', tribal,'' after ''State''.
On page 313, line 1, insert ''tribal,'' after ''State,''.
On page 313, line 18, insert '', tribal,'' after ''State''.
On page 316, line 15, strike ''federal, state,'' and insert ''Federal, State, tribal,''.
On page 316, line 24, strike ''state,'' and insert ''State, tribal,''.
On page 318, line 4, insert ''tribal,'' after ''State,''.
On page 318, line 18, insert ''tribal,'' after ''State,''.
On page 319, line 17, insert ''tribal,'' after ''State,''.
On page 319, line 23, insert ''tribal,'' after ''State,''.
On page 320, line 19, insert ''or Indian tribe'' after ''subdivision)''.
On page 321, line 4, insert ''or Indian tribe'' after ''subdivision)''.
On page 376, line 22, insert ''tribal,'' after ''State,''.
On page 476, line 2, insert ''tribal,'' after ''State,''.
On page 476, line 8, insert '', tribal,'' after ''State''.
On page 476, line 10, insert '', tribal,'' after ''State''.
On page 476, line 12, insert '', tribal,'' after ''State''.

SA 4953. Mr. LIBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).
(2) Section 311(i).
(3) Subtitle G of title VIII.
(4) Section 871.
(5) Section 890.
(6) Section 1707.
(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

(d) The amendment made by subsection (a)(1) of this section shall be effective one day after enactment.

SA 4954. Mr. REID (for Ms. CANTWELL (for herself, Mr. GRASSLEY, Mr. ENZI, and Mr. KOHL)) proposed an amendment to the bill S. 1742, to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Identity Theft Victims Assistance Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the crime of identity theft is the fastest growing crime in the United States;

(2) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

(3) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

(4) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(5) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

(6) victims of identity theft need a nationally standardized means of—

(A) reporting identity theft to consumer credit reporting agencies and business entities; and

(B) evidencing their true identity and claim of identity theft to consumer credit reporting agencies and business entities;

(7) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

(8) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. 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 transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business 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), provide, without charge, a copy of all application and 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—

''(A) the presentation of a government-issued identification card;

''(B) if providing proof by mail, a copy of a government-issued identification card; or

''(C) upon the request of the person seeking business records, the business entity may inform the requesting person of the categories of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; 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) 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.

''(e) 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; or

''(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information.

''(f) 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.

''(g) 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—

''(1) the business entity has made a reasonably diligent search of its available business records; and

''(2) the records requested under this section do not exist or are not available.

''(h) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to provide a private right of action or claim for relief.

''(i) 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.

''(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. 4. 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 paragraph (3) 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) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)—

''(A) that the information may be a result of identity theft;

''(B) that a police report has been filed;

''(C) that a block has been requested under this subsection; and

''(D) of the effective date of the block.

''(3) AUTHORITY TO DECLINE OR RESCIND.—

''(A) IN GENERAL.—A consumer reporting agency may 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 information was blocked due to 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; or

''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner 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.

''(4) 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.—

''(i) NO RESELLER FILE.—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.

''(ii) RESELLER WITH FILE.—The sole obligation of the consumer reporting agency under this subsection, with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if—

''(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft;

''(II) the consumer reporting agency is acting as a reseller of the identified information by assembling or merging information about that consumer which is contained in the database of not less than 1 other consumer reporting agency; and

''(III) the consumer reporting agency does not store or maintain a database of information obtained for resale from which new consumer reports are produced.

''(iii) NOTICE.—In carrying out its obligation under clause (ii), the consumer reporting agency shall provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.''.

(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. 5. 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 4 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; and

''(H) 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 4955. Mr. REID (for Mr. HELMS (for himself and Mr. LEAHY)) proposed an amendment to the bill H.R. 5469, To amend title 17, United States Code, with respect to the statutory license for webcasting; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Webcaster Settlement Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Some small webcasters who did not participate in the copyright arbitration royalty panel proceeding leading to the July 8, 2002 order of the Librarian of Congress establishing rates and terms for certain digital performances and ephemeral reproductions of sound recordings, as provided in part 261 of the Code of Federal Regulations (published in the Federal Register on July 8, 2002) (referred to in this section as ''small webcasters''), have expressed reservations about the fee structure set forth in such order, and have expressed their desire for a fee based on a percentage of revenue.

(2) Congress has strongly encouraged representatives of copyright owners of sound recordings and representatives of the small webcasters to engage in negotiations to arrive at an agreement that would include a fee based on a percentage of revenue.

(3) The representatives have arrived at an agreement that they can accept in the extraordinary and unique circumstances here presented, specifically as to the small webcasters, their belief in their inability to pay the fees due pursuant to the July 8 order, and as to the copyright owners of sound recordings and performers, the strong encouragement of Congress to reach an accommodation with the small webcasters on an expedited basis.

(4) The representatives have indicated that they do not believe the agreement provides for or in any way approximates fair or reasonable royalty rates and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

(5) Congress has made no determination as to whether the agreement provides for or in any way approximates fair or reasonable fees and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

(6) Congress likewise has made no determination as to whether the July 8 order is reasonable or arbitrary, and nothing in this Act shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of such order.

(7) It is, nevertheless, in the public interest for the parties to be able to enter into such an agreement without fear of liability for deviating from the fees and terms of the July 8 order, if it is clear that the agreement will not be admissible as evidence or otherwise taken into account in any government proceeding involving the setting or adjustment of the royalties payable to copyright owners of sound recordings for the public performance or reproduction in ephemeral phonorecords or copies of such works, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements.

SEC. 3. SUSPENSION OF CERTAIN PAYMENTS.

(a) NONCOMMERCIAL WEBCASTERS.—

(1) IN GENERAL.—The payments to be made by noncommercial webcasters for the digital performance of sound recordings under section 114 of title 17, United States Code, and the making of ephemeral phonorecords under section 112 of title 17, United States Code, during the period beginning on October 28, 1998, and ending on May 31, 2003, which have not already been paid, shall not be due until June 20, 2003.

(2) DEFINITION.—In this subsection, the term ''noncommercial webcaster'' has the meaning given that term in section 114(f)(5)(E)(i) of title 17, United States Code, as added by section 4 of this Act.

(b) SMALL COMMERCIAL WEBCASTERS.—

(1) IN GENERAL.—The receiving agent may, in a writing signed by an authorized representative thereof, delay the obligation of any 1 or more small commercial webcasters to make payments pursuant to sections 112 and 114 of title 17, United States Code, for a period determined by such entity to allow negotiations as permitted in section 4 of this Act, except that any such period shall end no later than December 15, 2002. The duration and terms of any such delay shall be as set forth in such writing.

(2) DEFINITIONS.—In this subsection—

(A) the term ''webcaster'' has the meaning given that term in section 114(f)(5)(E)(iii) of title 17, United States Code, as added by section 4 of this Act; and

(B) the term ''receiving agent'' shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002.

SEC. 4. AUTHORIZATION FOR SETTLEMENTS.

Section 114(f) of title 17, United States Code, is amended by adding after paragraph (4) the following:

''(5)(A) Notwithstanding section 112(e) and the other provisions of this subsection, the receiving agent may enter into agreements for the reproduction and performance of sound recordings under section 112(e) and this section by any 1 or more small commercial webcasters or noncommercial webcasters during the period beginning on October 28, 1998, and ending on December 31, 2004, that, once published in the Federal Register pursuant to subparagraph (B), shall be binding on all copyright owners of sound recordings and other persons entitled to payment under this section, in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress. Any such agreement for small commercial webcasters shall include provisions for payment of royalties on the basis of a percentage of revenue or expenses, or both, and include a minimum fee. Any such agreement may include other terms and conditions, including requirements by which copyright owners may receive notice of the use of their sound recordings and under which records of such use shall be kept and made available by small commercial webcasters or noncommercial webcasters. The receiving agent shall be under no obligation to negotiate any such agreement. The receiving agent shall have no obligation to any copyright owner of sound recordings or any other person entitled to payment under this section in negotiating any such agreement, and no liability to any copyright owner of sound recordings or any other person entitled to payment under this section for having entered into such agreement.

''(B) The Copyright Office shall cause to be published in the Federal Register any agreement entered into pursuant to subparagraph (A). Such publication shall include a statement containing the substance of subparagraph (C). Such agreements shall not be included in the Code of Federal Regulations. Thereafter, the terms of such agreement shall be available, as an option, to any small commercial webcaster or noncommercial webcaster meeting the eligibility conditions of such agreement.

''(C) Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

''(D) Nothing in the Small Webcaster Settlement Act of 2002 or any agreement entered into pursuant to subparagraph (A) shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of the determination by the Librarian of Congress of July 8, 2002, of rates and terms for the digital performance of sound recordings and ephemeral recordings, pursuant to sections 112 and 114.

''(E) As used in this paragraph—

''(i) the term 'noncommercial webcaster' means a webcaster that—

''(I) is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

''(II) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

''(III) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes;

''(ii) the term 'receiving agent' shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002; and

''(iii) the term 'webcaster' means a person or entity that has obtained a compulsory license under section 112 or 114 and the implementing regulations therefor to make eligible nonsubscription transmissions and ephemeral recordings.

''(F) The authority to make settlements pursuant to subparagraph (A) shall expire December 15, 2002, except with respect to noncommercial webcasters for whom the authority shall expire May 31, 2003.''.

SEC. 5. DEDUCTIBILITY OF COSTS AND EXPENSES OF AGENTS AND DIRECT PAYMENT TO ARTISTS OF ROYALTIES FOR DIGITAL PERFORMANCES OF SOUND RECORDINGS.

(a) FINDINGS.—Congress finds that—

(1) in the case of royalty payments from the licensing of digital transmissions of sound recordings under subsection (f) of section 114 of title 17, United States Code, the parties have voluntarily negotiated arrangements under which payments shall be made directly to featured recording artists and the administrators of the accounts provided in subsection (g)(2) of that section;

(2) such voluntarily negotiated payment arrangements have been codified in regulations issued by the Librarian of Congress, currently found in section 261.4 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002;

(3) other regulations issued by the Librarian of Congress were inconsistent with the voluntarily negotiated arrangements by such parties concerning the deductibility of certain costs incurred for licensing and arbitration, and Congress is therefore restoring those terms as originally negotiated among the parties; and

(4) in light of the special circumstances described in this subsection, the uncertainty created by the regulations issued by the Librarian of Congress, and the fact that all of the interested parties have reached agreement, the voluntarily negotiated arrangements agreed to among the parties are being codified.

(b) DEDUCTIBILITY.—Section 114(g) of title 17, United States Code, is amended by adding after paragraph (2) the following:

''(3) A nonprofit agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive royalties from another designated agent and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent incurred after November 1, 1995, in—

''(A) the administration of the collection, distribution, and calculation of the royalties;

''(B) the settlement of disputes relating to the collection and calculation of the royalties; and

''(C) the licensing and enforcement of rights with respect to the making of ephemeral recordings and performances subject to licensing under section 112 and this section, including those incurred in participating in negotiations or arbitration proceedings under section 112 and this section, except that all costs incurred relating to the section 112 ephemeral recordings right may only be deducted from the royalties received pursuant to section 112.

''(4) Notwithstanding paragraph (3), any designated agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts, the reasonable costs identified in paragraph (3) of such agent incurred after November 1, 1995, with respect to such copyright owners and performers who have entered with such agent a contractual relationship that specifies that such costs may be deducted from such royalty receipts.''.

(c) DIRECT PAYMENT TO ARTISTS.—Section 114(g)(2) of title 17, United States Code, is amended to read as follows:

''(2) An agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall distribute such receipts as follows:

''(A) 50 percent of the receipts shall be paid to the copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of a digital audio transmission.

''(B) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

''(C) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

''(D) 45 percent of the receipts shall be paid, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying rights in the artists' performance in the sound recordings).''.

SEC. 6. REPORT TO CONGRESS.

By not later than June 1, 2004, the Comptroller General of the United States, in consultation with the Register of Copyrights, shall conduct and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a study concerning the economic arrangements among small commercial webcasters covered by agreements entered into pursuant to section 114(f)(5)(A) of title 17, United States Code, as added by section 4 of this Act, and third parties, and the effect of those arrangements on royalty fees payable on a percentage of revenue or expense basis.

SA 4956. Mr. REID (for Mr. HAGEL (for himself, Mr. BIDEN, and Mr. HELMS)) proposed an amendment to the bill S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries; as follows:

On page 39, line 20, strike ''and''.

On page 39, line 24, strike the period and insert ''; and''.

On page 39, after line 24, insert the following:

(9) Foster the growth of a pluralistic society that promotes and respects religious freedom.

Beginning on page 40, strike line 1 and all that follows through line 15 on page 41.

On page 41, line 16, strike ''sec. 104.'' and insert ''sec. 1035.''. Starting on line 17, strike ''any other provision of law,'' and insert ''section 512 of P.L. 107–115 or any other similar provision of law.''

On page 42, line 7, insert ''and other unexploded ordinance'' after ''landmines''.

On page 44, lines 24 and 25, strike ''2002 through 2005'' and insert ''2003 through 2006''.

Beginning on page 44, line 25, strike ''of the amount'' and all that follows through ''authorized'' on line 1 of page 45 and insert ''is authorized to be appropriated to the President''.

On page 47, line 6, insert ''(including repairing homes damaged during military operations)'' after ''housing''.

On page 48, line 11, insert ''including religious freedom,'' after ''awareness,''.

On page 48, line 16, insert '', including the recognition of religious freedom in the constitution and other legal frameworks,'' after ''Afghanistan''.

On page 49, line 4, insert '', including religious freedom, freedom of expression, and freedom of association,'' after ''rights''.

On page 49, between lines 5 and 6, insert:

(x) support for Afghan and international efforts to investigate human rights atrocities committed in Afghanistan by the Taliban regime, opponents of such regime, and terrorist groups operating in Afghanistan, including the collection of forensic evidence relating to such atrocities;

On page 49, line 6, strike ''(x)'' and insert ''(xi)''.

On page 49, line 8, strike ''(xi)'' and insert ''(xii)''.

On page 49, line 12, strike ''(xii)'' and insert ''(xiii)''.

On page 49, line 14, strike ''(xiii)'' and insert ''(xiv)''.

On page 49, line 21, strike ''not less than''.

On page 49, beginning on line 21, strike ''of the'' and all that follows through ''should'' on line 22 and insert ''is authorized to be appropriated to the President to''.

On page 50, line 23, strike ''and''.

On page 50, after line 23, insert the following:

(E) develop handicraft and other small-scale industries; and

On page 51, line 1, strike ''(E)'' and insert ''(F)''.

On page 53, line 2, insert '', including the rights of religious freedom, freedom of expression, and freedom of association,'' after ''rights''.

On page 53, line 8, insert '', including the rights of religious freedom, freedom of expression, and freedom of association,'' after ''human rights''.

On page 53, line 12, strike ''2002 through 2005'' and insert ''2003 through 2006''.

On page 53, beginning on line 13, strike ''of'' and all that follows through ''authorized'' on line 15 and insert ''is authorized to be appropriated to the President''.

On page 53, beginning on line 18, strike ''of'' and all that follows through ''authorized'' on line 20 and insert ''is authorized to be appropriated to the President''.

On page 54, line 12, insert ''that respects human rights'' after ''Afghanistan''.

On page 55, beginning on line 5, strike ''for fiscal year'' and all that follows through ''2005'' on lines 7.

On page 55, line 17, strike ''sec. 105.'' and insert ''sec. 104.''.

On page 56, between lines 14 and 15, insert the following:

SEC. 105. SENSE OF CONGRESS REGARDING PROMOTING COOPERATION IN OPIUM PRODUCING AREAS.

It is the sense of Congress that the President should—

(1) to the extent practicable, under such procedures as the President may prescribe, withhold United States bilateral assistance from, and oppose multilateral assistance to, opium-producing areas of Afghanistan if, within such areas, appropriate cooperation is not provided to the United States, the Government of Afghanistan, and international organizations with respect to the suppression of narcotics cultivation and trafficking, and if withholding such assistance would promote such cooperation;

(2) redistribute any United States bilateral assistance (and to promote the redistribution of any multilateral assistance) withheld

from an opium-producing area to other areas with respect to which assistance has not been withheld as a consequence of this section; and

(3) define or redefine the boundaries of opium producing areas of Afghanistan for the purposes of this section.

On page 57, line 14, strike ''LAND GRANT''.

On page 57, line 22, strike ''land grant''.

On page 58, beginning with line 1, strike ''Amounts'' and all that follows through the period on line 5 and insert the following: ''Of the funds made available to carry out the purposes of assistance authorized by this title in any fiscal year, up to 7 percent may be used for administrative expenses of Federal departments and agencies in connection with the provision of such assistance.''.

On page 58, line 11, strike ''(A) IN GENERAL.—''.

On page 58, strike lines 17 through 20.

On page 59, line 8, strike ''$500,000,000'' and insert ''$425,000,000''.

On page 59, line 9, strike ''2002 through 2005'' and insert ''2003 through 2006''.

On page 61, line 20, insert ''and shall not count toward any limitation contained in section 506 of the Foreign Assistance Act of 1961 (22 U.S.C. 2318)'' after section 204(b)(1)''.

On page 61, strike line 23.

On page 61, line 24, strike ''(1) IN GENERAL.—'' and insert ''(a) IN GENERAL.—''.

On page 61, lines 24 and 25, strike ''paragraph (2)'' and insert ''subsection (b)''.

On page 62, line 3, strike ''(A)'' and insert ''(1)''.

On page 62, line 8, strike ''(B)'' and insert ''(2)''.

On page 62, line 10, strike ''(2)'' and insert ''(b)''.

On page 62, line 12, after ''repeatedly,'' insert ''engaged in gross violations of human rights, or''

On page 62, strike lines 19 through 22.

On page 63, lines 15 and 16, strike ''are authorized to remain available until expended, and''.

Beginning on page 64, strike line 9 and all that follows through line 22 on page 68 and insert the following:

SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN AND EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE.

(a) FINDINGS.—Congress finds the following:

(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it is no longer a haven for terrorism.

(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through an improved security environment is critical to the functioning of the Government of Afghanistan and the traditional Afghan assembly or ''Loya Jirga'' process, which is intended to lead to a permanent national government in Afghanistan, and also is essential for the participation of women in Afghan society.

(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unsafe environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

(5)(A) On July 6, Vice President Haji Abdul Qadir was assassinated in Kabul by unknown assailants.

(B) On September 5, 2002, a car bomb exploded in Kabul killing 32 and injuring 150 and on the same day a member of Kandahar Governor Sherzai's security team attempted to assassinate President Karzai.

(6) The violence and lawlessness may jeopardize the ''Loya Jirga'' process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaida, Taliban forces, and drug traffickers.

(7) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the ability of the United States to meet its military objectives.

(8) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries without the participation of United States Armed Forces, is deployed only in Kabul and currently does not have the mandate or the capacity to provide security to other parts of Afghanistan.

(9) Due to the ongoing military campaign in Afghanistan, the United States does not contribute troops to the International Security Assistance Force but has provided support to other countries that are doing so.

(10) The United States is providing political, financial, training, and other assistance to the Afghan Interim Authority as it begins to build a national army and police force to help provide security throughout Afghanistan, but this effort is not meeting the immediate security needs of Afghanistan.

(11) Because of these immediate security needs, the Government of Afghanistan, its President, Hamid Karzai, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded and deployed throughout the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(b) STATEMENT OF POLICY.—It should be the policy of the United States to support measures to help meet the immediate security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

(c) IMPLEMENTATION OF STRATEGY.—

(1) INITIAL REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall provide the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate with—

(A) a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government, including an update to the strategies submitted pursuant to Public Law 107–206; and

(B) a description of the progress of the Government of Afghanistan toward the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan in accordance with the provisions of this Act.

(2) IMPLEMENTATION OF STRATEGY.—Every 6 months after the enactment of this Act through January 1, 2007, the President shall submit to the congressional committees specified in paragraph (1) a report on the implementation of the strategies for meeting the immediate and long-term security needs of Afghanistan, which shall include the following elements—

(A) since the previous report, the progress in recruiting, training, and deploying an Afghan National Army and police force, including the numbers and ethnic composition of recruits; the number of graduates from military and police training; the numbers of graduates retained by the Afghan National Army and police forces since the previous report; the numbers of graduates operationally deployed and to which areas of the country; the degree to which these graduates are assuming security responsibilities; whether Afghan army and police units are establishing effective central governmental authority over areas of the country, and which areas; and the numbers of instances of armed attacks against Afghan central governmental officials, United States or international officials, troops or aid workers, or between the armed forces of regional leaders;

(B) the degree to which armed regional leaders are cooperating and integrating with the central government, providing security and order within their regions of influence, engaging in armed conflict or other forms of competition that are deleterious to peace, security, and the integration of a unified Afghanistan under the central government;

(C) the amount of humanitarian relief provided since the previous report to returnees, isolated populations and other vulnerable groups, as well as demining assistance and landmine survivors rehabilitation; and the numbers of such persons not assisted since the previous report;

(D) the steps taken since the previous report toward national reconstruction, including establishment of the ministries and other institutions of the Government of Afghanistan;

(E) the numbers of Civil Affairs Teams working with regional leaders, as well as the quick impact infrastructure projects undertaken by such teams since the previous report;

(F) efforts undertaken since the previous report to rebuild the justice sector, including the establishment of a functioning judiciary, a competent bar, reintegration of women legal professionals and a reliable penal system, and the respect for human rights; and

(G) a description of the progress of the Government of Afghanistan with respect to the matters described in paragraph (1)(B).

(d) EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE.—

(1) SENSE OF CONGRESS.—Congress urges the President, in order to fulfill the objective of establishing security in Afghanistan, to take all appropriate measures to assist Afghanistan establish a secure environment throughout the country, including by—

(A) sponsoring in the United Nations Security Council a resolution authorizing an expansion of the International Security Assistance Force, or the establishment of a similar security force; and

(B) enlisting the European and other allies of the United States to provide forces for an expansion of the International Security Assistance Force in Afghanistan, or the establishment of a similar security force.

(2) AUTHORIZATION OF APPROPRIATIONS.—(A) There is authorized to be appropriated to the President $500,000,000 for each of fiscal years 2003 and 2004 to support the International Security Assistance Force or the establishment of a similar security force.

(B) Amounts made available under subparagraph (A) may be appropriated pursuant

to chapter 4 of part II of the Foreign Assistance Act of 1961, section 551 of such Act, or section 23 of the Arms Export Control Act.

(C) Funds appropriated pursuant to subparagraph (A) shall be subject to the notification requirements under section 634A of the Foreign Assistance Act of 1961.

On page 63, line 24, insert ''and the Committee on Appropriations'' after ''Relations''.

On page 63, line 25, insert ''and the Committee on Appropriations'' after ''Relations''.

On page 69, line 5, strike ''any other provision of law'' and insert ''section 512 of Public Law 107–115 or any similar provision of law''.

Beginning on page 69, strike line 6 and all that follows through line 4 on page 70.

On page 70, line 5, strike ''sec. 209.'' and insert '' sec. 208.''

On page 70, line 7, strike ''2005'' and insert ''2006''.

On page 70, after line 7, add the following:

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. REQUIREMENT TO COMPLY WITH PROCEDURES RELATING TO THE PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS.

Assistance provided under this Act shall be subject to the same provisions as are applicable to assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act under section 487 of the Foreign Assistance Act of 1961 (relating to the prohibition on assistance to drug traffickers; 22 U.S.C. 2291f), and the applicable regulations issued under that section.

SEC. 302. SENSE OF CONGRESS REGARDING PROTECTING AFGHANISTAN'S PRESIDENT.

It is the sense of Congress that—

(1) any United States physical protection force provided for the personal security of the President of Afghanistan should be composed of United States diplomatic security, law-enforcement, or military personnel, and should not utilize private contracted personnel to provide actual physical protection services;

(2) United States allies should be invited to volunteer active-duty military or law enforcement personnel to participate in such a protection forces; and

(3) such a protection force should be limited in duration and should be succeeded by qualified Afghan security forces as soon as practicable.

SEC. 303. DONOR CONTRIBUTIONS TO AFGHANISTAN AND REPORTS.

(a) FINDINGS.—The Congress finds that inadequate amounts of international assistance promised by donor states at the Tokyo donors conference and elsewhere have been delivered to Afghanistan, imperiling the rebuilding and development of civil society and infrastructure, and endangering peace and security in that war-torn country.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should use all appropriate diplomatic means to encourage all states that have pledged assistance to Afghanistan to deliver as soon as possible the total amount of assistance pledged.

(c) REPORTS.—

(1) IN GENERAL.—The Secretary of State shall submit reports to the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives, in accordance with this paragraph, on the status of contributions of assistance from donor states to Afghanistan. The first report shall be submitted not later than 60 days after the date of enactment of this Act, the second report shall be submitted 90 days thereafter, and subsequent reports shall be submitted every 180 days thereafter through December 31, 2004.

(2) FURTHER REQUIREMENTS.—Each report, which shall be unclassified and posted upon the Department of State's Internet website, shall include, by donor country, the total amount pledged, the amount delivered within the previous 60 days, the total amount of assistance delivered, the type of assistance and type of projects supported by the assistance.

SA 4957. Mr. REID (for Mr. KERRY (for himself, Mr. BROWNBACK, and Mr. HOLLINGS)) proposed an amendment to the bill S. 2869, 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; as follows:

SECTION 1. RELIEF FROM CONTINUING OBLIGATIONS.

A winner bidder to which the Commission has not granted an Auction 35 license may irrevocably elect to relinquish any right, title, or interest in that license and the associated license application by formal written notice to the Commission. Such an election may only be made within 30 days after the date of enactment of this Act. A winning bidder that makes such an election shall be free of any obligation the winning bidder would otherwise have with respect to that license, the associated license application, and the associated winning bid, including the obligation to pay the amount of its winning bid that would be otherwise due for such license.

SEC. 2. RETURN OF DEPOSITS AND DOWNPAYMENTS.

Within 37 days after receiving an election that meets the requirements of section 3 from an Auction 35 winning bidder that has made the election described in section 1, the Commission shall refund any deposit or down-payment made with respect to a winning bidder for the license that is the subject of the election.

SEC. 3. COMMISSION TO ISSUE PUBLIC NOTICE.

(a) PUBLIC NOTICE.—Within 5 days after the date of enactment of this Act, the Commission shall issue a public notice specifying the form and the process for the return of deposits and downpayments under section 2.

(b) TIME FOR ELECTION.—An election under this section is not valid unless it is made within 30 days after the date of enactment of this Act.

SEC. 4. WAIVER OF PAPERWORK REDUCTION ACT REQUIREMENTS.

Section 3507 of title 44, United States Code, shall not apply to the Commission's implementation of this Act.

SEC. 5. NO INFERENCE WITH RESPECT TO NEXTWAVE CASE.

It is the sense of the Congress that no inference with respect to any issue of law or fact in Federal Communications Commission v. NextWAVE Personal Communications, Inc., et al. (Supreme Court Docket No. 01–653) should be drawn from the introduction, amendment, defeat, or enactment of this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) AUCTION 35.—The term ''Auction 35'' means the C and F block broadband personal communications service spectrum auction of the Commission that began on December 1, 2000, and ended on January 6, 2001, insofar as that auction related to spectrum previously licensed to NextWave Personal Communications, Inc., NextWave Power Partners, Inc., or Urban Comm North Carolina, Inc.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission or a bureau or division thereof acting on delegated authority.

(3) WINNING BIDDER.—The term ''winning bidder'' means any person who is entitled under Commission order FCC 02–99 (released March 27, 2002), to a refund of a substantial portion of monies on deposit for spectrum formerly licensed to NextWave and Urban Comm as defined in that order.

SA 4958. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, Mr. HOLLINGS, and Mr. FRIST)) proposed an amendment to the bill H.R. 4664, An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, 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 ''National Science Foundation Authorization Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Science Foundation has made major contributions for more than 50 years to strengthen and sustain the Nation's academic research enterprise that is the envy of the world.

(2) The economic strength and national security of the United States and the quality of life of all Americans are grounded in the Nation's scientific and technological capabilities.

(3) The National Science Foundation carries out important functions in supporting basic research in all science and engineering disciplines and in supporting science, mathematics, engineering, and technology education at all levels.

(4) The research and education activities of the National Science Foundation promote the discovery, integration, dissemination, and application of new knowledge in service to society and prepare future generations of scientists, mathematicians, and engineers who will be necessary to ensure America's leadership in the global marketplace.

(5) The National Science Foundation must be provided with sufficient resources to enable it to carry out its responsibilities to develop intellectual capital, strengthen the scientific infrastructure, integrate research and education, enhance the delivery of mathematics and science education in the United States, and improve the technological literacy of all people in the United States.

(6) The emerging global economic, scientific, and technical environment challenges long-standing assumptions about domestic and international policy, requiring the National Science Foundation to play a more proactive role in sustaining the competitive advantage of the United States through superior research capabilities.

(7) Commercial application of the results of Federal investment in basic and computing science is consistent with long-standing United States technology transfer policy and is a critical national priority, particularly with regard to cybersecurity and other homeland security applications, because of the urgent needs of commercial, academic, and individual users as well as the Federal and State Governments.

SEC. 3. POLICY OBJECTIVES.

In allocating resources made available under section 5, the Foundation shall have the following policy objectives:

(1) To strengthen the Nation's lead in science and technology by—

(A) increasing the national investment in general scientific research and increasing investment in strategic areas;

(B) balancing the Nation's research portfolio among the life sciences, mathematics, the physical sciences, computer and information science, geoscience, engineering, and social, behavioral, and economic sciences, all of which are important for the continued development of enabling technologies necessary for sustained international competitiveness;

(C) expanding the pool of scientists and engineers in the United States;

(D) modernizing the Nation's research infrastructure; and

(E) establishing and maintaining cooperative international relationships with premier research institutions, with the goal of such relationships being the exchange of personnel, data, and information in an effort to alleviate problems common to the global community.

(2) To increase overall workforce skills by—

(A) improving the quality of mathematics and science education, particularly in kindergarten through grade 12;

(B) promoting access to information technology for all students;

(C) raising postsecondary enrollment rates in science, mathematics, engineering, and technology disciplines for individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b);

(D) increasing access to higher education in science, mathematics, engineering, and technology fields for students from low-income households; and

(E) expanding science, mathematics, engineering, and technology training opportunities at institutions of higher education.

(3) To strengthen innovation by expanding the focus of competitiveness and innovation policy at the regional and local level.

SEC. 4. DEFINITIONS.

In this Act:

(1) ACADEMIC UNIT.—The term ''academic unit'' means a department, division, institute, school, college, or other subcomponent of an institution of higher education.

(2) BOARD.—The term ''Board'' means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(3) COMMUNITY COLLEGE.—The term ''community college'' has the meaning given such term in section 3301(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7011(3)).

(4) DIRECTOR.—The term ''Director'' means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(5) ELEMENTARY SCHOOL.—The term ''elementary school'' has the meaning given that term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(6) ELIGIBLE NONPROFIT ORGANIZATION.—The term ''eligible nonprofit organization'' means a nonprofit research institute, or a nonprofit professional association, with demonstrated experience and effectiveness in mathematics or science education as determined by the Director.

(7) FOUNDATION.—The term ''Foundation'' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(8) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term ''high-need local educational agency'' means a local educational agency that meets one or more of the following criteria:

(A) It has at least one school in which 50 percent or more of the enrolled students are eligible for participation in the free and reduced price lunch program established by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) It has at least one school in which—

(i) more than 34 percent of the academic classroom teachers at the secondary level (across all academic subjects) do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes; or

(ii) more than 34 percent of the teachers in two of the academic departments do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

(C) It has at least one school whose teacher attrition rate has been 15 percent or more over the last three school years.

(9) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(10) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given such term by section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

(11) MASTER TEACHER.—The term ''master teacher'' means a mathematics or science teacher who works to improve the instruction of mathematics or science in kindergarten through grade 12 through—

(A) participating in the development or revision of science, mathematics, engineering, or technology curricula;

(B) serving as a mentor to mathematics or science teachers;

(C) coordinating and assisting teachers in the use of hands-on inquiry materials, equipment, and supplies, and when appropriate, supervising acquisition and repair of such materials;

(D) providing in-classroom teaching assistance to mathematics or science teachers; and

(E) providing professional development, including for the purposes of training other master teachers, to mathematics and science teachers.

(12) NATIONAL RESEARCH FACILITY.—The term ''national research facility'' means a research facility funded by the Foundation which is available, subject to appropriate policies allocating access, for use by all scientists and engineers affiliated with research institutions located in the United States.

(13) SECONDARY SCHOOL.—The term ''secondary school'' has the meaning given that term by section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(14) STATE.—Except with respect to the Experimental Program to Stimulate Competitive Research, the term ''State'' means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(15) STATE EDUCATIONAL AGENCY.—The term ''State educational agency'' has the meaning given such term by section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

(16) UNITED STATES.—The term ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEAR 2003.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $5,536,390,000 for fiscal year 2003.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $4,155,690,000 shall be made available to carry out research and related activities, of which $704,000,000 shall be for information technology research described in paragraph (1) of section 8 and $301,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,006,250,000 shall be made available for education and human resources, of which—

(i) $200,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $25,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $172,050,000 shall be made available for major research equipment and facilities construction;

(D) $191,200,000 shall be made available for salaries and expenses;

(E) $3,500,000 shall be made available for the Office of the National Science Board, including salaries and compensation for members of the Board and staff appointed under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863), travel and training costs for members of the Board and such staff, general and Board operating expenses, representational expenses for the Board, honorary awards made by the Board, Board reports (other than the report entitled ''Science and Engineering Indicators''), and contracts; and

(F) $7,700,000 shall be made available for the Office of Inspector General.

(b) FISCAL YEAR 2004.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $6,390,832,000 for fiscal year 2004.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $4,799,822,000 shall be made available to carry out research and related activities, of which $774,000,000 shall be for information technology research described in paragraph (1) of section 8 and $350,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,157,188,000 shall be made available for education and human resources, of which—

(i) $300,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $30,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $211,182,000 shall be made available for major research equipment and facilities construction;

(D) $210,320,000 shall be made available for salaries and expenses;

(E) $3,850,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $8,470,000 shall be made available for the Office of Inspector General.

(c) FISCAL YEAR 2005.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $7,378,343,000 for fiscal year 2005.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $5,543,794,000 shall be made available to carry out research and related activities;

(B) $1,330,766,000 shall be made available to carry out education and human resources, of which—

(i) $400,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $35,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $258,879,000 shall be made available for major research equipment and facilities construction;

(D) $231,337,000 shall be made available for salaries and expenses;

(E) $4,250,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $9,317,000 shall be made available for the Office of Inspector General.

(d) FISCAL YEAR 2006.—There are authorized to be appropriated to the Foundation $8,519,776,000 for fiscal year 2006.

(e) FISCAL YEAR 2007.—There are authorized to be appropriated to the Foundation $9,839,262,000 for fiscal year 2007.

(f) CONTINGENT AUTHORIZATION.—

(1) IN GENERAL.—Funds are authorized to be appropriated under subsections (d) and (e), contingent on a determination by Congress that the Foundation has made successful progress toward meeting management goals consisting of—

(A) strategic management of human capital;

(B) competitive sourcing;

(C) improved financial performance;

(D) expanded electronic government; and

(E) budget and performance integration.

(2) CONSIDERATION.—In making that determination, Congress shall take into consideration whether or not the Director of the Office of Management and Budget has certified that the Foundation has, overall, made successful progress toward meeting those goals.

SEC. 6. OBLIGATION OF MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION FUNDS.

(a) FISCAL YEAR 2003.—None of the funds authorized under section 5(a)(2)(C) may be obligated until 30 days after the first report required under section 14(a)(2) is transmitted to the Congress.

(b) FISCAL YEAR 2004.—None of the funds authorized under section 5(b)(2)(C) may be obligated until 30 days after the report required by June 15, 2003, under section 14(a)(2) is transmitted to the Congress.

(c) FISCAL YEAR 2005.—None of the funds authorized under section 5(c)(2)(C) may be obligated until 30 days after the report required by June 15, 2004, under section 14(a)(2) is transmitted to the Congress.

(d) FISCAL YEAR 2006.—None of the funds authorized under section 5(d) may be obligated for major research equipment and facilities construction until 30 days after the report required by June 15, 2005, under section 14(a)(2) is transmitted to the Congress.

(e) FISCAL YEAR 2007.—None of the funds authorized under section 5(e) may be obligated for major research equipment and facilities construction until 30 days after the report required by June 15, 2006, under section 14(a)(2) is transmitted to the Congress.

SEC. 7. ANNUAL PLAN FOR ALLOCATION OF FUNDING.

Not later than 60 days after the date of enactment of legislation providing for the annual appropriation of funds for the Foundation, the Director shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, a plan for the allocation of funds authorized by this Act for the corresponding fiscal year. The portion of the plan pertaining to Research and Related Activities shall include a description of how the allocation of funding—

(1) will affect the average size and duration of research grants supported by the Foundation by field of science, mathematics, and engineering;

(2) will affect trends in research support for major fields and subfields of science, mathematics, and engineering, including for emerging multidisciplinary research areas; and

(3) is designed to achieve an appropriate balance among major fields and subfields of science, mathematics, and engineering.

SEC. 8. SPECIFIC PROGRAM AUTHORIZATIONS.

From amounts authorized to be appropriated under section 5, the Director shall carry out the Foundation's research and education programs, including the following initiatives in accordance with this section:

(1) INFORMATION TECHNOLOGY.—An information technology research program to support competitive, merit-reviewed proposals for research, education, and infrastructure support in areas related to cybersecurity, terascale computing systems, software, networking, scalability, communications, data management, and remote sensing and geospatial information technologies.

(2) NANOSCALE SCIENCE AND ENGINEERING.—A nanoscale science and engineering research and education program to support competitive, merit-reviewed proposals that emphasize—

(A) research aimed at discovering novel phenomena, processes, materials, and tools that address grand challenges in materials, electronics, optoelectronics and magnetics, manufacturing, the environment, and health care; and

(B) supporting new research and interdisciplinary centers and networks of excellence, including shared national user facilities, infrastructure, research, and education activities on the societal implications of advances in nanoscale science and engineering.

(3) PLANT GENOME RESEARCH.—(A) A plant genome research program to support competitive, merit-reviewed proposals—

(i) that advance the understanding of the structure, organization, and function of plant genomes; and

(ii) that accelerate the use of new knowledge and innovative technologies toward a more complete understanding of basic biological processes in plants, especially in economically important plants such as corn and soybeans.

(B) Regional plant genome and gene expression research centers to conduct research and dissemination activities that may include—

(i) basic plant genomics research and genomics applications, including those related to cultivation of crops in extreme environments and to cultivation of crops with reduced reliance on fertilizer, herbicides, and pesticides;

(ii) basic research that will contribute to the development or use of innovative plant-derived products;

(iii) basic research on alternative uses for plants and plant materials, including the use of plants as renewable feedstock for alternative energy production and nonpetroleum-based industrial chemicals and precursors; and

(iv) basic research and dissemination of information on the ecological and other consequences of genetically engineered plants.

Competitive, merit-based awards for centers under this subparagraph shall be to consortia of institutions of higher education or nonprofit organizations. The Director shall, to the extent practicable, ensure that research centers established under this subparagraph collectively examine as many different agricultural environments as possible, enhance the excellence of existing Foundation programs, and focus on plants of economic importance.

(C) Research partnerships to focus on—

(i) basic genomic research on crops grown in the developing world;

(ii) basic plant genome research that will advance and expedite the development of improved cultivars, including those that are pest-resistant, produce increased yield, reduce the need for fertilizers, herbicides, or pesticides, or have increased tolerance to stress;

(iii) basic research that could lead to the development of technologies to produce pharmaceutical compounds such as vaccines and medications in plants that can be grown in the developing world; and

(iv) research on the impact of plant biotechnology on the social, political, economic, health, and environmental conditions in countries in the developing world.

Competitive, merit-based awards for partnerships under this subparagraph shall be to institutions of higher education, nonprofit organizations, or consortia of such entities that enter into a partnership that shall include one or more research institutions in one or more developing nations, and that may also include for-profit companies involved in plant biotechnology. The Director, by means of outreach, shall encourage inclusion of historically Black colleges and universities, Hispanic-serving institutions, tribally controlled colleges and universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions in consortia that enter into such partnerships.

(4) INNOVATION PARTNERSHIPS.—An innovation partnerships program to support competitive, merit-reviewed proposals that seek to stimulate innovation at the regional level through new partnerships involving States, regional governmental entities, local governmental entities, industry, academic institutions, and other related organizations in strategically important fields of science and technology.

(5) MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.—The mathematics and science education partnerships program described in section 9.

(6) ROBERT NOYCE SCHOLARSHIP PROGRAM.—The Robert Noyce Scholarship Program described in section 10.

(7) SCIENCE, MATHEMATICS, ENGINEERING, AND TECHNOLOGY TALENT EXPANSION PROGRAM.—(A) A program of competitive, merit-based, multi-year grants for eligible applicants to increase the number of students studying toward and completing associate's or bachelor's degrees in science, mathematics, engineering, and technology, particularly in fields that have faced declining enrollment in recent years.

(B) In selecting projects under this paragraph, the Director shall strive to increase the number of students studying toward and completing baccalaureate degrees, concentrations, or certificates in science, mathematics, engineering, or technology who are individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(C) The types of projects the Foundation may support under this paragraph include those that promote high quality—

(i) interdisciplinary teaching;

(ii) undergraduate-conducted research;

(iii) mentor relationships for students;

(iv) bridge programs that enable students at community colleges to matriculate directly into baccalaureate science, mathematics, engineering, or technology programs;

(v) internships carried out in partnership with industry; and

(vi) innovative uses of digital technologies, particularly at institutions of higher education that serve high numbers or percentages of economically disadvantaged students.

(D)(i) In order to receive a grant under this paragraph, an eligible applicant shall establish targets to increase the number of students studying toward and completing associate's or bachelor's degrees in science, mathematics, engineering, or technology.

(ii) A grant under this paragraph shall be awarded for a period of 5 years, with the final 2 years of funding contingent on the Director's determination that satisfactory progress has been made by the grantee toward meeting the targets established under clause (i).

(iii) In the case of community colleges, a student who transfers to a baccalaureate program, or receives a certificate under an established certificate program, in science, mathematics, engineering, or technology shall be counted toward meeting a target established under clause (i).

(E) For each grant awarded under this paragraph to an institution of higher education, at least 1 principal investigator shall be in a position of administrative leadership at the institution of higher education, and at least 1 principal investigator shall be a faculty member from an academic department included in the work of the project. For each grant awarded to a consortium or partnership, at each institution of higher education participating in the consortium or partnership, at least 1 of the individuals responsible for carrying out activities authorized under this paragraph at that institution shall be in a position of administrative leadership at the institution, and at least 1 shall be a faculty member from an academic department included in the work of the project at that institution.

(F) In this paragraph, the term ''eligible applicant'' means—

(i) an institution of higher education;

(ii) a consortium of institutions of higher education; or

(iii) a partnership between—

(I) an institution of higher education or a consortium of such institutions; and

(II) a nonprofit organization, a State or local government, or a private company, with demonstrated experience and effectiveness in science, mathematics, engineering, or technology education.

(8) SECONDARY SCHOOL SYSTEMIC INITIATIVE.—A program of competitive, merit-based grants for State educational agencies or local educational agencies that supports the planning and implementation of agency-wide secondary school reform initiatives designed to promote scientific and technological literacy, meet the mathematics and science education needs of students at risk of not achieving State student academic achievement standards, reduce the need for basic skill training by employers, and heighten college completion rates through activities, such as—

(A) systemic alignment of secondary school curricula and higher education freshman placement requirements;

(B) development of materials and curricula that support small, theme-oriented schools and learning communities;

(C) implementation of enriched mathematics and science curricula for all secondary school students;

(D) strengthened teacher training in mathematics, science, and reading as it relates to technical and specialized texts;

(E) laboratory improvement and provision of instrumentation as part of a comprehensive program to enhance the quality of mathematics, science, engineering, and technology instruction; or

(F) other secondary school systemic initiatives that enable grantees to leverage private sector funding for mathematics, science, engineering, and technology scholarships.

In awarding grants under this paragraph, the Director shall give priority to agencies that serve high poverty communities.

(9) EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH.—The Experimental Program to Stimulate Competitive Research, established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g), that is designed to enhance—

(A) research in mathematics, science, and engineering throughout the States eligible to participate in the program and the Commonwealth of Puerto Rico;

(B) research infrastructure in the States eligible to participate in the program and the Commonwealth of Puerto Rico; and

(C) the geographic distribution of Federal research and development support.

(10) THE SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT.—A comprehensive program designed to advance the goals of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885 et seq.), including programs to—

(A) provide support to minority-serving institutions; and

(B) ensure that reports required under sections 36 and 37 of such Act are submitted to the—

(i) Committee on Science of the House of Representatives;

(ii) Committee on Health, Education, Labor, and Pensions of the Senate; and

(iii) Committee on Commerce, Science, and Transportation of the Senate.

(11) ASTRONOMICAL RESEARCH AND INSTRUMENTATION.—An astronomical research program to support competitive, merit-reviewed proposals that—

(A) will advance understanding of—

(i) the origins and characteristics of planets, the Sun, other stars, the Milky Way Galaxy, and extragalactic objects (such as clusters of galaxies and quasars); and

(ii) the structure and origin of the universe; and

(B) support related activities such as developing advanced technologies and instrumentation, funding undergraduate and graduate students, and satisfying other instrumentation and research needs.

SEC. 9. MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—(A) The Director shall carry out a program to award grants to institutions of higher education or eligible nonprofit organizations (or consortia of such institutions or organizations) to establish mathematics and science education partnership programs to improve elementary and secondary mathematics and science instruction.

(B) Grants shall be awarded under this subsection on a competitive, merit-reviewed basis.

(2) PARTNERSHIPS.—(A) In order to be eligible to receive a grant under this subsection, an institution of higher education or eligible nonprofit organization (or consortium of such institutions or organizations) shall enter into a partnership with one or more local educational agencies that may also include a State educational agency or one or more businesses.

(B) A participating institution of higher education shall include mathematics, science, or engineering departments in the programs carried out through a partnership under this paragraph.

(3) USES OF FUNDS.—Grants awarded under this subsection shall be used for activities that draw upon the expertise of the partners to improve elementary or secondary education in mathematics or science and that are consistent with State mathematics and science student academic achievement standards, including—

(A) recruiting and preparing students for careers in elementary or secondary mathematics or science education;

(B) offering professional development programs, including summer or academic year institutes or workshops, designed to strengthen the capabilities of mathematics and science teachers;

(C) offering innovative preservice and in-service programs that instruct teachers on using technology more effectively in teaching mathematics and science, including programs that recruit and train undergraduate and graduate students to provide technical support to teachers;

(D) developing distance learning programs for teachers or students, including developing courses, curricular materials, and other resources for the in-service professional development of teachers that are made available to teachers through the Internet;

(E) developing a cadre of master teachers who will promote reform and improvement in schools;

(F) offering teacher preparation and certification programs for professional mathematicians, scientists, and engineers who wish to begin a career in teaching;

(G) developing tools to evaluate activities conducted under this subsection;

(H) developing or adapting elementary school and secondary school mathematics and science curricular materials that incorporate contemporary research on the science of learning;

(I) developing initiatives to increase and sustain the number, quality, and diversity of prekindergarten through grade 12 teachers of mathematics and science, especially in underserved areas;

(J) using mathematicians, scientists, and engineers employed by private businesses to help recruit and train mathematics and science teachers;

(K) developing and offering mathematics or science enrichment programs for students, including after-school and summer programs;

(L) providing research opportunities in business or academia for students and teachers;

(M) bringing mathematicians, scientists, and engineers from business and academia into elementary school and secondary school classrooms; and

(N) any other activities the Director determines will accomplish the goals of this subsection.

(4) MASTER TEACHERS.—Activities carried out in accordance with paragraph (3)(E) shall—

(A) emphasize the training of master teachers who will improve the instruction of mathematics or science in kindergarten through grade 12;

(B) include training in both content and pedagogy; and

(C) provide training only to teachers who will be granted sufficient nonclassroom time to serve as master teachers, as demonstrated by assurances their employing school has

provided to the Director, in such time and such manner as the Director may require.

(5) SCIENCE ENRICHMENT PROGRAMS FOR GIRLS.—Activities carried out in accordance with paragraph (3)(K) and (L) shall include elementary school and secondary school programs to encourage the ongoing interest of girls in science, mathematics, engineering, and technology and to prepare girls to pursue undergraduate and graduate degrees and careers in science, mathematics, engineering, or technology. Funds made available through awards to partnerships for the purposes of this paragraph may support programs for—

(A) encouraging girls to pursue studies in science, mathematics, engineering, and technology and to major in such fields in postsecondary education;

(B) tutoring girls in science, mathematics, engineering, and technology;

(C) providing mentors for girls in person and through the Internet to support such girls in pursuing studies in science, mathematics, engineering, and technology;

(D) educating the parents of girls about the difficulties faced by girls to maintain an interest and desire to achieve in science, mathematics, engineering, and technology, and enlisting the help of parents in overcoming these difficulties; and

(E) acquainting girls with careers in science, mathematics, engineering, and technology and encouraging girls to plan for careers in such fields.

(6) RESEARCH IN SECONDARY SCHOOLS.—Activities carried out in accordance with paragraph (3)(K) may include support for research projects performed by students at secondary schools. Uses of funds made available through awards to partnerships for purposes of this paragraph may include—

(A) training secondary school mathematics and science teachers in the design of research projects for students;

(B) establishing a system for students and teachers involved in research projects funded under this subsection to exchange information about their projects and research results; and

(C) assessing the educational value of the student research projects by such means as tracking the academic performance and choice of academic majors of students conducting research.

(7) STIPENDS.—Grants awarded under this subsection may be used to provide stipends for teachers or students participating in training or research activities that would not be part of their typical classroom activities.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education or an eligible nonprofit organization (or a consortium of such institutions or organizations) seeking funding under subsection (a) shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the partnership and the role that each member will play in implementing the proposal;

(B) a description of each of the activities to be carried out, including—

(i) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science;

(ii) how such activities will be based on a review of relevant research;

(iii) why such activities are expected to improve student performance and strengthen the quality of mathematics and science instruction; and

(iv) any activities that will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b) in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields;

(C) a description of the number, size, and nature of any stipends that will be provided to students or teachers and the reasons such stipends are needed;

(D) a description of how the partnership will serve as a catalyst for reform of mathematics and science education programs;

(E) a description of how the partnership will assess its success;

(F) a description of how the partnership will collaborate with the State educational agency to ensure that successful partnership activities may be replicated throughout the State; and

(G) a description of the manner in which the partnership will be continued after assistance under this section ends.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the partnership to carry out effectively the proposed programs;

(B) the extent to which the members of the partnership are committed to making the partnership a central organizational focus;

(C) the degree to which activities carried out by the partnership are based on relevant research and are likely to result in increased student achievement;

(D) the degree to which such activities are aligned with State mathematics and science student academic achievement standards;

(E) the likelihood that the partnership will demonstrate activities that can be widely implemented as part of larger scale reform efforts; and

(F) the extent to which the activities will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b) in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields.

(3) AWARDS.—In awarding grants under this section, the Director shall—

(A) give priority to applications in which the partnership includes a high-need local educational agency or a high-need local educational agency in which at least one school does not make adequate yearly progress, as determined pursuant to part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.); and

(B) ensure that, to the extent practicable, a substantial number of the partnerships funded under this section include businesses.

(c) ACCOUNTABILITY AND DISSEMINATION.—

(1) ASSESSMENT REQUIRED.—The Director shall evaluate the program established under subsection (a). At a minimum, such evaluation shall—

(A) use a common set of benchmarks and assessment tools to identify best practices and materials developed and demonstrated by the partnerships; and

(B) to the extent practicable, compare the effectiveness of practices and materials developed and demonstrated by the partnerships authorized under this section with those of partnerships funded by other State or Federal agencies.

(2) DISSEMINATION OF RESULTS.—(A) The results of the evaluation required under paragraph (1) shall be made available to the public and shall be provided to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(B) Materials developed under the program established under subsection (a) that are demonstrated to be effective shall be made widely available to the public.

(3) ANNUAL MEETING.—The Director, in consultation with the Secretary of Education, shall convene an annual meeting of the partnerships participating under this section to foster greater national collaboration.

(4) REPORT ON COORDINATION.—The Director, in consultation with the Secretary of Education, shall provide an annual report to the Committee on Science of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate describing how the program authorized under this section has been and will be coordinated with the program authorized under part B of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.). The report under this paragraph shall be submitted along with the President's annual budget request.

(5) TECHNICAL ASSISTANCE.—At the request of an eligible partnership or a State educational agency, the Director shall provide the partnership or agency with technical assistance in meeting any requirements of this section, including providing advice from experts on how to develop—

(A) a quality application for a grant; and

(B) quality activities from funds received from a grant under this section.

SEC. 10. ROBERT NOYCE SCHOLARSHIP PROGRAM.

(a) SCHOLARSHIP PROGRAM.—

(1) IN GENERAL.—The Director shall carry out a program to award grants to institutions of higher education (or consortia of such institutions) to provide scholarships, stipends, and programming designed to recruit and train mathematics and science teachers. Such program shall be known as the ''Robert Noyce Scholarship Program''.

(2) MERIT REVIEW.—Grants shall be provided under this subsection on a competitive, merit-reviewed basis.

(3) USE OF GRANTS.—Grants provided under this section shall be used by institutions of higher education or consortia—

(A) to develop and implement a program to encourage top college juniors and seniors majoring in mathematics, science, and engineering at the grantee's institution to become mathematics and science teachers, through—

(i) administering scholarships in accordance with subsection (c);

(ii) offering programs to help scholarship recipients to teach in elementary schools and secondary schools, including programs that will result in teacher certification or licensing; and

(iii) offering programs to scholarship recipients, both before and after they receive their baccalaureate degree, to enable the recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields; or

(B) to develop and implement a program to encourage science, mathematics, or engineering professionals to become mathematics and science teachers, through—

(i) administering stipends in accordance with subsection (d);

(ii) offering programs to help stipend recipients obtain teacher certification or licensing; and

(iii) offering programs to stipend recipients, both during and after matriculation in

the program for which the stipend is received, to enable recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education or consortium seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the scholarship or stipend program that the applicant intends to operate, including the number of scholarships or the size and number of stipends the applicant intends to award, and the selection process that will be used in awarding the scholarships or stipends;

(B) evidence that the applicant has the capability to administer the scholarship or stipend program in accordance with the provisions of this section; and

(C) a description of the programming that will be offered to scholarship or stipend recipients during and after their matriculation in the program for which the scholarship or stipend is received.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the program;

(B) the extent to which the applicant is committed to making the program a central organizational focus;

(C) the degree to which the proposed programming will enable scholarship or stipend recipients to become successful mathematics and science teachers;

(D) the number and quality of the students that will be served by the program; and

(E) the ability of the applicant to recruit students who would otherwise not pursue a career in teaching.

(c) SCHOLARSHIP REQUIREMENTS.—

(1) IN GENERAL.—Scholarships under this section shall be available only to students who are—

(A) majoring in science, mathematics, or engineering; and

(B) in the last 2 years of a baccalaureate degree program.

(2) SELECTION.—Individuals shall be selected to receive scholarships primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) AMOUNT.—The Director shall establish for each year the amount to be awarded for scholarships under this section for that year, which shall be not less than $7,500 per year, except that no individual shall receive for any year more than the cost of attendance at that individual's institution. Individuals may receive a maximum of 2 years of scholarship support.

(4) SERVICE OBLIGATION.—If an individual receives a scholarship, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the scholarship was awarded, 2 years of service as a mathematics or science teacher for each year a scholarship was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(d) STIPENDS.—

(1) IN GENERAL.—Stipends under this section shall be available only to mathematics, science, and engineering professionals who, while receiving the stipend, are enrolled in a program to receive certification or licensing to teach.

(2) SELECTION.—Individuals shall be selected to receive stipends under this section primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) DURATION.—Individuals may receive a maximum of 1 year of stipend support.

(4) SERVICE OBLIGATION.—If an individual receives a stipend under this section, that individual shall be required to complete, within 6 years after graduation from the program for which the stipend was awarded, 2 years of service as a mathematics or science teacher for each year a stipend was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(e) CONDITIONS OF SUPPORT.—As a condition of acceptance of a scholarship or stipend under this section, a recipient shall enter into an agreement with the institution of higher education—

(1) accepting the terms of the scholarship or stipend pursuant to subsections (c) and (g), or subsection (d);

(2) agreeing to provide the awarding institution of higher education with annual certification of employment and up-to-date contact information and to participate in surveys provided by the institution of higher education as part of an ongoing assessment program; and

(3) establishing that any scholarship recipient shall be liable to the United States for any amount that is required to be repaid in accordance with the provisions of subsection (g).

(f) COLLECTION FOR NONCOMPLIANCE.—

(1) MONITORING COMPLIANCE.—An institution of higher education (or consortium thereof) receiving a grant under this section shall, as a condition of participating in the program, enter into an agreement with the Director to monitor the compliance of scholarship and stipend recipients with their respective service requirements.

(2) COLLECTION OF REPAYMENT.—(A) In the event that a scholarship recipient is required to repay the scholarship under subsection (g), the institution shall be responsible for collecting the repayment amounts.

(B) Except as provided in subparagraph (C), any such repayment shall be returned to the Treasury of the United States.

(C) A grantee may retain a percentage of any repayment it collects to defray administrative costs associated with the collection. The Director shall establish a single, fixed percentage that will apply to all grantees.

(g) FAILURE TO COMPLETE SERVICE OBLIGATION.—

(1) GENERAL RULE.—If an individual who has received a scholarship under this section—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which the individual is enrolled, as determined by the Director;

(B) is dismissed from such educational institution for disciplinary reasons;

(C) withdraws from the baccalaureate degree program for which the award was made before the completion of such program;

(D) declares that the individual does not intend to fulfill the service obligation under this section; or

(E) fails to fulfill the service obligation of the individual under this section,

such individual shall be liable to the United States as provided in paragraph (2).

(2) AMOUNT OF REPAYMENT.—(A) If a circumstance described in paragraph (1) occurs before the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to—

(i) the total amount of awards received by such individual under this section; plus

(ii) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 2.

(B) If a circumstance described in paragraph (1)(D) or (E) occurs after the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to the total amount of awards received by such individual under this section minus ½ of the amount of the award received per year for each full year of service completed, plus the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(3) EXCEPTIONS.—The Director may provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(h) DATA COLLECTION.—Institutions or consortia receiving grants under this section shall supply to the Director any relevant statistical and demographic data on scholarship recipients and stipend recipients the Director may request, including information on employment required by subsection (e).

(i) DEFINITIONS.—In this section—

(1) the term ''cost of attendance'' has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll);

(2) the term ''mathematics and science teacher'' means a mathematics, science, or technology teacher at the elementary school or secondary school level;

(3) the term ''mathematics, science, or engineering professional'' means a person who holds a baccalaureate, masters, or doctoral degree in science, mathematics, or engineering and is working in that field or a related area;

(4) the term ''scholarship'' means an award under subsection (c); and

(5) the term ''stipend'' means an award under subsection (d).

SEC. 11. ESTABLISHMENT OF CENTERS FOR RESEARCH ON MATHEMATICS AND SCIENCE LEARNING AND EDUCATION IMPROVEMENT.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—(A) The Director shall award grants to institutions of higher education (or consortia thereof) to establish multidisciplinary Centers for Research on Learning and Education Improvement.

(B) Grants shall be awarded under this paragraph on a competitive, merit-reviewed basis.

(2) PURPOSE.—The purpose of the Centers shall be to conduct and evaluate research in cognitive science, education, and related fields and to develop ways in which the results of such research can be applied in elementary school and secondary school classrooms to improve the teaching of mathematics and science.

(3) FOCUS.—(A) Each Center shall be focused on a different challenge faced by elementary school or secondary school teachers of mathematics and science. In determining the research focus of the Centers, the Director shall consult with the National Academy of Sciences and the Secretary of Education and take into account the extent to which other Federal programs support research on similar questions.

(B) The proposal solicitation issued by the Director shall state the focus of each Center and applicants shall apply for designation as a specific Center.

(C) At least one Center shall focus on developing ways in which the results of research described in paragraph (2) can be applied, duplicated, and scaled up for use in low-performing elementary schools and secondary schools to improve the teaching and student achievement levels in mathematics and science.

(D) To the extent practicable and relevant to its focus, every Center shall include, as part of its research, work designed to quantitatively assess and improve the ways that information technology is used in the teaching of mathematics and science.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education (or a consortium of such institutions) seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the initial research projects that will be undertaken by the Center and the process by which new projects will be identified;

(B) how the Center will work with other research institutions and schools to broaden the national research agenda on learning and teaching;

(C) how the Center will promote active collaboration among physical, biological, and social science researchers;

(D) how the Center will promote active participation by elementary and secondary mathematics and science teachers and administrators; and

(E) how the results of the Center's research can be incorporated into educational practices, and how the Center will assess the success of those practices.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the research program, including the activities described in paragraph (1)(E);

(B) the experience of the applicant in conducting research on the science of teaching and learning and the capacity of the applicant to foster new multidisciplinary collaborations;

(C) the capacity of the applicant to attract elementary school and secondary school teachers from a diverse array of schools, and with diverse professional experiences, for participation in Center activities; and

(D) the capacity of the applicant to attract and provide adequate support for graduate students to pursue research at the intersection of educational practice and basic research on human cognition and learning.

(3) AWARDS.—The Director shall ensure, to the extent practicable, that the Centers funded under this section conduct research and develop educational practices designed to improve the educational performance of a broad range of students, including individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(c) ANNUAL CONFERENCE.—The Director shall convene an annual meeting of the Centers to foster collaboration among the Centers and to further disseminate the results of the Centers' activities.

(d) COORDINATION.—The Director shall coordinate with the Secretary of Education in—

(1) disseminating the results of the research conducted pursuant to grants awarded under this section to elementary school teachers and secondary school teachers; and

(2) providing programming, guidance, and support to ensure that such teachers—

(A) understand the implications of the research disseminated under paragraph (1) for classroom practice; and

(B) can use the research to improve such teachers' performance in the classroom.

SEC. 12. DUPLICATION OF PROGRAMS.

(a) IN GENERAL.—The Director shall review the education programs of the Foundation that are in operation as of the date of enactment of this Act to determine whether any of such programs duplicate the programs authorized under this Act.

(b) IMPLEMENTATION.—As programs authorized under this Act are implemented, the Director shall—

(1) terminate any duplicative program being carried out by the Foundation or merge the duplicative program into a program authorized under this Act; and

(2) not establish any new program that duplicates a program that has been implemented pursuant to this Act.

(c) REPORT.—

(1) REVIEW.—The Director of the Office of Science and Technology Policy shall review the education programs of the Foundation to ensure compliance with the provisions of this section.

(2) SUBMISSION.—Not later than 1 year after the date of enactment of this Act, and annually thereafter as part of the annual Office of Science and Technology Policy's budget submission to Congress, the Director of the Office of Science and Technology Policy shall complete a report on the review carried out under this subsection and shall submit the report to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate.

SEC. 13. MAJOR RESEARCH INSTRUMENTATION.

(a) REVIEW AND ASSESSMENT.—The Director shall conduct a review and assessment of the major research instrumentation program and, not later than 1 year after the date of enactment of this Act, submit a report of findings and recommendations to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate. The report shall include—

(1) estimates of the needs, by major field of science and engineering and by types of institutions of higher education, for the types of research instrumentation that are eligible for acquisition under the guidelines of the major research instrumentation program;

(2) a description of the distribution of awards and funding levels by year, by major field of science and engineering, and by type of institution of higher education for the program, since the inception of the major research instrumentation program; and

(3) an analysis of the impact of the major research instrumentation program on the research instrumentation needs that were documented in the Foundation's 1994 survey of academic research instrumentation needs.

(b) NATIONAL ACADEMY OF SCIENCES ASSESSMENT ON INTERDISCIPLINARY RESEARCH AND ADVANCED INSTRUMENTATION CENTERS.—

(1) ASSESSMENT.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to assess the need for an interagency program to establish and support fully equipped, state-of-the-art university-based centers for interdisciplinary research and advanced instrumentation development.

(2) TRANSMITTAL TO CONGRESS.—Not later than 15 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the assessment conducted by the National Academy of Sciences together with the Foundation's reaction to the assessment authorized under paragraph (1).

SEC. 14. MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION PLAN.

(a) PRIORITIZATION OF PROPOSED MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION.—

(1) DEVELOPMENT OF PRIORITIES.—(A) The Director shall—

(i) develop a list indicating by number the relative priority for funding under the major research equipment and facilities construction account that the Director assigns to each project the Board has approved for inclusion in a future budget request; and

(ii) submit the list described in clause (i) to the Board for approval.

(B) The Director shall update the list prepared under subparagraph (A) each time the Board approves a new project that would receive funding under the major research equipment and facilities construction account, as necessary to prepare reports under paragraph (2), and, from time to time, submit any updated list to the Board for approval.

(2) ANNUAL REPORT.—Not later than 90 days after the date of enactment of this Act, and not later than each June 15 thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing—

(A) the most recent Board-approved priority list developed under paragraph (1)(A);

(B) a description of the criteria used to develop such list; and

(C) a description of the major factors for each project that determined the ranking of such project on the list, based on the application of the criteria described pursuant to subparagraph (B).

(3) CRITERIA.—The criteria described pursuant to paragraph (2)(B) shall include, at a minimum—

(A) scientific merit;

(B) broad societal need and probable impact;

(C) consideration of the results of formal prioritization efforts by the scientific community;

(D) readiness of plans for construction and operation;

(E) the applicant's management and administrative capacity of large research facilities;

(F) international and interagency commitments; and

(G) the order in which projects were approved by the Board for inclusion in a future budget request.

(b) FACILITIES PLAN.—

(1) IN GENERAL.—Section 201(a)(1) of the National Science Foundation Authorization

Act of 1998 (42 U.S.C. 1862*l*(a)(1)) is amended to read as follows:

''(1) IN GENERAL.—The Director shall prepare, and include as part of the Foundation's annual budget request to Congress, a plan for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.''.

(2) CONTENTS OF PLAN.—Section 201(a)(2) of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862*l*(a)(2)) is amended—

(A) in subparagraph (A), by striking ''(1);'' and inserting ''(1), including costs for instrumentation development;'';

(B) in subparagraph (B), by striking ''and'' after the semicolon;

(C) in subparagraph (C), by striking ''construction.'' and inserting ''construction;''; and

(D) by adding at the end the following:

''(D) for each project funded under the major research equipment and facilities construction account—

''(i) estimates of the total project cost (from planning to commissioning); and

''(ii) the source of funds, including Federal funding identified by appropriations category and non-Federal funding;

''(E) estimates of the full life-cycle cost of each national research facility;

''(F) information on any plans to retire national research facilities; and

''(G) estimates of funding levels for grants supporting research that will be conducted using each national research facility.''.

(3) DEFINITION.—Section 2 of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862k note) is amended—

(A) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

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

''(3) FULL LIFE-CYCLE COST.—The term 'full life-cycle cost' means all costs of planning, development, procurement, construction, operations and support, and shut-down costs, without regard to funding source and without regard to what entity manages the project or facility involved.''.

(c) PROJECT MANAGEMENT.—No national research facility project funded under the major research equipment and facilities construction account shall be managed by an individual whose appointment to the Foundation is temporary.

(d) BOARD APPROVAL OF MAJOR RESEARCH EQUIPMENT AND FACILITIES PROJECTS.—

(1) IN GENERAL.—The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) REPORT.—Not later than September 15 of each fiscal year, the Board shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Science of the House of Representatives on the conditions of any delegation of authority under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) that relates to funds appropriated for any project in the major research equipment and facilities construction account.

(e) NATIONAL ACADEMY OF SCIENCES STUDY ON MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION.—

(1) STUDY.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to perform a study on setting priorities for a diverse array of disciplinary and interdisciplinary Foundation-sponsored large research facility projects.

(2) TRANSMITTAL TO CONGRESS.—Not later than 15 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, the study conducted by the National Academy of Sciences together with the Foundation's reaction to the study authorized under paragraph (1).

SEC. 15. ADMINISTRATIVE AMENDMENTS.

(a) BOARD MEETINGS.—

(1) IN GENERAL.—Section 4(e) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(e)) is amended by striking the second and third sentences and inserting ''The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, which in no case shall be less than one-half plus one of the confirmed members of the Board.''.

(2) OPEN MEETINGS.—The Board and all of its committees, subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to section 552b of title 5, United States Code.

(3) COMPLIANCE AUDIT.—The Inspector General of the Foundation shall conduct an annual audit of the compliance by the Board with the requirements described in paragraph (2). The audit shall examine the proposed and actual content of closed meetings and determine whether the closure of the meetings was consistent with section 552b of title 5, United States Code.

(4) REPORT.—Not later than February 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the audit required under paragraph (3) along with recommendations for corrective actions that need to be taken to achieve fuller compliance with the requirements described in paragraph (2), and recommendations on how to ensure public access to the Board's deliberations.

(b) CONFIDENTIALITY OF CERTAIN INFORMATION.—Section 14(i) of the National Science Foundation Act of 1950 (42 U.S.C. 1873(i)) is amended to read as follows:

''(i)(1)(A) Information supplied to the Foundation or a contractor of the Foundation in survey forms, questionnaires, or similar instruments for purposes of section 3(a)(5) or (6) by an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution when the institution has received a pledge of confidentiality from the Foundation, shall not be disclosed to the public unless the information has been transformed into statistical or abstract formats that do not allow for the identification of the supplier.

''(B) Information that has not been transformed into formats described in subparagraph (A) may be used only for statistical or research purposes.

''(C) The identities of individuals, organizations, and institutions supplying information described in subparagraph (A) may not be disclosed to the public.

''(2) In support of functions authorized by section 3(a)(5) or (6), the Foundation may designate, at its discretion, authorized persons, including employees of Federal, State, or local agencies or instrumentalities (including local educational agencies) and employees of private organizations, to have access, for statistical or research purposes only, to information collected pursuant to section 3(a)(5) or (6) that allows for the identification of the supplier. No such person may—

''(A) publish information collected pursuant to section 3(a)(5) or (6) in such a manner that either an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution that has received a pledge of confidentiality from the Foundation can be specifically identified;

''(B) permit anyone other than individuals authorized by the Foundation to examine data that allows for such identification relating to an individual, an industrial or commercial organization, or an academic, educational, or other nonprofit institution that has received a pledge of confidentiality from the Foundation; or

''(C) knowingly and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.

''(3) Violation of this subsection is punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or both.''.

(c) APPOINTMENT.—Section 4(g) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(g)) is amended by striking the second sentence and inserting ''Such staff shall be appointed by the Chairman and assigned at the direction of the Board.''.

(d) SCHOLARSHIP ELIGIBILITY.—The Director shall not exclude part-time students from eligibility for scholarships under the Computer Science, Engineering, and Mathematics Scholarship program.

SEC. 16. SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT AMENDMENTS.

Section 32 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885) is amended—

(1) in subsection (a), by striking ''backgrounds.'' and inserting ''backgrounds, including persons with disabilities.''; and

(2) in subsection (b)—

(A) by inserting '', including persons with disabilities,'' after ''backgrounds''; and

(B) by striking ''and minorities'' each place the term appears and inserting '', minorities, and persons with disabilities''.

SEC. 17. UNDERGRADUATE EDUCATION REFORM.

(a) IN GENERAL.—The Director shall award grants, on a competitive, merit-reviewed basis, to institutions of higher education to expand previously implemented reforms of undergraduate science, mathematics, engineering, or technology education that have been demonstrated to have been successful in increasing the number and quality of students studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) USES OF FUNDS.—Activities supported by grants under this section may include—

(1) expansion of successful reform efforts beyond a single course or group of courses to achieve reform within an entire academic unit;

(2) expansion of successful reform efforts beyond a single academic unit to other science, mathematics, engineering, or technology academic units within an institution;

(3) creation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and research in science, mathematics, engineering, and technology;

(4) expansion of undergraduate research opportunities beyond a particular laboratory, course, or academic unit to engage multiple academic units in providing multidisciplinary research opportunities for undergraduate students;

(5) expansion of innovative tutoring or mentoring programs proven to enhance student recruitment or persistence to degree completion in science, mathematics, engineering, or technology;

(6) improvement of undergraduate science, mathematics, engineering, and technology education for nonmajors, including education majors; and

(7) implementation of technology-driven reform efforts, including the installation of technology to facilitate such reform, that directly impact undergraduate science, mathematics, engineering, or technology instruction or research experiences.

(c) SELECTION PROCESS.—

(1) APPLICATIONS.—An institution of higher education seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the proposed reform effort;

(B) a description of the previously implemented reform effort that will serve as the basis for the proposed reform effort and evidence of success of that previous effort, including data on student recruitment, persistence to degree completion, and academic achievement;

(C) evidence of active participation in the proposed project by individuals who were central to the success of the previously implemented reform effort; and

(D) evidence of institutional support for, and commitment to, the proposed reform effort, including a description of existing or planned institutional policies and practices regarding faculty hiring, promotion, tenure, and teaching assignment that reward faculty contributions to undergraduate education equal to, or greater than, scholarly scientific research.

(2) REVIEW OF APPLICATIONS.—In evaluating applications submitted under paragraph (1), the Director shall consider at a minimum—

(A) the evidence of past success in implementing undergraduate education reform and the likelihood of success in undertaking the proposed expanded effort;

(B) the extent to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit;

(C) the degree to which the proposed reform will contribute to change in institutional culture and policy such that a greater value is placed on faculty engagement in undergraduate education, as evidenced through promotion and tenure policies; and

(D) the likelihood that the institution will sustain or expand the reform beyond the period of the grant.

(3) GRANT DISTRIBUTION.—The Director shall ensure, to the extent practicable, that grants awarded under this section are made to a variety of types of institutions of higher education.

SEC. 18. REPORTS.

(a) GRANT SIZE AND DURATION.—Not later than 6 months after the date of enactment of this Act, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report describing the impact that increasing the average grant size and duration would have on minority-serving institutions and on institutions located in States where the Foundation's Experimental Program to Stimulate Competitive Research (established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g)) is carrying out activities.

(b) FACULTY.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to assess gender differences in the careers of science and engineering faculty. This study shall build on the Academy's work on gender differences in the carriers of doctoral scientists and engineers and examine issues such as faculty hiring, promotion, tenure, and allocation of resources including laboratory space. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(c) GRANT FUNDING.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an agreement with an appropriate party to assess gender differences in the distribution of external Federal research and development funding. This study shall examine differences in amounts requested and awarded, by gender, in major Federal external grant programs. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(d) STUDY OF BROADBAND NETWORK ACCESS FOR SCHOOLS AND LIBRARIES.—

(1) REPORT TO CONGRESS.—The Director shall conduct a study of the issues described in paragraph (3), and not later than 1 year after the date of the enactment of this Act, transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report including recommendations to address those issues. Such report shall be updated annually for 4 additional years.

(2) CONSULTATION.—In preparing the reports under paragraph (1), the Director shall consult with Federal agencies and educational entities as the Director considers appropriate.

(3) ISSUES TO BE ADDRESSED.—The reports shall—

(A) identify the availability of high-speed, large bandwidth capacity access to different demographic groups served by elementary schools, secondary schools, and libraries in the United States;

(B) identify how the provision of high-speed, large bandwidth capacity access to the Internet to such schools and libraries can be effectively utilized within each school and library;

(C) consider the effect that specific or regional circumstances may have on the ability of such institutions to acquire high-speed, large bandwidth capacity access to achieve universal connectivity as an effective tool in the education process; and

(D) include options and recommendations to address the challenges and issues identified in the reports.

(e) MINORITY-SERVING INSTITUTION FUNDING.—

(1) ANNUAL REPORTING REQUIRED.—The Director shall submit an annual report, along with the President's annual budget request, to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the amount of funding awarded by the Foundation to minority-serving institutions, including funding received as members of consortia. The report shall include information on such funding to minority-serving institutions—

(A) expressed as a percentage of funding to all institutions of higher education for each appropriations account within the Foundation's budget; and

(B) for the preceding 10 years.

(2) REPORT ON WAYS TO IMPROVE FUNDING.—Within one year after the date of enactment of this Act, the Director shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report on recommendations on how the Foundation can improve funding to minority-serving institutions.

SEC. 19. EVALUATIONS.

(a) EDUCATION.—

(1) IN GENERAL.—The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall evaluate the effectiveness of all undergraduate science, mathematics, engineering, or technology education activities supported by the Foundation in increasing the number and quality of students, including individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b) studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, and technology. In conducting the evaluation, the Director shall consider information on—

(A) the number of students enrolled in undergraduate science, mathematics, engineering, and technology programs;

(B) student academic achievement, including quantifiable measurements of students' mastery of content and skills;

(C) persistence to degree completion, including students who transfer from science, mathematics, engineering, and technology programs to programs in other academic disciplines; and

(D) placement during the first year after degree completion in post-graduate education or career pathways.

(2) ASSESSMENT BENCHMARKS AND TOOLS.—The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall establish a common set of assessment benchmarks and tools, and shall enable every Foundation-sponsored project to incorporate the use of these benchmarks and tools in their project-based assessment activities.

(3) REPORTS TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, and once every 3 years thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of evaluations under paragraph (1).

(b) AWARDS.—Notwithstanding any other provision of this Act, the Director shall annually evaluate a random sample of grants, contracts, or other awards made pursuant to this Act.

(c) DISSEMINATION.—The Director shall—

(1) provide for the dissemination of the results of the evaluations conducted pursuant to this section to the public; and

(2) provide notice to the public that such evaluations are available.

SEC. 20. REPORT BY COMMITTEE ON EQUAL OPPORTUNITIES IN SCIENCE AND ENGINEERING.

As part of the first report required by section 36(e) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885c(e)) transmitted to Congress after the date of enactment of this Act, the Committee on Equal Opportunities in Science and Engineering shall include—

(1) a summary of its findings over the previous 10 years;

(2) a description of past and present policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in science, mathematics, and engineering fields, including activities in support of minority-serving institutions; and

(3) an assessment of the trends in participation in Foundation activities, and an assessment of the success of Foundation policies and activities, along with proposals for new strategies or the broadening of existing successful strategies toward facilitating the goals of that Act.

SEC. 21. ADVANCED TECHNOLOGICAL EDUCATION PROGRAM.

(a) CORE SCIENCE AND MATHEMATICS COURSES.—Section 3(a) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(a)) is amended—

(1) by inserting '', and to improve the quality of their core education courses in science and mathematics'' after ''education in advanced-technology fields'';

(2) in paragraph (1) by inserting ''and in core science and mathematics courses'' after ''advanced-technology fields''; and

(3) in paragraph (2) by striking ''in advanced-technology fields'' and inserting ''who provide instruction in science, mathematics, and advanced-technology fields''.

(b) ARTICULATION PARTNERSHIPS.—Section 3(c)(1)(B) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(c)(1)(B)) is amended—

(1) by striking ''and'' at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting a semicolon; and

(3) by adding after clause (ii) the following new clauses:

''(iii) provide students with research experiences at bachelor's-degree-granting institutions participating in the partnership, including stipend support for students participating in summer programs; and

''(iv) provide faculty mentors for students participating in activities under clause (iii), including summer salary support for faculty mentors.''.

(c) NATIONAL SCIENCE FOUNDATION REPORT.—Within 6 months after the date of the enactment of this Act, the Director shall transmit a report to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on—

(1) efforts by the Foundation and awardees under the program carried out under section 3 of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i) to disseminate information about the results of projects;

(2) the effectiveness of national centers of scientific and technical education established under section 3(b) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(b)) in serving as national and regional clearinghouses of information and models for best practices in undergraduate science, mathematics, and technology education; and

(3) efforts to satisfy the requirement of section 3(f)(4) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(f)(4)).

SEC. 22. REPORT ON FOUNDATION BUDGETARY AND PROGRAMMATIC EXPANSION.

The Board shall prepare a report to address and examine the Foundation's budgetary and programmatic growth provided for by this Act. The report shall be submitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of the enactment of this Act and shall include—

(1) recommendations on how the increased funding should be utilized;

(2) an examination of the projected impact that the budgetary increases will have on the Nation's scientific and technological workforce;

(3) a description of new or expanded programs that will enable institutions of higher education to expand their participation in Foundation-funded activities;

(4) an estimate of the national scientific and technological research infrastructure needed to adequately support the Foundation's increased funding and additional programs; and

(5) a description of the impact the budgetary increases provided under this Act will have on the size and duration of grants awarded by the Foundation.

SEC. 23. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Foundation and the National Aeronautics and Space Administration shall jointly establish an Astronomy and Astrophysics Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) DUTIES.—The Advisory Committee shall—

(1) assess, and make recommendations regarding, the coordination of astronomy and astrophysics programs of the Foundation and the National Aeronautics and Space Administration;

(2) assess, and make recommendations regarding, the status of the activities of the Foundation and the National Aeronautics and Space Administration as they relate to the recommendations contained in the National Research Council's 2001 report entitled ''Astronomy and Astrophysics in the New Millennium'', and the recommendations contained in subsequent National Research Council reports of a similar nature; and

(3) not later than March 15 of each year, transmit a report to the Director, the Administrator of the National Aeronautics and Space Administration, and the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the Advisory Committee's findings and recommendations under paragraphs (1) and (2).

(c) MEMBERSHIP.—The Advisory Committee shall consist of 13 members, none of whom shall be a Federal employee, including—

(1) 5 members selected by the Director;

(2) 5 members selected by the Administrator of the National Aeronautics and Space Administration; and

(3) 3 members selected by the Director of the Office of Science and Technology Policy.

(d) SELECTION PROCESS.—Initial selections under subsection (c) shall be made within 3 months after the date of the enactment of this Act. Vacancies shall be filled in the same manner as provided in subsection (c).

(e) CHAIRPERSON.—The Advisory Committee shall select a chairperson from among its members.

(f) COORDINATION.—The Advisory Committee shall coordinate with the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities.

(g) COMPENSATION.—The members of the Advisory Committee shall serve without compensation, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) MEETINGS.—The Advisory Committee shall convene, in person or by electronic means, at least 4 times a year.

(i) QUORUM.—A majority of the members serving on the Advisory Committee shall constitute a quorum for purposes of conducting the business of the Advisory Committee.

(j) DURATION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

SEC. 24. MINORITY-SERVING INSTITUTIONS UNDERGRADUATE PROGRAM.

(a) IN GENERAL.—The Director is authorized to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions, Alaska Native-serving institutions, Native Hawaiian-serving institutions, and other institutions of higher education serving a substantial number of minority students to enhance the quality of undergraduate science, mathematics, and engineering education at such institutions and to increase the retention and graduation rates of students pursuing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) PROGRAM COMPONENTS.—Grants awarded under this section shall support—

(1) activities to improve courses and curriculum in science, mathematics, and engineering;

(2) faculty development;

(3) stipends for undergraduate students participating in research; and

(4) other activities consistent with subsection (a), as determined by the Director.

(c) PROGRAM COORDINATION.—This program shall be coordinated with and in addition to the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

(d) INSTRUMENTATION.—Funding for instrumentation is an allowed use of grants awarded under this section and under the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

SEC. 25. STUDY ON RESEARCH AND DEVELOPMENT FUNDING DATA DISCREPANCIES.

(a) STUDY.—The Director, in consultation with the Director of the Office of Management and Budget and the heads of other Federal agencies, shall enter into agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding.

(b) CONTENTS.—The study shall—

(1) examine the relevance and accuracy of reporting classifications and definitions used in the reports described in subsection (a);

(2) examine whether the classifications and definitions are used consistently across Federal agencies for data gathering;

(3) examine whether and how Federal agencies use reports described in subsection (a), and describe any other sources of similar data used by those agencies;

(4) recommend alternatives for modifications to the current reporting process and system that would—

(A) accommodate emerging fields of science and changing practices in the conduct of research and development;

(B) minimize, to the extent possible, the burden imposed on the reporters of these data;

(C) increase the consistency of application of the system across the Federal agencies including the Office of Management and Budget and the Foundation;

(D) encourage the use of new technologies to increase accuracy, timeliness, and consistency of the reported data between the agencies and the research performers; and

(E) overcome systemic shortfalls; and

(5) recommend an implementation timeline for the modifications recommended under paragraph (4), and recommend specific responsibilities for the program and budget offices in the agencies, taking into consideration required changes to the current computer systems and processes used by the agencies.

(c) SUBMISSION.—The Director shall submit a report on the results of the study to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act.

(d) IMPLEMENTATION.—Within 6 months after the completion of the study required by subsection (a), the Director of the Office of Science and Technology Policy shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a plan for implementation of the recommendations of the study.

SEC. 26. PLANNING GRANTS.

The Director is authorized to accept planning proposals from applicants who are within .075 percentage points of the current eligibility level for the Experimental Program to Stimulate Competitive Research. Such proposals shall be reviewed by the Foundation to determine their merit for support under the Experimental Program to Stimulate Competitive Research or any other appropriate program.

SA 4959. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 4664, An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; as follows:

Amend the title so as to read: ''An Act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation and for other purposes.''.

SA 4960. Mrs. CLINTON (for herself, Mr. FITZGERALD, Ms. CANTWELL, and Mr. SPECTER) proposed an amendment to the bill H.R. 3529, to provide tax incentives for economic recovery and assistance to displaced workers; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. Section 114 of Public Law 107–229 is amended by striking ''the date specified in section 107(c) of this joint resolution'' and inserting ''March 31, 2003''.

Section. 2. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) In general.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

''SEC. 208. APPLICABILITY.

''(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending before April 1, 2003.

''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of March 29, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

''(2) NO AUGMENTATION AFTER MARCH 29, 2003.—If the account of an individual is exhausted after March 29, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

''(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 28, 2003.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21).

SA 4961. Mr. REID (for Mr. BAUCUS) proposed an amendment to the bill H.R. 5557, to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes; as follows:

On page 10, strike line 10, and insert the following:

SEC. 8. CLARIFICATION RELATING TO EXCEPTION FROM ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS, ETC. ON ACCOUNT OF ATTENDANCE AT MILITARY ACADEMY.

(a) IN GENERAL.—Subparagraph (B) of section 530(d)(4) of the Internal Revenue Code of 1986 (relating to exceptions from additional tax for distributions not used for educational purposes) is amended by striking ''or'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) made on account of the attendance of the account holder at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect for taxable years beginning after December 31, 2002.

SEC. 9. SUSPENSION OF TAX-EXEMPT STATUS OF DESIGNATED TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) SUSPENSION OF TAX-EXEMPT STATUS OF DESIGNATED TERRORIST ORGANIZATIONS.—

''(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization shall be suspended during any period in which the organization is a designated terrorist organization.

''(2) DESIGNATED TERRORIST ORGANIZATION.—For purposes of this subsection, the term 'designated terrorist organization' means an organization which—

''(A) is designated as a terrorist organization in or pursuant to an Executive order, or otherwise designated, under the authority of—

''(i) section 212(a)(3) or 219 of the Immigration and Nationality Act,

''(ii) the International Emergency Economic Powers Act, or

''(iii) section 5 of the United Nations Participation Act, or

''(B) is designated in or pursuant to an Executive order as supporting terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

''(3) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization during the period such organization is a designated terrorist organization.

''(4) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation described in paragraph (2), or a denial of a deduction under paragraph (3) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

''(5) CREDIT OR REFUND IN CASE OF ERRONEOUS DESIGNATION.—

''(A) IN GENERAL.—If a designation of an organization pursuant to 1 or more of the provisions of law described in paragraph (2) is determined to be erroneous pursuant to such law and the erroneous designation results in an overpayment of income tax for any taxable year with respect to such organization, credit or refund (with interest) with respect to such overpayment shall be made.

''(B) WAIVER OF LIMITATIONS.—If credit or refund of any overpayment of tax described in subparagraph (A) is prevented at any time before the close of the 1-year period beginning on the date of the determination of such credit or refund by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''.

(b) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under section 501(p) of the Internal Revenue Code of 1986 (as added by subsection (a)), the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.

(a) DEDUCTION ALLOWED.—Section 162 of the Internal Revenue Code of 1986 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

''(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such services.''.

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

''(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, not in excess of $1,500, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

SEC. 11. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7527. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

''Category	Average Fee
Employee plan ruling and opinion ..	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination.	$275
Chief counsel ruling	$200.

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2012.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 7527. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 12. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) of the Internal Revenue Code of 1986 (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) of such Code (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 of the Internal Revenue Code of 1986 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 13. PROTECTION OF SOCIAL SECURITY.

AUTHORITY FOR COMMITTEES TO MEET

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, November 14, 2002 at 1 p.m. to hold a Members' Briefing.

Agenda

Briefers:

The Honorable Christina Rocca, Assistant Secretary for South Asian Affairs, Department of State.

The Hon. John S. Wolf, Assistant Secretary for Nonproliferation, Department of State.

Representative from the Central Intelligence Agency to be announced.

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, November 14, 2002 at 2:30 to hold a nomination hearing.

Agenda

Nominee:

Mrs. Mary Carlin Yates, of Oregon, to be Ambassador to the Republic of Ghana.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, November 14, 2002 at 10:00 a.m. in Dirksen Room 226.

Tentative Agenda

I. Nomination:

Dennis Shedd to be a U.S. Circuit Court Judge for the Fourth Circuit.

Michael McConnell to be a U.S. Circuit Court Judge for the Tenth Circuit.

To be a U.S. Attorney: Kevin J. O'Connor for the District of Connecticut.

II. Bills:

S. 2480, Law Enforcement Officers Safety Act of 2002 [Leahy/Hatch/Thurmond/Grassley McConnell/Feinstein/DeWine/Kyl/Sessions/Brownback/Edwards/Cantwell].

S. 1655, Captive Exotic Animal Protection Act of 2001 [Biden/Kennedy/Kohl/Feinstein/Feingold/Schumer/Durbin/Cantwell].

S. 2934, To Amend the charter of the American Legion [Johnson].

H.R. 3988, To Amend the charter of the American Legion [Gekas].

S. 2541, Identity Theft Penalty Enhancement Act of 2002 [Feinstein/Kyl/Sessions/Grassley].

H.R. 3180, To consent to certain amendments to the New Hampshire-Vermont Interstate School Compact [Bass].

S. 2520, Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002 [Hatch/Leahy/Sessions/Brownback/Edwards/DeWine/Grassley.

S. 3114, Hometown Heroes Survivors Benefits Act of 2002 [Leahy/Collins].

S. Con. Res. 94, A Sense of Congress that a National Importance of Health Coverage Month should be established [Wyden/Hatch/Grassley].

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

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM AND GOVERNMENT INFORMATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information be authorized to meet to conduct a hearing on ''America Still Unprepared—America Still in Danger'' on Thursday, November 14, 2002, at 2 p.m. in room 226 of the Dirksen Senate Office Building.

Witness List

Senator Warren B. Rudman, Co-Chair, Independent Terrorism Task Force Washington, DC.

Stephen E. Flynn, Member, Independent Terrorism Task Force, Senior Fellow, National Security Studies, Council on Foreign Relations, New York, NY.

Philip A. Odeen, Member, Independent Terrorism Task Force, Chairman, TRW Inc., Arlington, VA.

Col. Randy Larsen, Ret., Director, ANSER Institute for Homeland Security, Arlington, VA.

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

PRIVILEGES OF THE FLOOR

Mr. McCAIN. Madam President, I ask unanimous consent that Joe Raymond, a Coast Guard fellow on the Senate Commerce Committee, be granted the privilege of the floor during consideration of the conference report to accompany S. 1214, the Port and Maritime Security Act.

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

Mrs. CLINTON. Madam President, I ask unanimous consent that a fellow in my office, Dr. Leo Tressande, be given floor privileges.

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

SMALL WEBCASTER AMENDMENTS ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to the consideration of H.R. 5469.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5469) to amend title 17, United States Code, with respect to the statutory license for webcasting.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Madam President, I am pleased that the Senate is taking the important step of passing H.R. 5469, the ''Small Webcaster Amendments Act of 2002.'' This legislation reflects hard choices made in hard negotiations under hard circumstances. I commend House Judiciary Chairman Sensenbrenner and Representative Conyers for bringing this legislation to a successful conclusion and passage in the House of Representatives in a timely fashion to make a difference in the prospects of many small webcasters.

The Internet is an American invention that has become the emblem of the Information Age and an engine for bringing American content into homes and businesses around the globe. I have long been an enthusiast and champion of the Internet and of the creative spirits who are the source of the music, films, books, news, and entertainment content that enrich our lives, energize our economy and influence our culture. As a citizen, I am impressed by the innovation of new online entrepreneurs, and as a Senator, I want to do everything possible to promote the full realization of the Internet's potential. A flourishing Internet with clear, fair and enforceable rules governing how content may be used will benefit *all* of us, including the entrepreneurs who want us to become new customers and the artists who create the content we value.

The advent of webcasting—streaming music online rather than broadcasting it over the air as traditional radio stations do—has marked one of the more exciting and quickly growing of the new industries that have sprung up on the Web. Many of the new webcasters, unconstrained by the technological limitations of traditional radio transmission, can and do serve listeners across the country and around the world. They provide music in specialized niches not available over the air. They feature new and fringe artists who do not enjoy the few spots in the Top 40. And they can bring music of all types to listeners who, for whatever reason, are not being catered to by traditional broadcasters.

We have been mindful on this Committee that as the Internet is a boon to consumers, we must not neglect the artists who create and the businesses which produce the digital works that make the online world so fascinating and worth visiting. With each legislative effort to provide clear, fair and enforceable intellectual property rules for the Internet, a fundamental principle to which we have adhered is that artists and producers of digital works merit compensation for the value derived from the use of their work.

In 1995, we enacted the Digital Performance Right in Sound Recordings Act, which created an intellectual property right in digital sound recordings, giving copyright owners the right to receive royalties when their copyrighted sound recordings were digitally transmitted by others. Therefore when their copyrighted sound recordings are digitally transmitted, royalties are due. In the 1998 Digital Millennium Copyright Act, DMCA, we made clear that this law applied to webcasters and that they would have to pay these royalties. At the same time, we created a compulsory license so that webcasters could be sure of the use of these digital works. We directed that the appropriate royalty rate could be negotiated by the parties or determined by a Copyright Arbitration Royalty Panel—or CARP—at the Library of Congress.

Despite some privately negotiated agreements, no industry-wide agreement on royalty rates was reached and therefore a CARP proceeding was instituted that concluded on February 20, 2002. The CARP decision set the royalty rate to be paid by commercial webcasters, no matter their size, at .14 cents per song per listener, with royalty payments retroactive to October 1998, when the DMCA was passed.

At a Judiciary Committee hearing I convened on this issue on May 15, 2002, nobody seemed happy with the outcome of the arbitration and, in fact, all the parties appealed. The recording industry and artist representatives feel that the royalty rate—which was based on the number of performances and listeners, rather than on a percentage-of-revenue model—was too low to adequately compensate the creative efforts of the artists and the financial investments of the labels. Many webcasters declared that the per-performance approach, and the rate attached to it, would bankrupt small operations and drain the large ones. I said then that such an outcome would be highly unfortunate not only for the webcasters but also for the artists, the labels and the consumers, who all would lose important legitimate channels to connect music and music lovers online.

On appeal, the Librarian in June, 2002, cut the rate in half, to .07 cents per song per listener for commercial webcasters. Nevertheless, many webcasters, who had been operating during the four-year period between 1998 and 2002, were taken by surprise at the amount of their royalty liability. The retroactive fees were to be paid in full by October 20th and would have resulted in many small webcasters in particular, going out of business.

In order to avoid many webcasting streams going silent on October 20, when retroactive royalty payments are due, I urged all sides to avoid more expense and time and reach a negotiated

outcome more satisfactory to all participants than the Librarian's decision. I also monitored closely the progress of negotiations between the RIAA and webcasters. On July 31, I sent a letter with Senator HATCH to Sound Exchange, which was created by the RIAA to act as the agent for copyright holders in negotiating the voluntary licenses with webcasters under the DMCA and to serve as the receiving agent for royalties under the CARP process. The letter posed questions on the status of the reported on-going negotiations between RIAA/Sound Exchange and the smaller webcasters, the terms being proposed and considered, and how likely the outcome of those negotiations would be to produce viable deals for smaller webcasters, while still satisfying the copyright community.

Reports on the progress of these negotiations were disappointing, which makes this legislation all the more important. As a general principle, marketplace negotiations are the appropriate mechanism for determining the allocation of compensation among interested parties under copyright law. Yet, we have made exceptions to this general principle, as reflected in this legislation and the very compulsory license provisions it amends.

The legislation reflects a compromise for all the parties directly affected by this legislation—small webcasters that could not survive with the rates set by the Librarian and copyright owners and performers who under this bill will give certain eligible webcasters an alternative royalty payment scheme. This legislation does not represent a complete victory for any of these stakeholders. Artists and music labels may believe that they are forgoing significant royalties under this legislation and I appreciate that they are those in the webcasting business, who are either not covered or not sufficiently helped by the bill, who believe that this legislation should do more. As one analyst at the Radio and Internet Newsletter stated, in the October 11, 2002 issue, ''Clearly, the 'Small Webcaster Amendments Act of 2002' (a/k/a H.R. 5469) is an imperfect bill that doesn't fix everything for everybody . . . Still, overall, does it do more good than harm for more people? My belief is that many are helped one way or the other and virtually no one is assured of being hurt. Thus, the answer, on the whole, would be yes.''

I know that most webcasters share my belief that artists and labels should be fairly compensated for use of their creative works. This legislation provides both compensation to the copyright owners and helps to support the webcasting industry by offering more variable payment options to small webcasters than the one-size-fits all per performance rate set out in the original CARP and Librarian decisions. The rates, terms and record-keeping provisions are applicable only to the parties that qualify for and elect to be governed by this alternative royalty structure and no broad principles should be extrapolated from the rates, terms and record-keeping provisions contained in the bill. The Copyright Office is presently engaged in a rule-making on record-keeping and this bill does not supplant that ongoing process.

This legislation does three things to help small webcasters pay royalties and stay in business. As one Vermont webcaster told me, ''Although the percentage of revenue is too high, at least we have the option. A percentage of revenue deal will enable [us] to stay in business moving forward, grow our audience, and compete.''

First, the Librarian royalty rate is based on a per performance formula, which has the unfortunate effect of requiring webcasters to pay high fees for their use of music, even before the audience of the webcaster has grown to a sufficient size to attract any appreciable advertising revenues. Without any percentage of revenue option (as provided by the legislation), the webcasting industry would be closed to all but those with the substantial resources necessary to subsidize the business until the advertising revenue caught up to the per performance royalty rate. The bill provides a percentage of revenue option for small businesses with less than $500,000 in gross revenue in 2003 and $1.25 million dollars in 2004. The bill also provides for minimum fees and a percentage of expenses floor on the royalties, to assure that copyright owners and artists receive some payment for performance of their music.

Second, for noncommercial webcasters, such as college webcasters, the bill corrects an anomaly in the Librarian's decision. Under that decision, nonprofit entities held FCC licenses were given a lower per performance rate than were commercial entities. However, the decision made no such provision for noncommercial entities that were not FCC licenses. The bill extends the lower rate to all nonprofit entities.

Finally, the bill reduces the retroactive burden on many of the small commercial webcasters by allowing them to make their payments based on a percentage of revenue or percentage of expense, but also allows both small commercial and noncommercial webcasters to pay these retroactive fees in three payments over the span of a year.

To accommodate the concerns of artists and the RIAA, the bill provides for the reporting of information about which songs were played by the small commercial webcasters. This information will be used to account properly for the distribution of the royalties to the copyright holders and the artists.

A number of concerns have been raised that the rate, terms and record-keeping provisions in the bill do not constitute evidence of any rates, rate structure fees, definitions, conditions or terms that would have been negotiated in the marketplace between a willing buyer and willing seller. This concern stems from the DMCA's statutory license fee standard directing the CARP to establish rates and terms ''that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller,'' rather than a determination of ''reasonable copyright royalty rates'' according to a set of balancing factors. This new webcasting standard may be having the unfortunate and unintended result that webcasters and copyright owners are concerned that the rates and terms of any voluntary licensing agreements will be applied industry-wide. The new webcasting standard appears to be making all sides cautious and reluctant to enter into, rather than facilitating, voluntary licensing agreements.

Passage of this legislation does not mean that our work is done. As this webcasting issue has unfolded, I have heard complaints from all sides about the fairness and completeness of procedures employed in the arbitration. Indeed, the concerns of many small webcasters were never heard, since the cost of participating in the proceedings was prohibitively expensive and their ability to participate for free was barred by procedural rules. One thing is clear: Compulsory licenses are no panacea and their implementation may only invite more congressional intervention. To avoid repeated requests for the Congress or the courts to intercede, we must make sure the procedures and standards used to establish the royalty rates for the webcasting and other compulsory licenses produce fair, workable results. Next year, we should focus attention on reforming the CARP process.

Mr. REID. Madam President, I ask unanimous consent that the Helms amendment at the desk be agreed to; the bill, as amended, be read a third time, passed, and the motion to reconsider be laid on the table, with no intervening action or debate.

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

The amendment (No. 4955) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 5469), as amended, was read the third time and passed.

MEASURE PLACED ON THE CALENDAR—H.J. RES. 124

Mr. REID. Madam President, I ask unanimous consent that H.J. Res. 124, the continuing resolution just received from the House, be placed on the calendar.

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

AFGHANISTAN FREEDOM SUPPORT ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate

proceed to the consideration of Calendar No. 597, S. 2712.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2712) to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Foreign Relations with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part printed in Italic.]

S. 2712

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; DEFINITION.

[(a) SHORT TITLE.—This Act may be cited as the ''Afghanistan Freedom Support Act of 2002''.

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

[Sec. 1. Short title; table of contents; definition.

[TITLE I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

[Sec. 101. Declaration of policy.
[Sec. 102. Purposes of assistance.
[Sec. 103. Principles of assistance.
[Sec. 104. Authorization of assistance.
[Sec. 105. Coordination of assistance.
[Sec. 106. Administrative provisions.
[Sec. 107. Authorization of appropriations.

[TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

[Sec. 201. Support for security during transition in Afghanistan.
[Sec. 202. Authorization of assistance.
[Sec. 203. Eligible foreign countries and eligible international organizations.
[Sec. 204. Reimbursement for assistance.
[Sec. 205. Authority to provide assistance.
[Sec. 206. Promoting secure delivery of humanitarian and other assistance in Afghanistan.
[Sec. 207. Sunset.

[TITLE III—ADDITIONAL REQUIREMENTS WITH RESPECT TO ASSISTANCE FOR AFGHANISTAN

[Sec. 301. Prohibition on United States involvement in poppy cultivation or illicit narcotics growth, production, or trafficking.
[Sec. 302. Requirement to report by certain United States officials.
[Sec. 303. Report by the President.

[(c) DEFINITION.—In this Act, the term ''Government of Afghanistan'' includes—

[(1) the government of any political subdivision of Afghanistan; and

[(2) any agency or instrumentality of the Government of Afghanistan.

[TITLE I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

[SEC. 101. DECLARATION OF POLICY.

[Congress makes the following declarations:

[(1) The United States and the international community should support efforts that advance the development of democratic civil authorities and institutions in Afghanistan and the establishment of a new broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan.

[(2) The United States, in particular, should provide its expertise to meet immediate humanitarian and refugee needs, fight the production and flow of illicit narcotics, and aid in the reconstruction of Afghanistan's agriculture, health care, civil service, financial, and educational systems.

[(3) By promoting peace and security in Afghanistan and preventing a return to conflict, the United States and the international community can help ensure that Afghanistan does not again become a source for international terrorism.

[(4) The United States should support the objectives agreed to on December 5, 2001, in Bonn, Germany, regarding the provisional arrangement for Afghanistan as it moves toward the establishment of permanent institutions and, in particular, should work intensively toward ensuring the future neutrality of Afghanistan, establishing the principle that neighboring countries and other countries in the region do not threaten or interfere in one another's sovereignty, territorial integrity, or political independence, including supporting diplomatic initiatives to support this goal.

[(5) The special emergency situation in Afghanistan, which from the perspective of the American people combines security, humanitarian, political, law enforcement, and development imperatives, requires that the President should receive maximum flexibility in designing, coordinating, and administering efforts with respect to assistance for Afghanistan and that a temporary special program of such assistance should be established for this purpose.

[(6) To foster stability and democratization and to effectively eliminate the causes of terrorism, the United States and the international community should also support efforts that advance the development of democratic civil authorities and institutions in the broader Central Asia region.

[SEC. 102. PURPOSES OF ASSISTANCE.

[The purposes of assistance authorized by this title are—

[(1) to help assure the security of the United States and the world by reducing or eliminating the likelihood of violence against United States or allied forces in Afghanistan and to reduce the chance that [Afghanistan will again be a source of international terrorism;

[(2) to support the continued efforts of the United States and the international community to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries;

[(3) to fight the production and flow of illicit narcotics, to control the flow of precursor chemicals used in the production of heroin, and to enhance and bolster the capacities of Afghan governmental authorities to control poppy cultivation and related activities;

[(4) to help achieve a broad-based, multiethnic, gender-sensitive, and fully representative government in Afghanistan that is freely chosen by the people of Afghanistan and that respects the human rights of all Afghans, particularly women, including authorizing assistance for the rehabilitation and reconstruction of Afghanistan with a particular emphasis on meeting the educational, health, and sustenance needs of women and children to better enable their full participation in Afghan society;

[(5) to support the Government of Afghanistan in its development of the capacity to facilitate, organize, develop, and implement projects and activities that meet the needs of the Afghan people;

[(6) to foster the participation of civil society in the establishment of the new Afghan government in order to achieve a broad-based, multiethnic, gender-sensitive, fully representative government freely chosen by the Afghan people, without prejudice to any decisions which may be freely taken by the Afghan people about the precise form in which their government is to be organized in the future;

[(7) to support the reconstruction of Afghanistan through, among other things, programs that create jobs, facilitate clearance of landmines, and rebuild the agriculture sector, the health care system, and the educational system of Afghanistan; and

[(8) to include specific resources to the Ministry for Women's Affairs of Afghanistan to carry out its responsibilities for legal advocacy, education, vocational training, and women's health programs.

[SEC. 103. PRINCIPLES OF ASSISTANCE.

[The following principles should guide the provision of assistance authorized by this title:

[(1) TERRORISM AND NARCOTICS CONTROL.—Assistance should be designed to reduce the likelihood of harm to United States and other allied forces in Afghanistan and the region, the likelihood of additional acts of international terrorism emanating from Afghanistan, and the cultivation, production, trafficking, and use of illicit narcotics in Afghanistan.

[((2) ROLE OF WOMEN.—Assistance should increase the participation of women at the national, regional, and local levels in Afghanistan, wherever feasible, by enhancing the role of women in decisionmaking processes, as well as by providing support for programs that aim to expand economic and educational opportunities and health programs for women and educational and health programs for girls.

[(3) AFGHAN OWNERSHIP.—Assistance should build upon Afghan traditions and practices. The strong tradition of community responsibility and self-reliance in Afghanistan should be built upon to increase the capacity of the Afghan people and institutions to participate in the reconstruction of Afghanistan.

[(4) STABILITY.—Assistance should encourage the restoration of security in Afghanistan, including, among other things, the disarmament, demobilization, and reintegration of combatants, and the establishment of the rule of law, including the establishment of a police force and an effective, independent judiciary.

[(5) COORDINATION.—Assistance should be part of a larger donor effort for Afghanistan. The magnitude of the devastation—natural and man-made—to institutions and infrastructure make it imperative that there be close coordination and collaboration among donors. The United States should endeavor to assert its leadership to have the efforts of international donors help achieve the purposes established by this title.

[SEC. 104. AUTHORIZATION OF ASSISTANCE.

[(a) IN GENERAL.—The President is authorized to provide assistance for Afghanistan for the following activities:

[(1) URGENT HUMANITARIAN NEEDS.—To assist in meeting the urgent humanitarian needs of the people of Afghanistan, including assistance such as—

[(A) emergency food, shelter, and medical assistance;

[(B) clean drinking water and sanitation;

[(C) preventative health care, including childhood vaccination, therapeutic feeding, maternal child health services, and infectious diseases surveillance and treatment;

[(D) family tracing and reunification services; and

[(E) clearance of landmines.

[(2) REPATRIATION AND RESETTLEMENT OF REFUGEES AND INTERNALLY DISPLACED PERSONS.—To assist refugees and internally displaced persons as they return to their home communities in Afghanistan and to support their reintegration into those communities, including assistance such as—

[(A) assistance identified in paragraph (1);

[(B) assistance to communities, including those in neighboring countries, that have taken in large numbers of refugees in order to rehabilitate or expand social, health, and educational services that may have suffered as a result of the influx of large numbers of refugees;

[(C) assistance to international organizations and host governments in maintaining security by screening refugees to ensure the exclusion of armed combatants, members of foreign terrorist organizations, and other individuals not eligible for economic assistance from the United States; and

[(D) assistance for voluntary refugee repatriation and reintegration inside Afghanistan and continued assistance to those refugees who are unable or unwilling to return, and humanitarian assistance to internally displaced persons, including those persons who need assistance to return to their homes, through the United Nations High Commissioner for Refugees and other organizations charged with providing such assistance.

[(3) COUNTERNARCOTICS EFFORTS.—(A) To assist in the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan and the region, with particular emphasis on assistance to—

[(i) eradicate opium poppy, establish crop substitution programs, purchase nonopium products from farmers in opium-growing areas, quick-impact public works programs to divert labor from narcotics production, develop projects directed specifically at narcotics production, processing, or trafficking areas to provide incentives to cooperation in narcotics suppression activities, and related programs;

[(ii) establish or provide assistance to one or more entities within the Government of Afghanistan, including the Afghan State High Commission for Drug Control, and to provide training and equipment for the entities, to help enforce counternarcotics laws in Afghanistan and limit illicit narcotics growth, production, and trafficking in Afghanistan;

[(iii) train and provide equipment for customs, police, and other border control entities in Afghanistan and the region relating to illicit narcotics interdiction and relating to precursor chemical controls and interdiction to help disrupt heroin production in Afghanistan and the region;

[(iv) continue the annual opium crop survey and strategic studies on opium crop planting and farming in Afghanistan; and

[(v) reduce demand for illicit narcotics among the people of Afghanistan, including refugees returning to Afghanistan.

[(B) For each of the fiscal years 2002 through 2005, $15,000,000 of the amount made available to carry out this title is authorized to be made available for a contribution to the United Nations Drug Control Program for the purpose of carrying out activities described in clauses (i) through (v) of subparagraph (A). Amounts made available under the preceding sentence are in addition to amounts otherwise available for such purposes.

[(4) REESTABLISHMENT OF FOOD SECURITY, REHABILITATION OF THE AGRICULTURE SECTOR, IMPROVEMENT IN HEALTH CONDITIONS, AND THE RECONSTRUCTION OF BASIC INFRASTRUCTURE.—To assist in expanding access to markets in Afghanistan, to increase the availability of food in markets in Afghanistan, to rehabilitate the agriculture sector in Afghanistan by creating jobs for former combatants, returning refugees, and internally displaced persons, to improve health conditions, and assist in the rebuilding of basic infrastructure in Afghanistan, including assistance such as—

[(A) rehabilitation of the agricultural infrastructure, including irrigation systems and rural roads;

[(B) extension of credit;

[(C) provision of critical agricultural inputs, such as seeds, tools, and fertilizer, and strengthening of seed multiplication, certification, and distribution systems;

[(D) improvement in the quantity and quality of water available through, among other things, rehabilitation of existing irrigation systems and the development of local capacity to manage irrigation systems;

[(E) livestock rehabilitation through market development and other mechanisms to distribute stocks to replace those stocks lost as a result of conflict or drought;

[(F) mine awareness and demining programs and programs to assist mine victims, war orphans, and widows;

[(G) programs relating to infant and young child feeding, immunizations, vitamin A supplementation, and prevention and treatment of diarrheal diseases and respiratory infections;

[(H) programs to improve maternal and child health and reduce maternal and child mortality;

[(I) programs to improve hygienic and sanitation practices and for the prevention and treatment of infectious diseases, such as tuberculosis and malaria;

[(J) programs to reconstitute the delivery of health care, including the reconstruction of health clinics or other basic health infrastructure, with particular emphasis on health care for children who are orphans;

[(K) programs for housing, rebuilding urban infrastructure, and supporting basic urban services; and

[(L) disarmament, demobilization, and reintegration of armed combatants into society, particularly child soldiers.

[(5) REESTABLISHMENT OF AFGHANISTAN AS A VIABLE NATION-STATE.—(A) To assist in the development of the capacity of the Government of Afghanistan to meet the needs of the people of Afghanistan through, among other things, support for the development and expansion of democratic and market-based institutions, including assistance such as—

[(i) support for international organizations that provide civil advisers to the Government of Afghanistan;

[(ii) support for an educated citizenry through improved access to basic education, with particular emphasis on basic education for children who are orphans, with particular emphasis on basic education for children;

[(iii) programs to enable the Government of Afghanistan to recruit and train teachers, with special focus on the recruitment and training of female teachers;

[(iv) programs to enable the Government of Afghanistan to develop school curriculum that incorporates relevant information such as landmine awareness, food security and agricultural education, human rights awareness, and civic education;

[(v) support for the activities of the Government of Afghanistan to draft a new constitution, other legal frameworks, and other initiatives to promote the rule of law in Afghanistan;

[(vi) support to increase the transparency, accountability, and participatory nature of governmental institutions, including programs designed to combat corruption and other programs for the promotion of good governance;

[(vii) support for an independent media;

[(viii) programs that support the expanded participation of women and members of all ethnic groups in government at national, regional, and local levels;

[(ix) programs to strengthen civil society organizations that promote human rights and support human rights monitoring;

[(x) support for national, regional, and local elections and political party development;

[(xi) support for the effective administration of justice at the national, regional, and local levels, including the establishment of a responsible and community-based police force; and

[(xii) support for establishment of a central bank and central budgeting authority.

[(B) For each of the fiscal years 2003 through 2005, not less than $10,000,000 of the amount made available to carry out this title should be made available for the purposes of carrying out a traditional Afghan assembly or ''Loya Jirga'' and for support for national, regional, and local elections and political party development under subparagraph (A)(x).

[(6) MARKET ECONOMY.—To support the establishment of a market economy, the establishment of private financial institutions, the adoption of policies to promote foreign direct investment, the development of a basic telecommunication infrastructure, and the development of trade and other commercial links with countries in the region and with the United States, including policies to—

[(A) encourage the return of Afghanistan citizens or nationals living abroad who have marketable and business-related skills;

[(B) establish financial institutions, including credit unions, cooperatives, and other entities providing microenterprise credits and other income-generation programs for the poor, with particular emphasis on women;

[(C) facilitate expanded trade with countries in the region;

[(D) promote and foster respect for basic workers' rights and protections against exploitation of child labor; and

[(E) provide financing programs for the reconstruction of Kabul and other major cities in Afghanistan.

[(b) LIMITATION.—

[(1) IN GENERAL.—Amounts made available to carry out this title (except amounts made available for assistance under paragraphs (1) through (3) and subparagraphs (F) through (I) of paragraph (4) of subsection (a)) may be provided only if the President first determines and certifies to Congress with respect to the fiscal year involved that substantial progress has been made toward adopting a constitution and establishing a democratically elected government for Afghanistan.

[(2) WAIVER.—

[(A) IN GENERAL.—The President may waive the application of paragraph (1) if the President first determines and certifies to Congress that it is important to the national interest of the United States to do so.

[(B) CONTENTS OF CERTIFICATION.—A certification transmitted to Congress under subparagraph (A) shall include a written explanation of the basis for the determination of the President to waive the application of paragraph (1).

[SEC. 105. COORDINATION OF ASSISTANCE.

[(a) IN GENERAL.—The President is strongly urged to designate, within the Department of State, a coordinator who shall be responsible for—

[(1) designing an overall strategy to advance United States interests in Afghanistan;

[(2) ensuring program and policy coordination among agencies of the United States Government in carrying out the policies set forth in this title;

[(3) pursuing coordination with other countries and international organizations with respect to assistance to Afghanistan;

[(4) ensuring that United States assistance programs for Afghanistan are consistent with this title;

[(5) ensuring proper management, implementation, and oversight by agencies responsible for assistance programs for Afghanistan; and

[(6) resolving policy and program disputes among United States Government agencies with respect to United States assistance for Afghanistan.

[(b) RANK AND STATUS OF THE COORDINATOR.—The coordinator designated under subsection (a) shall have the rank and status of ambassador.

[SEC. 106. ADMINISTRATIVE PROVISIONS.

[(a) APPLICABLE ADMINISTRATIVE AUTHORITIES.—Except to the extent inconsistent with the provisions of this title, the administrative authorities under chapters 1 and 2 of part III of the Foreign Assistance Act of 1961 shall apply to the provision of assistance under this title to the same extent and in the same manner as such authorities apply to the provision of economic assistance under part I of such Act.

[(b) USE OF THE EXPERTISE OF AFGHAN-AMERICANS.—In providing assistance authorized by this title, the President should—

[(1) maximize the use, to the extent feasible, of the services of Afghan-Americans who have expertise in the areas for which assistance is authorized by this title; and

[(2) in the awarding of contracts and grants to implement activities authorized under this title, encourage the participation of such Afghan-Americans (including organizations employing a significant number of such Afghan-Americans).

[(c) DONATIONS OF MANUFACTURING EQUIPMENT; USE OF LAND GRANT COLLEGES AND UNIVERSITIES.—In providing assistance authorized by this title, the President, to the maximum extent practicable, should—

[(1) encourage the donation of appropriate excess or obsolete manufacturing and related equipment by United States businesses (including small businesses) for the reconstruction of Afghanistan; and

[(2) utilize research conducted by United States land grant colleges and universities and the technical expertise of professionals within those institutions, particularly in the areas of agriculture and rural development.

[(d) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of the amount made available to a Federal department or agency to carry out this title for a fiscal year may be used by the department or agency for administrative expenses in connection with such assistance.

[(e) MONITORING.—

[(1) COMPTROLLER GENERAL.—The Comptroller General shall monitor the provision of assistance under this title.

[(2) INSPECTOR GENERAL OF USAID.—

[(A) IN GENERAL.—The Inspector General of the United States Agency for International Development shall conduct audits, inspections, and other activities, as appropriate, associated with the expenditure of the funds to carry out this title.

[(B) FUNDING.—Not more than $1,500,000 of the amount made available to carry out this title for a fiscal year shall be made available to carry out subparagraph (A).

[(f) CONGRESSIONAL NOTIFICATION PROCEDURES.—Funds made available to carry out this title may not be obligated until 15 days after notification of the proposed obligation of the funds has been provided to the congressional committees specified in section 634A of the Foreign Assistance Act of 1961 in accordance with the procedures applicable to reprogramming notifications under that section.

[SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated to the President to carry out this title $300,000,000 for each of the fiscal years 2002 through 2004, and $250,000,000 for fiscal year 2005. Amounts authorized to be appropriated pursuant to the preceding sentence for fiscal year 2002 are in addition to amounts otherwise available for assistance for Afghanistan.

[(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are—

[(1) authorized to remain available until expended; and

[(2) in addition to funds otherwise available for such purposes, including, with respect to food assistance under section 104(a)(1), funds available under title II of the Agricultural Trade Development and Assistance Act of 1954, the Food for Progress Act of 1985, and section 416(b) of the Agricultural Act of 1949.

[TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

[SEC. 201. SUPPORT FOR SECURITY DURING TRANSITION IN AFGHANISTAN.

[It is the sense of Congress that, during the transition to a broad-based, multi-ethnic, gender-sensitive, fully representative government in Afghanistan, the United States should support—

[(1) the development of a civilian-controlled and centrally-governed standing Afghanistan army that respects human rights and prohibits the use of children as soldiers or combatants;

[(2) the creation and training of a professional civilian police force that respects human rights; and

[(3) a multinational security force in Afghanistan.

[SEC. 202. AUTHORIZATION OF ASSISTANCE.

[(a) TYPES OF ASSISTANCE.—

[(1) IN GENERAL.—(A) To the extent that funds are appropriated in any fiscal year for the purposes of this Act, the President may provide, consistent with existing United States statutes, defense articles, defense services, counter-narcotics, crime control and police training services, and other support (including training) to the Government of Afghanistan.

[(B) To the extent that funds are appropriated in any fiscal year for these purposes, the President may provide, consistent with existing United States statutes, defense articles, defense services, and other support (including training) to eligible foreign countries and eligible international organizations.

[(C) The assistance authorized under subparagraph (B) shall be used for directly supporting the activities described in section 203.

[(2) DRAWDOWN AUTHORITY.—The President is authorized to direct the drawdown of defense articles, defense services, and military education and training for the Government of Afghanistan, eligible foreign countries, and eligible international organizations.

[(3) AUTHORITY TO ACQUIRE BY CONTRACT OR OTHERWISE.—The assistance authorized under paragraphs (1) and (2) and under Public Law 105–338 may include the supply of defense articles, defense services, counter-narcotics, crime control and police training services, other support, and military education and training that are acquired by contract or otherwise.

[(b) AMOUNT OF ASSISTANCE.—The aggregate value (as defined in section 644(m) of the Foreign Assistance Act of 1961) of assistance provided under subsection (a)(2) may not exceed $300,000,000, provided that such limitation shall be increased by any amounts appropriated pursuant to the authorization of appropriations in section 204(b)(1).

[SEC. 203. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

[(a) ELIGIBILITY FOR ASSISTANCE.—

[(1) IN GENERAL.—Except as provided in paragraph (2), a foreign country or international organization shall be eligible to receive assistance under section 202 if such foreign country or international organization is participating in or directly supporting United States military activities authorized under Public Law 107–40 or is participating in military, peacekeeping, or policing operations in Afghanistan aimed at restoring or maintaining peace and security in that country.

[(2) EXCEPTION.—No country the government of which has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) shall be eligible to receive assistance under section 202.

[(b) WAIVER.—The President may waive the application of subsection (a)(2) if the President determines that it is important to the national security interest of the United States to do so.

[SEC. 204. REIMBURSEMENT FOR ASSISTANCE.

[(a) IN GENERAL.—Defense articles, defense services, and military education and training provided under section 202(a)(2) shall be made available without reimbursement to the Department of Defense except to the extent that funds are appropriated pursuant to the authorization of appropriations in subsection (b)(1).

[(b) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL.—There are authorized to be appropriated to the President such sums as may be necessary to reimburse the applicable appropriation, fund, or account for the value (as defined in section 644(m) of the Foreign Assistance Act of 1961) of defense articles, defense services, or military education and training provided under section 202(a)(2).

[(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended, and are in addition to amounts otherwise available for the purposes described in this title.

[SEC. 205. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

[(a) AUTHORITY.—The President may provide assistance under this title to any eligible foreign country or eligible international organization if the President determines that such assistance is important to the national security interest of the United States and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such determination at least 15 days in advance of providing such assistance.

[(b) NOTIFICATION.—The report described in subsection (a) shall be submitted in classified and unclassified form and shall include information relating to the type and amount of assistance proposed to be provided and the actions that the proposed recipient of such

assistance has taken or has committed to take.

[SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN.

[(a) FINDINGS.—Congress finds the following:

[(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it never again becomes a haven for terrorism.

[(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

[(3) Enhanced stability in Afghanistan through an improved security environment is critical to the fostering of the Afghan Interim Authority and the traditional Afghan assembly or ''Loya Jirga'' process, which is intended to lead to a permanent national government in Afghanistan, and also is essential for the participation of women in Afghan society.

[(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unsafe environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

[(5) The violence and lawlessness may jeopardize the ''Loya Jirga'' process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaida, Taliban forces, and drug traffickers.

[(6) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the ability of the United States to meet its military objectives.

[(7) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries without the participation of United States Armed Forces, is deployed only in Kabul and currently does not have the mandate or the capacity to provide security to other parts of Afghanistan.

[(8) Due to the ongoing military campaign in Afghanistan, the United States does not contribute troops to the International Security Assistance Force but has provided support to other countries that are doing so.

[(9) The United States is providing political, financial, training, and other assistance to the Afghan Interim Authority as it begins to build a national army and police force to help provide security throughout Afghanistan, but this effort is not meeting the immediate security needs of Afghanistan.

[(10) Because of these immediate security needs, the Afghan Interim Authority, its Chairman, Hamid Karzai, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded and deployed throughout the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

[(11)(A) On January 29, 2002, the President stated that ''[w]e will help the new Afghan government provide the security that is the foundation of peace''.

[(B) On March 25, 2002, the Secretary of Defense stated, with respect to the reconstruction of Afghanistan, that ''the first thing . . . you need for anything else to happen, for hospitals to happen, for roads to happen, for refugees to come back, for people to be fed and humanitarian workers to move on the country . . . [y]ou've got to have security''.

[(b) STATEMENT OF POLICY.—It should be the policy of the United States to support measures to help meet the immediate security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

[(c) PREPARATION OF STRATEGY.—Not later than 45 days after the date of the enactment of this Act, and every six months thereafter, the President shall transmit to the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

[SEC. 207. SUNSET.

[The authority of this title shall expire after December 31, 2004.

[TITLE III—ADDITIONAL REQUIREMENTS WITH RESPECT TO ASSISTANCE FOR AFGHANISTAN

[SEC. 301. PROHIBITION ON UNITED STATES INVOLVEMENT IN POPPY CULTIVATION OR ILLICIT NARCOTICS GROWTH, PRODUCTION, OR TRAFFICKING.

[No officer or employee of any Federal department or agency who is involved in the provision of assistance under this Act may knowingly encourage or participate in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan. No United States military or civilian aircraft or other United States vehicle that is used with respect to the provision of assistance under this Act may be used to facilitate the distribution of poppies or illicit narcotics in Afghanistan.

[SEC. 302. REQUIREMENT TO REPORT BY CERTAIN UNITED STATES OFFICIALS.

[(a) REQUIREMENT.—An officer or employee of any Federal department or agency involved in the provision of assistance under this Act and having knowledge of facts or circumstances that reasonably indicate that any agency or instrumentality of the Government of Afghanistan, or any other individual (including an individual who exercises civil power by force over a limited region) or organization in Afghanistan, that receives assistance under this Act is involved in poppy cultivation or illicit narcotics growth, production, or trafficking shall, notwithstanding any memorandum of understanding or other agreement to the contrary, report such knowledge or facts to the appropriate official.

[(b) DEFINITION.—In this section, the term ''appropriate official'' means the Attorney General, the Inspector General of the Federal department or agency involved, or the head of such department or agency.

[SEC. 303. REPORT BY THE PRESIDENT.

[Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the President shall transmit to Congress a written report on the progress of the Government of Afghanistan toward the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan in accordance with the provisions of this Act.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINITION.

(a) SHORT TITLE.—This Act may be cited as the ''Afghanistan Freedom Support Act of 2002''.

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

Sec. 1. Short title; table of contents; definition.

TITLE I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

Sec. 101. Declaration of policy.
Sec. 102. Purposes of assistance.
Sec. 103. Principles of assistance.
Sec. 104. Authorization of assistance.
Sec. 105. Coordination of assistance.
Sec. 106. Administrative provisions.
Sec. 107. Relationship to other authority.
Sec. 108. Authorization of appropriations.

TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

Sec. 201. Support for security during transition in Afghanistan.
Sec. 202. Authorization of assistance.
Sec. 203. Eligible foreign countries and eligible international organizations.
Sec. 204. Reimbursement for assistance.
Sec. 205. Congressional notification requirements.
Sec. 206. Promoting secure delivery of humanitarian and other assistance in Afghanistan.
Sec. 207. Relationship to other authority.
Sec. 208. Sense of Congress regarding expansion of the International Security Assistance Force; authorization of appropriations.
Sec. 209. Sunset.

(c) DEFINITION.—In this Act, the term ''Government of Afghanistan'' includes—

(1) the government of any political subdivision of Afghanistan; and

(2) any agency or instrumentality of the Government of Afghanistan.

TITLE I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

SEC. 101. DECLARATION OF POLICY.

Congress makes the following declarations:

(1) The United States and the international community should support efforts that advance the development of democratic civil authorities and institutions in Afghanistan and the establishment of a new broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan.

(2) The United States, in particular, should provide its expertise to meet immediate humanitarian and refugee needs, fight the production and flow of illicit narcotics, and aid in the reconstruction of Afghanistan.

(3) By promoting peace and security in Afghanistan and preventing a return to conflict, the United States and the international community can help ensure that Afghanistan does not again become a source for international terrorism.

(4) The United States should support the objectives agreed to on December 5, 2001, in Bonn, Germany, regarding the provisional arrangement for Afghanistan as it moves toward the establishment of permanent institutions and, in particular, should work intensively toward ensuring the future neutrality of Afghanistan, establishing the principle that neighboring countries and other countries in the region do not threaten or interfere in one another's sovereignty, territorial integrity, or political independence, including supporting diplomatic initiatives to support this goal.

(5) The special emergency situation in Afghanistan, which from the perspective of the

American people combines security, humanitarian, political, law enforcement, and development imperatives, requires that the President should receive maximum flexibility in designing, coordinating, and administering efforts with respect to assistance for Afghanistan and that a temporary special program of such assistance should be established for this purpose.

(6) To foster stability and democratization and to effectively eliminate the causes of terrorism, the United States and the international community should also support efforts that advance the development of democratic civil authorities and institutions in the broader Central Asia region.

SEC. 102. PURPOSES OF ASSISTANCE.

The purposes of assistance authorized by this title are—

(1) to help assure the security of the United States and the world by reducing or eliminating the likelihood of violence against United States or allied forces in Afghanistan and to reduce the chance that Afghanistan will again be a source of international terrorism;

(2) to support the continued efforts of the United States and the international community to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries;

(3) to fight the production and flow of illicit narcotics, to control the flow of precursor chemicals used in the production of heroin, and to enhance and bolster the capacities of Afghan governmental authorities to control poppy cultivation and related activities;

(4) to help achieve a broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan that is freely chosen by the people of Afghanistan and that respects the human rights of all Afghans, particularly women, including authorizing assistance for the rehabilitation and reconstruction of Afghanistan with a particular emphasis on meeting the educational, health, and sustenance needs of women and children to better enable their full participation in Afghan society;

(5) to support the Government of Afghanistan in its development of the capacity to facilitate, organize, develop, and implement projects and activities that meet the needs of the Afghan people;

(6) to foster the participation of civil society in the establishment of the new Afghan government in order to achieve a broad-based, multi-ethnic, gender-sensitive, fully representative government freely chosen by the Afghan people, without prejudice to any decisions which may be freely taken by the Afghan people about the precise form in which their government is to be organized in the future;

(7) to support the reconstruction of Afghanistan through, among other things, programs that create jobs, facilitate clearance of landmines, and rebuild the agriculture sector, the health care system, and the educational system of Afghanistan; and

(8) to provide resources to the Ministry for Women's Affairs of Afghanistan to carry out its responsibilities for legal advocacy, education, vocational training, and women's health programs.

SEC. 103. PRINCIPLES OF ASSISTANCE.

The following principles should guide the provision of assistance authorized by this title:

(1) TERRORISM AND NARCOTICS CONTROL.—Assistance should be designed to reduce the likelihood of harm to United States and other allied forces in Afghanistan and the region, the likelihood of additional acts of international terrorism emanating from Afghanistan, and the cultivation, production, trafficking, and use of illicit narcotics in Afghanistan.

(2) ROLE OF WOMEN.—Assistance should increase the participation of women at the national, regional, and local levels in Afghanistan, wherever feasible, by enhancing the role of women in decisionmaking processes, as well as by providing support for programs that aim to expand economic and educational opportunities and health programs for women and educational and health programs for girls.

(3) AFGHAN OWNERSHIP.—Assistance should build upon Afghan traditions and practices. The strong tradition of community responsibility and self-reliance in Afghanistan should be built upon to increase the capacity of the Afghan people and institutions to participate in the reconstruction of Afghanistan.

(4) STABILITY.—Assistance should encourage the restoration of security in Afghanistan, including, among other things, the disarmament, demobilization, and reintegration of combatants, and the establishment of the rule of law, including the establishment of a police force and an effective, independent judiciary.

(5) COORDINATION.—Assistance should be part of a larger donor effort for Afghanistan. The magnitude of the devastation—natural and man-made—to institutions and infrastructure make it imperative that there be close coordination and collaboration among donors. The United States should endeavor to assert its leadership to have the efforts of international donors help achieve the purposes established by this title.

SEC. 104. AUTHORIZATION OF ASSISTANCE.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President is authorized to provide assistance for Afghanistan for the following activities:

(1) URGENT HUMANITARIAN NEEDS.—To assist in meeting the urgent humanitarian needs of the people of Afghanistan, including assistance such as—

(A) emergency food, shelter, and medical assistance;

(B) clean drinking water and sanitation;

(C) preventative health care, including childhood vaccination, therapeutic feeding, maternal child health services, and infectious diseases surveillance and treatment;

(D) family tracing and reunification services; and

(E) clearance of landmines.

(2) REPATRIATION AND RESETTLEMENT OF REFUGEES AND INTERNALLY DISPLACED PERSONS.—To assist refugees and internally displaced persons as they return to their home communities in Afghanistan and to support their reintegration into those communities, including assistance such as—

(A) assistance identified in paragraph (1);

(B) assistance to communities, including those in neighboring countries, that have taken in large numbers of refugees in order to rehabilitate or expand social, health, and educational services that may have suffered as a result of the influx of large numbers of refugees;

(C) assistance to international organizations and host governments in maintaining security by screening refugees to ensure the exclusion of armed combatants, members of foreign terrorist organizations, and other individuals not eligible for economic assistance from the United States; and

(D) assistance for voluntary refugee repatriation and reintegration inside Afghanistan and continued assistance to those refugees who are unable or unwilling to return, and humanitarian assistance to internally displaced persons, including those persons who need assistance to return to their homes, through the United Nations High Commissioner for Refugees and other organizations charged with providing such assistance.

(3) COUNTERNARCOTICS EFFORTS.—(A) To assist in the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan and the region, with particular emphasis on assistance to—

(i) eradicate opium poppy, establish crop substitution programs, purchase nonopium products from farmers in opium-growing areas, quick-impact public works programs to divert labor from narcotics production, develop projects directed specifically at narcotics production, processing, or trafficking areas to provide incentives to cooperation in narcotics suppression activities, and related programs;

(ii) establish or provide assistance to one or more entities within the Government of Afghanistan, including the Afghan State High Commission for Drug Control, and to provide training and equipment for the entities, to help enforce counternarcotics laws in Afghanistan and limit illicit narcotics growth, production, and trafficking in Afghanistan;

(iii) train and provide equipment for customs, police, and other border control entities in Afghanistan and the region relating to illicit narcotics interdiction and relating to precursor chemical controls and interdiction to help disrupt heroin production in Afghanistan and the region;

(iv) continue the annual opium crop survey and strategic studies on opium crop planting and farming in Afghanistan; and

(v) reduce demand for illicit narcotics among the people of Afghanistan, including refugees returning to Afghanistan.

(B) For each of the fiscal years 2002 through 2005, $15,000,000 of the amount made available to carry out this title is authorized to be made available for a contribution to the United Nations Drug Control Program for the purpose of carrying out activities described in clauses (i) through (v) of subparagraph (A). Amounts made available under the preceding sentence are in addition to amounts otherwise available for such purposes.

(4) REESTABLISHMENT OF FOOD SECURITY, REHABILITATION OF THE AGRICULTURE SECTOR, IMPROVEMENT IN HEALTH CONDITIONS, AND THE RECONSTRUCTION OF BASIC INFRASTRUCTURE.—To assist in expanding access to markets in Afghanistan, to increase the availability of food in markets in Afghanistan, to rehabilitate the agriculture sector in Afghanistan by creating jobs for former combatants, returning refugees, and internally displaced persons, to improve health conditions, and assist in the rebuilding of basic infrastructure in Afghanistan, including assistance such as—

(A) rehabilitation of the agricultural infrastructure, including irrigation systems and rural roads;

(B) extension of credit;

(C) provision of critical agricultural inputs, such as seeds, tools, and fertilizer, and strengthening of seed multiplication, certification, and distribution systems;

(D) improvement in the quantity and quality of water available through, among other things, rehabilitation of existing irrigation systems and the development of local capacity to manage irrigation systems;

(E) livestock rehabilitation through market development and other mechanisms to distribute stocks to replace those stocks lost as a result of conflict or drought;

(F) mine awareness and demining programs and programs to assist mine victims, war orphans, and widows;

(G) programs relating to infant and young child feeding, immunizations, vitamin A supplementation, and prevention and treatment of diarrheal diseases and respiratory infections;

(H) programs to improve maternal and child health and reduce maternal and child mortality;

(I) programs to improve hygienic and sanitation practices and for the prevention and treatment of infectious diseases, such as tuberculosis and malaria;

(J) programs to reconstitute the delivery of health care, including the reconstruction of health clinics or other basic health infrastructure, with particular emphasis on health care for children who are orphans;

(K) programs for housing, rebuilding urban infrastructure, and supporting basic urban services; and

(L) disarmament, demobilization, and reintegration of armed combatants into society, particularly child soldiers.

(5) REESTABLISHMENT OF AFGHANISTAN AS A VIABLE NATION-STATE.—(A) To assist in the development of the capacity of the Government of Afghanistan to meet the needs of the people of Afghanistan through, among other things, support for the development and expansion of democratic and market-based institutions, including assistance such as—

(i) support for international organizations that provide civil advisers to the Government of Afghanistan;

(ii) support for an educated citizenry through improved access to basic education, with particular emphasis on basic education for children who are orphans, with particular emphasis on basic education for children;

(iii) programs to enable the Government of Afghanistan to recruit and train teachers, with special focus on the recruitment and training of female teachers;

(iv) programs to enable the Government of Afghanistan to develop school curriculum that incorporates relevant information such as landmine awareness, food security and agricultural education, human rights awareness, and civic education;

(v) support for the activities of the Government of Afghanistan to draft a new constitution, other legal frameworks, and other initiatives to promote the rule of law in Afghanistan;

(vi) support to increase the transparency, accountability, and participatory nature of governmental institutions, including programs designed to combat corruption and other programs for the promotion of good governance;

(vii) support for an independent media;

(viii) programs that support the expanded participation of women and members of all ethnic groups in government at national, regional, and local levels;

(ix) programs to strengthen civil society organizations that promote human rights and support human rights monitoring;

(x) support for national, regional, and local elections and political party development;

(xi) support for the effective administration of justice at the national, regional, and local levels, including the establishment of a responsible and community-based police force;

(xii) support for establishment of a central bank and central budgeting authority; and

(xiii) assistance in identifying and surveying key road and rail routes essential for economic renewal in Afghanistan and the region, support in reconstructing those routes, and support for the establishment of a customs service and training for customs officers.

(B) For each of the fiscal years 2003 through 2005, not less than $10,000,000 of the amount made available to carry out this title should be made available for the purposes of carrying out a traditional Afghan assembly or ''Loya Jirga'' and for support for national, regional, and local elections and political party development under subparagraph (A)(x).

(6) MARKET ECONOMY.—To support the establishment of a market economy, the establishment of private financial institutions, the adoption of policies to promote foreign direct investment, the development of a basic telecommunication infrastructure, and the development of trade and other commercial links with countries in the region and with the United States, including policies to—

(A) encourage the return of Afghanistan citizens or nationals living abroad who have marketable and business-related skills;

(B) establish financial institutions, including credit unions, cooperatives, and other entities providing microenterprise credits and other income-generation programs for the poor, with particular emphasis on women;

(C) facilitate expanded trade with countries in the region;

(D) promote and foster respect for basic workers' rights and protections against exploitation of child labor; and

(E) provide financing programs for the reconstruction of Kabul and other major cities in Afghanistan.

(7) ASSISTANCE TO WOMEN AND GIRLS.—

(A) ASSISTANCE OBJECTIVES.—To assist women and girls in Afghanistan in the areas of political and human rights, health care, education, training, security, and shelter, with particular emphasis on assistance—

(i) to support construction of, provide equipment and medical supplies to, and otherwise facilitate the establishment and rehabilitation of, health care facilities in order to improve the health care of women, children, and infants;

(ii) to expand immunization programs for women and children;

(iii) to establish, maintain, and expand primary and secondary schools for girls that include mathematics, science, and languages in their primary curriculum;

(iv) to develop and expand technical and vocational training programs and income-generation projects for women;

(v) to provide special educational opportunities for girls whose schooling was ended by the Taliban, and to support the ability of women to have access to higher education;

(vi) to develop and implement programs to protect women and girls against sexual and physical abuse, abduction, trafficking, exploitation, and sex discrimination in the delivery of humanitarian supplies and services;

(vii) to provide emergency shelters for women and girls who face danger from violence;

(viii) to direct humanitarian assistance to widows, who make up a very large and needy population in war-torn Afghanistan;

(ix) to support the work of women-led and local nongovernmental organizations with demonstrated experience in delivering services to Afghan women and children;

(x) to disseminate information throughout Afghanistan on the rights of women and on international standards of human rights;

(xi) to provide women's rights and human rights training for military, police, and legal personnel; and

(xii) to support the National Human Rights Commission in programs to promote women's rights and human rights and in the investigation and monitoring of women's rights and human rights abuses.

(B) AVAILABILITY OF FUNDS.—For each of the fiscal years 2002 through 2005—

(i) $15,000,000 of the total amount made available for such fiscal year to carry out this title is authorized to be made available to the Afghan Ministry of Women's Affairs; and

(ii) $5,000,000 of the total amount made available for such fiscal year to carry out this title is authorized to be made available to the National Human Rights Commission of Afghanistan.

(C) RELATION TO OTHER AVAILABLE FUNDS.—Amounts made available under subparagraph (B) are in addition to amounts otherwise available for such purposes.

(b) LIMITATION.—

(1) IN GENERAL.—Amounts made available to carry out this title (except amounts made available for assistance under paragraphs (1) through (3) and subparagraphs (F) through (I) of paragraph (4) of subsection (a)) may be provided only if the President first determines and certifies to Congress with respect to the fiscal year involved that progress is being made toward adopting a constitution and establishing a democratically elected government for Afghanistan.

(2) WAIVER.—

(A) IN GENERAL.—The President may waive the application of paragraph (1) if the President first determines and certifies to Congress that it is important to the national interest of the United States to do so.

(B) CONTENTS OF CERTIFICATION.—A certification transmitted to Congress under subparagraph (A) shall include a written explanation of the basis for the determination of the President to waive the application of paragraph (1).

(c) ENTERPRISE FUND.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds otherwise available for such purpose, there are authorized to be appropriated to the President for an enterprise fund for Afghanistan $300,000,000 for fiscal year 2003, $100,000,000 for fiscal year 2004, and $100,000,000 for fiscal year 2005. The provisions contained in section 201 of the Support for East European Democracy (SEED) Act of 1989 (excluding the authorizations of appropriations provided in subsection (b) of that section) shall apply with respect to such enterprise fund and to funds made available to such enterprise fund under this subsection.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 105. COORDINATION OF ASSISTANCE.

(a) IN GENERAL.—The President is strongly urged to designate, within the Department of State, a coordinator who shall be responsible for—

(1) designing an overall strategy to advance United States interests in Afghanistan;

(2) ensuring program and policy coordination among agencies of the United States Government in carrying out the policies set forth in this title;

(3) pursuing coordination with other countries and international organizations with respect to assistance to Afghanistan;

(4) ensuring that United States assistance programs for Afghanistan are consistent with this title;

(5) ensuring proper management, implementation, and oversight by agencies responsible for assistance programs for Afghanistan; and

(6) resolving policy and program disputes among United States Government agencies with respect to United States assistance for Afghanistan.

(b) RANK AND STATUS OF THE COORDINATOR.—The coordinator designated under subsection (a) shall have the rank and status of ambassador.

SEC. 106. ADMINISTRATIVE PROVISIONS.

(a) APPLICABLE ADMINISTRATIVE AUTHORITIES.—Except to the extent inconsistent with the provisions of this title, the administrative authorities under chapters 1 and 2 of part III of the Foreign Assistance Act of 1961 shall apply to the provision of assistance under this title to the same extent and in the same manner as such authorities apply to the provision of economic assistance under part I of such Act.

(b) USE OF THE EXPERTISE OF AFGHAN-AMERICANS.—In providing assistance authorized by this title, the President should—

(1) maximize the use, to the extent feasible, of the services of Afghan-Americans who have expertise in the areas for which assistance is authorized by this title; and

(2) in the awarding of contracts and grants to implement activities authorized under this title, encourage the participation of such Afghan-Americans (including organizations employing a significant number of such Afghan-Americans).

(c) DONATIONS OF MANUFACTURING EQUIPMENT; USE OF LAND GRANT COLLEGES AND UNIVERSITIES.—In providing assistance authorized by this title, the President, to the maximum extent practicable, should—

(1) encourage the donation of appropriate excess or obsolete manufacturing and related equipment by United States businesses (including small businesses) for the reconstruction of Afghanistan; and

(2) utilize research conducted by United States land grant colleges and universities and the technical expertise of professionals within those institutions, particularly in the areas of agriculture and rural development.

(d) ADMINISTRATIVE EXPENSES.—Amounts made available to carry out this title may be made available to a Federal department or agency for administrative expenses incurred by the department or agency in connection with the providing of assistance under this title.

(e) MONITORING.—

(1) COMPTROLLER GENERAL.—The Comptroller General shall monitor the provision of assistance under this title.

(2) INSPECTOR GENERAL OF USAID.—

(A) IN GENERAL.—The Inspector General of the United States Agency for International Development shall conduct audits, inspections, and other activities, as appropriate, associated with the expenditure of the funds to carry out this title.

(B) FUNDING.—Not more than $1,500,000 of the amount made available to carry out this title for a fiscal year shall be made available to carry out subparagraph (A).

(f) PRIORITY FOR DIRECT ASSISTANCE TO THE GOVERNMENT OF AFGHANISTAN.—To the maximum extent practicable, assistance authorized under this title should be provided directly to the Government of Afghanistan (including any appropriate ministry thereof).

SEC. 107. RELATIONSHIP TO OTHER AUTHORITY.

The authority to provide assistance under this title is in addition to any other authority to provide assistance to the Government of Afghanistan.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to the President to carry out this title (other than section 104(c)) $500,000,000 for each of the fiscal years 2002 through 2005.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are—

(1) authorized to remain available until expended; and

(2) in addition to funds otherwise available for such purposes, including, with respect to food assistance under section 104(a)(1), funds available under title II of the Agricultural Trade Development and Assistance Act of 1954, the Food for Progress Act of 1985, and section 416(b) of the Agricultural Act of 1949.

TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

SEC. 201. SUPPORT FOR SECURITY DURING TRANSITION IN AFGHANISTAN.

It is the sense of Congress that, during the transition to a broad-based, multi-ethnic, gender-sensitive, fully representative government in Afghanistan, the United States should support—

(1) the development of a civilian-controlled and centrally-governed standing Afghanistan army that respects human rights and prohibits the use of children as soldiers or combatants;

(2) the creation and training of a professional civilian police force that respects human rights; and

(3) a multinational security force in Afghanistan.

SEC. 202. AUTHORIZATION OF ASSISTANCE.

(a) DRAWDOWN AUTHORITY.—

(1) IN GENERAL.—The President is authorized to exercise his authorities under section 506 of the Foreign Assistance Act of 1961 (22 U.S.C. 2318) to direct the drawdown of defense articles, defense services, and military education and training—

(A) for the Government of Afghanistan, in accordance with this section; and

(B) for eligible foreign countries, and eligible international organizations, in accordance with this section and sections 203 and 205.

(2) AUTHORITY TO ACQUIRE BY CONTRACT OR OTHERWISE.—The assistance authorized under paragraph (1) may include the supply of defense articles, defense services, counter-narcotics, crime control and police training services, other support, and military education and training that are acquired by contract or otherwise.

(b) AMOUNT OF ASSISTANCE.—The aggregate value (as defined in section 644(m) of the Foreign Assistance Act of 1961) of assistance provided under subsection (a) may not exceed $300,000,000, except that such limitation shall be increased by any amounts appropriated pursuant to the authorization of appropriations in section 204(b)(1).

SEC. 203. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

(a) ELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), a foreign country or international organization shall be eligible to receive assistance under section 202 if—

(A) such country or organization is participating in military, peacekeeping, or policing operations in Afghanistan aimed at restoring or maintaining peace and security in that country; and

(B) such assistance is provided specifically for such operations in Afghanistan.

(2) EXCEPTION.—No country the government of which has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) shall be eligible to receive assistance under section 202.

(b) WAIVER.—The President may waive the application of subsection (a)(2) if the President determines that it is important to the national security interest of the United States to do so.

SEC. 204. REIMBURSEMENT FOR ASSISTANCE.

(a) IN GENERAL.—Defense articles, defense services, and military education and training provided under section 202(a)(2) shall be made available without reimbursement to the Department of Defense except to the extent that funds are appropriated pursuant to the authorization of appropriations in subsection (b)(1).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President such sums as may be necessary to reimburse the applicable appropriation, fund, or account for the value (as defined in section 644(m) of the Foreign Assistance Act of 1961) of defense articles, defense services, or military education and training provided under section 202(a)(2).

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended, and are in addition to amounts otherwise available for the purposes described in this title.

SEC. 205. CONGRESSIONAL NOTIFICATION REQUIREMENTS.

(a) AUTHORITY.—The President may provide assistance under this title to any eligible foreign country or eligible international organization if the President determines that such assistance is important to the national security interest of the United States and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such determination at least 15 days in advance of providing such assistance.

(b) NOTIFICATION.—The report described in subsection (a) shall be submitted in classified and unclassified form and shall include information relating to the type and amount of assistance proposed to be provided and the actions that the proposed recipient of such assistance has taken or has committed to take.

SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN.

(a) FINDINGS.—Congress finds the following:

(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it never again becomes a haven for terrorism.

(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through an improved security environment is critical to the fostering of the Afghan Interim Authority and the traditional Afghan assembly or ''Loya Jirga'' process, which is intended to lead to a permanent national government in Afghanistan, and also is essential for the participation of women in Afghan society.

(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unsafe environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

(5) The violence and lawlessness may jeopardize the ''Loya Jirga'' process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaida, Taliban forces, and drug traffickers.

(6) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the ability of the United States to meet its military objectives.

(7) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries without the participation of United States Armed Forces, is deployed only in Kabul and currently does not have the mandate or the capacity to provide security to other parts of Afghanistan.

(8) Due to the ongoing military campaign in Afghanistan, the United States does not contribute troops to the International Security Assistance Force but has provided support to other countries that are doing so.

(9) The United States is providing political, financial, training, and other assistance to the Afghan Interim Authority as it begins to build a national army and police force to help provide security throughout Afghanistan, but this effort is not meeting the immediate security needs of Afghanistan.

(10) Because of these immediate security needs, the Afghan Interim Authority, its Chairman, Hamid Karzai, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded and deployed throughout the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(11)(A) On January 29, 2002, the President stated that ''[w]e will help the new Afghan government provide the security that is the foundation of peace''.

(B) On March 25, 2002, the Secretary of Defense stated, with respect to the reconstruction of Afghanistan, that ''the first thing . . . you need for anything else to happen, for hospitals to happen, for roads to happen, for refugees to come back, for people to be fed and humanitarian workers to move on the country . . . [y]ou've got to have security''.

(b) STATEMENT OF POLICY.—It should be the policy of the United States to support measures to help meet the immediate security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

(c) PREPARATION OF STRATEGY.—

(1) IN GENERAL.—Not later than 45 days after the date of the enactment of this Act, and every

six months thereafter through January 1, 2006, the President shall provide the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate with—

(A) a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government; and

(B) a description of the progress of the Government of Afghanistan toward the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan in accordance with the provisions of this Act.

(2) FORM OF INFORMATION.—The initial provision of information under paragraph (1) shall be made by transmittal of a written report. Thereafter, the information required under paragraph (1) may be provided in a written report or in an oral briefing.

SEC. 207. RELATIONSHIP TO OTHER AUTHORITY.

(a) ADDITIONAL AUTHORITY.—The authority to provide assistance under this title is in addition to any other authority to provide assistance to the Government of Afghanistan.

(b) LAWS RESTRICTING AUTHORITY.—Assistance under this title to the Government of Afghanistan may be provided notwithstanding any other provision of law.

SEC. 208. SENSE OF CONGRESS REGARDING EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE; AUTHORIZATION OF APPROPRIATIONS.

(a) SENSE OF CONGRESS.—Congress urges the President, in order to fulfill the objective of establishing security in Afghanistan, to use the full diplomatic influence of the United States to expand the International Security Assistance Force (ISAF) beyond Kabul, Afghanistan by—

(1) sponsoring in the United Nations Security Council a resolution authorizing such an expansion of that force;

(2) enlisting the European and other allies of the United States to provide forces for an expanded International Security Assistance Force in Afghanistan; and

(3) providing such financial and military assistance, including personnel, as the President considers necessary to achieve the expansion of the International Security Assistance Force.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the President $500,000,000 for each of fiscal years 2003 and 2004 to provide the assistance described in subsection (a)(3).

SEC. 209. SUNSET.

The authority of this title shall expire after September 30, 2005.

Mr. REID. I ask unanimous consent that the Hagel-Biden-Helms amendment at the desk be agreed to; the committee substitute amendment, as amended, be agreed to; the bill, as amended, be read a third time and passed; the motion to reconsider be laid on the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4956) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2712), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

NATIONAL DAY OF PRAYER AND FASTING

Mr. REID. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Con. Res. 155, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 155) affirming the importance of a national day of prayer and fasting, and expressing the sense of Congress that November 27, 2002, should be designated as a national day of prayer and fasting.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the concurrent resolution and the preamble be agreed to; the motion to reconsider be laid on the table; and any statements relating to the resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 155) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 155

Whereas the President has sought the support of the international community in responding to the threat of terrorism, violent extremist organizations, and states that permit or host organizations that are opposed to democratic ideals;

Whereas a united stance against terrorism and terrorist regimes will likely lead to an increased threat to the armed forces and law enforcement personnel of those states that oppose these regimes of terror and that take an active role in rooting out these enemy forces;

Whereas Congress has aided and supported a united response to acts of terrorism and violence inflicted upon the United States, our allies, and peaceful individuals all over the world;

Whereas President Abraham Lincoln, at the outbreak of the Civil War, proclaimed that the last Thursday in September 1861 should be designated as a day of humility, prayer, and fasting for all people of the Nation;

Whereas it is appropriate and fitting to seek guidance, direction, and focus from God in times of conflict and in periods of turmoil;

Whereas it is through prayer, self-reflection, and fasting that we can better examine those elements of our lives that can benefit from God's wisdom and love;

Whereas prayer to God and the admission of human limitations and frailties begins the process of becoming both stronger and closer to God;

Whereas becoming closer to God helps provide direction, purpose, and conviction in those daily actions and decisions we must take;

Whereas our Nation, tested by civil war, military conflicts, and world wars, has always benefited from the grace and benevolence bestowed by God; and

Whereas dangers and threats to our Nation persist and in this time of peril, it is appropriate that the people of the United States, leaders and citizens alike, seek guidance, strength, and resolve through prayer and fasting: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) November 27, 2002, should be designated as a day for humility, prayer, and fasting for all people of the United States; and

(2) all people of the United States should—

(A) observe this day as a day of prayer and fasting;

(B) seek guidance from God to achieve greater understanding of our own failings;

(C) learn how we can do better in our everyday activities; and

(D) gain resolve in how to confront those challenges which we must confront.

CLARIFYING THE REQUIREMENTS FOR ELIGIBILITY IN THE AMERICAN LEGION

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 756, S. 2934.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2934) to amend title 36, United States Code, to clarify the requirements for the eligibility in the American Legion.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD as if read.

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

The bill (S. 2934) was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

AMENDING TITLE 36 U.S. CODE TO CLARIFY THE REQUIREMENT FOR ELIGIBILITY IN THE AMERICAN LEGION

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 758, H.R. 3988.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3988) to amend title 36, United States Code, to clarify the requirement for eligibility in the American Legion.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 3988) was read the third time and passed.

AUTHORIZING PAYMENT OF A GRATUITY TO TRUDY LAPIC

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 356, submitted earlier today by Mr. DAYTON.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 356) to authorize the payment of a gratuity to Trudy Lapic, the widow of Thomas Lapic, who perished in the plane crash which took the life of Senator Wellstone and others.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Madam President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table en bloc, with no intervening action or debate.

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

The resolution (S. Res. 356) was agreed to, as follows:

S. RES. 356

Resolved, That the Secretary of the Senate is authorized and directed to pay, from appropriations under the subheading ''MISCELLANEOUS ITEMS'' under the heading ''CONTINGENT EXPENSES OF THE SENATE'', to Trudy Lapic, widow of Thomas Lapic, a loyal employee of the Senate for 9 years, a sum equal to 8 months of compensation at the rate Thomas Lapic was receiving by law during the last month of his Senate service, that sum to be considered inclusive of funeral expenses and all other allowances.

AMENDING TITLE 10, U.S. CODE, TO PROVIDE FOR ORDERS OF PROTECTION OF CIVILIANS ON MILITARY INSTALLATIONS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5590.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5590) to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5590) was read the third time and passed.

RELATIVE TO THE CONVENING OF THE FIRST SESSION OF THE 108TH CONGRESS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. J. Res. 53, introduced earlier today by the Senator from South Dakota, Mr. DASCHLE, and the Senator from Mississippi, Mr. LOTT.

The PRESIDING OFFICER. The clerk will state the joint resolution by title.

A joint resolution (S. J. Res. 53) relative to the convening of the first session of the 108th Congress.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Madam President, I ask unanimous consent that the joint resolution be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The joint resolution (S. J. Res. 53) was read the third time and passed, as follows:

S.J. RES. 53

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundred Eighth Congress shall begin at noon on Tuesday, January 7, 2003.

AUTHORIZING APPOINTMENTS

Mr. REID. Madam President, I ask unanimous consent that notwithstanding the sine die adjournment of the Senate, the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

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

AUTHORIZING PRINTING OF HOUSE DOCUMENT

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 487 received from the House and which is now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 47) authorizing the printing as a House document of a volume consisting of the transcripts of the ceremonial meeting of the House of Representatives and Senate in New York City on September 6, 2002, and a collection of statements by Members of the House of Representatives and Senate from the CONGRESSIONAL RECORD on the terrorist attacks of September 11, 2001.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the concurrent resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 487) was agreed to.

COMMENDING AND CONGRATULATING THE ANAHEIM ANGELS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 357, submitted earlier today by Senators FEINSTEIN and BOXER.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 357) commending and congratulating the Anaheim Angels for their remarkable spirit, resilience, and athletic discipline in winning the 2002 World Series.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. FEINSTEIN. Madam President, I rise today with my friend and colleague from California, Senator BARBARA BOXER, to commend and congratulate the Anaheim Angels for winning the 2002 World Series 3 weeks ago.

The Angels are world champions for the first time in their 42-year history. After defeating the New York Yankees in the first round of the playoffs and then going on to beat the Minnesota Twins for the American League Championship, the Angels battled my hometown team, the San Francisco Giants, in an exciting all-California World Series. The Angels have proven to the world their outstanding ability to win and work as a team.

Led by manager Mike Scioscia and players Scott Spezio, Garret Anderson, and Darin Erstad the Angels offense destroyed even the mightiest pitchers through October. Most Valuable Player Troy Glaus batted an astounding .385 average with three homeruns in the seven-game series.

Another key player in the Angels' march to glory is Troy Percival. The veteran closing pitcher stifled the Giants' hitters in pivotal game 7 and throughout the playoffs. Furthermore, Troy Percival would not have been able to perform his masterful pitching had it not been for starting pitcher John Lackey who pitched five strong innings in game 7.

Manager Mike Scioscia's leadership proved to be invaluable to the team. His experience as a catcher with Southern California's other major league franchise, the Los Angeles Dodgers, helped the Angels through what started as Anaheim's worst season ever and turned it into a glorious year.

The Anaheim Angels truly epitomize the importance of teamwork, as nearly every member of the roster contributed to their phenomenal season. It should be noted that the championship could not have been won without the dedication of the entire team: David

Eckstein, Tim Salmon, Adam Kennedy, Bengie Molina, Brad Fullmer, Jarrod Washburn, Kevin Appier, Brendan Donnelly, Ben Weber, Ramon Ortiz, and Francisco Rodriguez.

I also would like to congratulate chairman and CEO of the Walt Disney Company Michael Eisner, General Manager Bill Stoneman and all of the Angels' staff on their hard work assembling Anaheim's first championship team. I should also congratulate Jackie Autry, widow of former Angels owner Gene Autry. One of her husband's greatest dreams was to see the Angels win a World Series.

And, most importantly, I would like to thank the Angels fans in Southern California who have earned national recognition for their enthusiasm and unbridled support of their team.

Finally, it is nearly impossible to congratulate the Angels or their fans without mentioning the ''Rally Monkey,'' the adorable mascot that has become Anaheim's symbol of resilience and refusal to give up hope in the most difficult situations.

The Angels have begun a new era of baseball in Southern California and will certainly defend their title with the same heart and determination that brought them to the World Series this year. The Anaheim Angels are a team with an unquenchable desire to win.

They have made the city of Anaheim, the county of Orange, and all of California proud.

Mr. REID. Madam President, I ask unanimous consent that the resolution and preamble be agreed to en bloc; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 357) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 357

Whereas the Anaheim Angels have won the first World Championship in the 42 year history of the franchise;

Whereas the Anaheim Angels completed their best season in franchise history with 99 wins, staging one of the most significant team improvements in Major League Baseball since the 2001 season;

Whereas the 2002 World Series was the Anaheim Angels' first appearance in the Fall Classic;

Whereas the Anaheim Angels have fielded such superstars as Nolan Ryan, Rod Carew, Bobby Grich, Reggie Jackson, Jim Abbott, Wally Joyner, Brian Downing, Jim Edmonds, Gary DiSarcina, and now Troy Percival, Jarrod Washburn, Garret Anderson, Troy Glaus, and Tim Salmon;

Whereas third baseman Troy Glaus received the World Series Most Valuable Player Award for his stellar defensive plays, .385 batting average, and 3 home runs during the series;

Whereas pitcher Francisco Rodriguez became the youngest pitcher to win a World Series game and tied the postseason record for games won with 5 outstanding wins;

Whereas Manager Mike Scioscia won his first World Series title as a manager;

Whereas Tim Salmon made his first playoff appearance in 10 seasons as a major league baseball player, the only current player to have played that long without having reached the postseason;

Whereas the spirit of Gene Autry, the ''Singing Cowboy'' and former owner of the Angels, was undoubtedly ever-present with the Anaheim players throughout the series as he was an inspirational force to all who played for him and knew of his legacy;

Whereas the Anaheim Angels battled another California team deserving of acknowledgement: the San Francisco Giants;

Whereas the San Francisco Giants were a worthy rival for the Anaheim Angels and set the stage for an exciting and suspenseful World Series that was watched with great interest by many Californians;

Whereas the Anaheim Angels epitomize California pride with their incredible focus, dedication to winning, team cohesiveness, and devotion to playing America's pastime with class, athleticism, and enthusiasm; and

Whereas the Anaheim Angels demonstrate the rewards of perseverance, discipline, teamwork, and championship as they prepare to defend their title of World Champions: Now, therefore, be it

Resolved, That the Senate congratulates the Anaheim Angels on winning the 2002 Major League Baseball World Series title.

EXPRESSING SENSE OF CONGRESS ABOUT PUBLIC AWARENESS AND EDUCATION ABOUT IMPORTANCE OF HEALTH CARE COVERAGE

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 757, S. Con. Res. 94.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 94) expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the concurrent resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 94) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 94

Whereas census estimates indicate that some 42,000,000 people in the United States are without health insurance coverage, many of whom are among the most vulnerable and can be financially devastated by serious illness, disease, or accident;

Whereas studies have shown that people with health insurance are healthier than those who are uninsured and receive care through emergency rooms or safety net health care services, because the insured are entitled to, and receive, more preventive care, follow-up care, and care for chronic conditions such as diabetes and high blood pressure;

Whereas over 17,300,000 of the uninsured are employed but are not offered health insurance through their employers;

Whereas such employers are small business owners who are often unaware of the benefits of offering health insurance, including that such benefits are tax deductible, reduce employee turnover, and reduce employee sick days;

Whereas over 16,000,000 people in the United States, more than ⅓ of the uninsured, are in families where at least 1 member of the family has been offered employer based health care coverage but has declined coverage;

Whereas many individuals are eligible for public assistance programs such as the State Children's Health Insurance Program, known as SCHIP, and the medicaid program, but are not currently enrolled due primarily to lack of outreach, education, and accessible enrollment processes;

Whereas studies have shown that many individuals and small businesses are unaware of the various options they have for obtaining affordable health care coverage;

Whereas surveys have shown that many individuals who cite expense as the reason for not purchasing insurance find insurance affordable once they are informed of the true cost of various options; and

Whereas education about health care coverage helps uninsured individuals and employers understand the critical value of health insurance as a preventive measure and the ways to keep their health insurance premiums manageable once they have health care coverage: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) a National Importance of Health Care Coverage Month be established to—

(A) promote a multifaceted educational effort about the importance of health care coverage;

(B) increase awareness of the many available health care coverage options; and

(C) inform those eligible for public insurance programs on ways to access those programs; and

(2) the President issue a proclamation calling on the Federal Government, States, localities, citizens, and businesses of the United States to conduct appropriate programs, fairs, ceremonies, and activities to promote this educational effort.

RELIEF OF SO HYUN JUN

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3758 now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3758) for the relief of So Hyun Jun.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Madam President, I ask unanimous consent that the bill be read a third time and passed; 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 PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3758) was read the third time and passed.

PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN TODAY ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 759, S. 2520.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2520) to amend title 18, United States Code, with respect to the sexual exploitation of children.

There being no objection, the Senate proceeded to consider the bill which was reported by the Committee on the Judiciary with an amendment to strike all after the enacting clause, and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part printed in italic.]

S. 2520

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 ''Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002''.

SEC. 2. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

''(3) knowingly—

''(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

''(B) advertises, promotes, presents, describes, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material in a manner that conveys the impression that the material is, or contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;'';

(B) in paragraph (4), by striking ''or'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

''(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

''(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

''(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer, for purposes of inducing or persuading such minor to participate in any activity that is illegal.'';

(2) in subsection (b)(1), by striking ''(1), (2), (3), or (4)'' and inserting ''(1), (2), (3), (4), or (6)''; and

(3) by striking subsection (c) and inserting the following:

''(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

''(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

''(B) each such person was an adult at the time the material was produced; or

''(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense shall be available in any prosecution that involves obscene child pornography or child pornography as described in section 2256(8)(D). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting a defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.''.

SEC. 3. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

''(e) ADMISSIBILITY OF EVIDENCE.—In any prosecution under this chapter, the name, address, or other identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor .''.

SEC. 4. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: ''and shall not be construed to require proof of the actual identity of the person'';

(2) in paragraph (8)—

(A) in subparagraph (B), by inserting ''is obscene and'' before ''is'';

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

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

''(D) such visual depiction—

''(i) is of a minor, or an individual who appears to be a minor, actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(ii) lacks serious literary, artistic, political, or scientific value; or

''(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct; and''; and

(3) in paragraph (9)(A)(ii)—

(A) by striking ''(ii) who is'' and inserting the following:

''(ii)(I) who is''; and

(B) by striking ''and'' at the end and inserting the following: ''or

''(II) who is virtually indistinguishable from an actual minor; and''.

SEC. 5. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking ''of this section'' and inserting ''of this chapter or chapter 71,'';

(2) in subsection (h)(3), by inserting '', computer generated image or picture,'' after ''video tape''; and

(3) in subsection (i)—

(A) by striking ''not more than 2 years'' and inserting ''not more than 5 years''; and

(B) by striking ''5 years'' and inserting ''10 years''.

SEC. 6. FEDERAL VICTIMS' PROTECTIONS AND RIGHTS.

Section 227(f)(1)(D) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032(f)(1)(D)) is amended to read as follows:

''(D) where the report discloses a violation of State criminal law to an appropriate official of that State or subdivision of that State for the purpose of enforcing such State law.''.

SEC. 7. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting ''or'' at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

''(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''; and

(2) in subsection (c)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

''(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''.

SEC. 8. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking ''subsection (d)'' each place that term appears and inserting ''subsection (e)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

''(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

''(2) The circumstance referred to in paragraph (1) is that—

''(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

''(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.''.

SEC. 9. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

''(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

''(A) temporary, preliminary, or permanent injunctive relief;

''(B) compensatory and punitive damages; and

''(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.''.

SEC. 10. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting ''chapter 71,'' before ''chapter 109A,'' each place it appears.

SEC. 11. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 12. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 13. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002'' or ''PROTECT Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ''The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,'' New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ''[T]he most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.'' Ferber, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to: (A) create depictions of virtual children that are indistinguishable from depictions of real children; (B) create depictions of virtual children using compositions of real children to create an unidentifiable child; or (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, to make depictions of virtual children look real.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges will likely increase after the Ashcroft v. Free Speech Coalition decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic delineation may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in Free Speech Coalition. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable.

(11) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(12) The Supreme Court's 1982 Ferber v. New York decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary to ensure that open and notorious trafficking in such materials does not reappear.

SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

''(3) knowingly—

''(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

''(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that conveys the impression that the material or purported material is, or contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;'';

(B) in paragraph (4), by striking ''or'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

''(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

''(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

''(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal.'';

(2) in subsection (b)(1), by striking ''(1), (2), (3), or (4)'' and inserting ''(1), (2), (3), (4), or (6)''; and

(3) by striking subsection (c) and inserting the following:

''(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

''(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

''(B) each such person was an adult at the time the material was produced; or

''(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense shall be available in any prosecution that involves obscene child pornography or child pornography as described in section 2256(8)(D). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.''.

SEC. 4. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

''(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor .''.

SEC. 5. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: ''and shall not be construed to require proof of the actual identity of the person'';

(2) in paragraph (8)—

(A) in subparagraph (B), by inserting ''is obscene and'' before ''is'';

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

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

''(D) such visual depiction—

''(i) is, or appears to be, of a minor actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(ii) lacks serious literary, artistic, political, or scientific value; or

''(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct;''; and

(3) by striking paragraph (9), and inserting the following:

''(9) 'identifiable minor'—

''(A)(i) means a person—

''(I)(aa) who was a minor at the time the visual depiction was created, adapted, or modified; or

''(bb) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

''(II) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

''(ii) shall not be construed to require proof of the actual identity of the identifiable minor; or

''(B) means a computer or computer generated image that is virtually indistinguishable from an actual minor; and

''(10) 'virtually indistinguishable' means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor.''.

SEC. 6. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking ''of this section'' and inserting ''of this chapter or chapter 71,'';

(2) in subsection (h)(3), by inserting '', computer generated image or picture,'' after ''video tape''; and

(3) in subsection (i)—

(A) by striking ''not more than 2 years'' and inserting ''not more than 5 years''; and

(B) by striking ''5 years'' and inserting ''10 years''.

SEC. 7. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (c), by inserting ''or pursuant to'' after ''to comply with'';

(2) by amending subsection (f)(1)(D) to read as follows:

''(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.'';

(3) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(4) by inserting after paragraph (2) of subsection (b) the following new paragraph:

''(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.''.

SEC. 8. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting ''or'' at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

''(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''; and

(2) in subsection (c)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

''(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''.

SEC. 9. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking ''subsection (d)'' each place that term appears and inserting ''subsection (e)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

''(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

''(2) The circumstance referred to in paragraph (1) is that—

''(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

''(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.''.

SEC. 10. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

''(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

''(A) temporary, preliminary, or permanent injunctive relief;

''(B) compensatory and punitive damages; and

''(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.''.

SEC. 11. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting ''chapter 71,'' before ''chapter 109A,'' each place it appears.

SEC. 12. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline

penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 13. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 14. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. REID. I ask unanimous consent that the committee substitute be agreed to, the bill, as amended, be read a third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2520), as amended, was read the third time and passed.

COMMENDING SAIL BOSTON FOR ITS CONTINUING ADVANCEMENT OF THE MARITIME HERITAGE OF NATIONS

Mr. REID. Madam President, I ask unanimous consent that the Committee on Commerce be discharged from further consideration of S.J. Res. 42 and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the joint resolution by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 42) commending Sail Boston for its continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. I ask unanimous consent that the joint resolution be read three times, passed, the motion to reconsider laid upon the table, the preamble be agreed to, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The joint resolution (S.J. Res. 42) was read the third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S. J. RES. 42

Whereas Sail Boston is a nonprofit corporation dedicated to the promotion of sail training and sail training events in an effort to build goodwill among the nations of the world by encouraging international sailing competition and gathering of tall ships in the United States;

Whereas Sail Boston has successfully promoted the United States in the international tall ship community since 1992 with its organization of numerous tall ship events in Boston and in the Great Lakes;

Whereas Sail Boston has worked for more than a decade in partnership with the American Sail Training Association in organizing and implementing tall ship gatherings in the United States to emphasize and promote the values of learning and education at sea;

Whereas Sail Boston has successfully established a unique reputation in the celebration of major sailing events and milestones in the maritime history of the United States;

Whereas Sail Boston served as an organizer for the bicentennial celebration of our country's oldest commissioned warship, the U.S.S. Constitution, in 1997 and was selected by the International Sail Training Association of London as Port Organizer for the gathering of the world's tall ships in Boston in 1992 and again in 2000 as part of our country's millennium celebration;

Whereas Sail Boston promoted and implemented 1 of the world's largest tall ship events in the history of sail training in the year 2000, when over 7,500,000 people welcomed a gathering of 145 international and domestic tall ships, representing 34 countries, to the port of Boston; and

Whereas Sail Boston will continue its international goodwill promotions with a gathering of tall ships in Boston in 2004: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) Sail Boston is commended for—

(A) its excellence in the promotion of tall ships and maritime events in Boston and in ports throughout the United States; and

(B) for its work with the American Sail Training Association in the promotion and encouragement of young cadets through training programs, seamanship, and education at sea;

(2) all Americans and citizens of nations throughout the world are encouraged to join in the international friendship and support that Sail Boston and the American Sail Training Association will provide during Sail Boston 2004; and

(3) Sail Boston is encouraged to continue to represent and promote the ports of the United States in the international tall ship community, and to continue to organize and participate in tall ship events in the United States and around the world.

FACILITATING ABILITY OF CERTAIN SPECTRUM AUCTION WINNERS TO PURSUE ALTERNATIVE MEASURES

Mr. REID. I ask unanimous consent that the Commerce Committee be discharged from consideration of S. 2869 and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2869) 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.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I understand that Senators KERRY, BROWNBACK, and HOLLINGS have an amendment at the desk. I ask unanimous consent that it be considered and agreed to; the motion to reconsider be laid upon the table; that the bill, as amended, be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 4957) was agreed to as follows:

(Purpose: To authorize the Federal Communications Commission to refund deposits and downpayments made by Auction 35 winning bidders who elect to withdraw their bids)

Strike out all after the enacting clause and insert the following:

SECTION 1. RELIEF FROM CONTINUING OBLIGATIONS.

A winning bidder to which the Commission has not granted an Auction 35 license may irrevocably elect to relinquish any right, title, or interest in that license and the associated license application by formal written notice to the Commission. Such an election may only be made within 30 days after the date of enactment of this Act. A winning bidder that makes such an election shall be free of any obligation the winning bidder would otherwise have with respect to that license, the associated license application, and the associated winning bid, including the obligation to pay the amount of its winning bid that would be otherwise due for such license.

SEC. 2. RETURN OF DEPOSITS AND DOWNPAYMENTS.

Within 37 days after receiving an election that meets the requirements of section 3

from an Auction 35 winning bidder that has made the election described in section 1, the Commission shall refund deposit or downpayment made with respect to a winning bidder for the license that is the subject of the election.

SEC. 3. COMMISSION TO ISSUE PUBLIC NOTICE.

(a) PUBLIC NOTICE.—Within 5 days after the date of enactment of this Act, the Commission shall issue a public notice specifying the form and the process for the return of deposits and downpayments under section 2.

(b) TIME FOR ELECTION.—An election under this section is not valid unless it is made within 30 days after the date of enactment of this Act.

SEC. 4. WAIVER OF PAPERWORK REDUCTION ACT REQUIREMENTS.

Section 3507 of title 44, United States Code, shall not apply to the Commission's implementation of this Act.

SEC. 5. NO INFERENCE WITH RESPECT TO NEXTWAVE CASE.

It is the sense of the Congress that no inference with respect to any issue of law or fact in Federal Communications Commission v. NextWAVE Personal Communications, Inc., et al. (Supreme Court Docket No. 01–653) should be drawn from the introduction, amendment, defeat, or enactment of this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) AUCTION 35.—The term ''Auction 35'' means the C and F block broadband personal communications service spectrum auction of the Commission that began on December 1, 2000, and ended on January 6, 2001, insofar as that auction related to spectrum previously licensed to NextWave Personal Communications, Inc., NextWave Power Partners, Inc., or Urban Comm North Carolina, Inc.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission or a bureau or division thereof action on delegated authority.

(3) WINNING BIDDER.—The term ''winning bidder'' means any person who is entitled under Commission order FCC 02–99 (released March 27, 2002), to a refund of a substantial portion of monies on deposit for spectrum formerly licensed to Nextwave and Urban Comm as defined in that order.

The bill (S. 2869), as amended, was read the third time and passed.

DAM SAFETY AND SECURITY ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 617, H.R. 4727.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4727) to reauthorize the national dam safety program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The bill (H.R. 4727) was read the third time and passed.

NORTH AMERICAN WETLANDS CONSERVATION REAUTHORIZATION ACT

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to Calendar No. 692, H.R. 3908.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3908) to reauthorize the North American Wetlands Conservation Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works with amendments, as follows:

[Strike the parts shown in boldface brackets and insert the parts shown in italic.]

H.R. 3908

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 ''North American Wetlands Conservation Reauthorization Act''.

SEC. 2. AMENDMENT OF NORTH AMERICAN WETLANDS CONSERVATION ACT.

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 the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.).

SEC. 3. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDING.—Section 2(a)(1) (16 U.S.C. 4401(a)(1)) is amended by striking ''and other habitats'' and inserting ''and associated habitats''.

(b) PURPOSES.—Section 2(b) (16 U.S.C. 4401(b)) is amended—

(1) in paragraph (1) by striking ''and other habitats for migratory birds'' and inserting ''**[**and associated habitats for wetland dependent migratory birds**]** *and habitats associated with wetland ecosystems*'';

(2) in paragraph (2) by inserting ''wetland **[**dependent *associated***]**'' before ''migratory bird''; and

(3) in paragraph (3)—

(A) by inserting ''wetland **[**dependent**]** *associated*'' before ''migratory birds''; and

(B) by inserting '', the United States Shorebird Conservation Plan, the North American Waterbird Conservation Plan, the Partners In Flight Conservation Plans,'' after ''North American Waterfowl Management Plan''.

SEC. 4. DEFINITION OF WETLANDS CONSERVATION PROJECT.

Section 3(9) (16 U.S.C. 4402(9)) is amended—

(1) in subparagraph (A) by inserting ''of a wetland ecosystem and associated habitat'' after ''including water rights,''; and

(2) in subparagraph (B) by striking ''and other habitat'' and inserting ''and associated habitat''.

SEC. 5. REAUTHORIZATION.

Section 7(c) (16 U.S.C. 4406(c)) is amended by striking ''not to exceed'' and all that follows and inserting ''not to exceed—

''(1) $55,000,000 for fiscal year 2003;

''(2) $60,000,000 for fiscal year 2004;

''(3) $65,000,000 for fiscal year 2005;

''(4) $70,000,000 for fiscal year 2006; and

''(5) $75,000,000 for fiscal year 2007.''.

SEC. 6. ALLOCATION.

Section 8(a) (16 U.S.C. 4407(a)) is amended—

(1) in paragraph (1)—

(A) by striking ''(but at least 50 per centum and not more than 70 per centum thereof)'' and inserting ''**[**(but at least 25 percent and not more than 50 percent thereof)**]** *(but at least 30 percent and not more than 60 percent)*''; and

(B) by striking ''4 per centum'' and inserting ''4 percent''; and

(2) in paragraph (2) by striking ''(but at least 30 per centum and not more than 50 per centum thereof)'' and inserting ''**[**(but at least 50 percent and not more than 75 percent thereof)**]** *(but at least 40 percent and not more than 70 percent)*''.

SEC. 7. CLARIFICATION OF NON-FEDERAL SHARE OF THE COST OF APPROVED WETLANDS CONSERVATION PROJECTS.

Section 8(b) (16 U.S.C. 4407(b)) is amended by striking so much as precedes the second sentence and inserting the following:

''(b) COST SHARING.—(1) Except as provided in paragraph (2), as a condition of providing assistance under this Act for any approved wetlands conservation project, the Secretary shall require that the portion of the costs of the project paid with amounts provided by non-Federal United States sources is equal to at least the amount allocated under subsection (a) that is used for the project.

''(2) Federal moneys allocated under subsection (a) may be used to pay 100 percent of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters.

''(3)''.

SEC. 8. TECHNICAL CORRECTIONS.

(a) The North American Wetlands Conservation Act is amended as follows:

(1) In section 2(a)(10) (16 U.S.C. 4401(a)(10)), by inserting ''of 1973'' after ''Species Act''.

(2) In section 2(a)(12) (16 U.S.C. 4401(a)(12)), by inserting ''and in 1994 by the Secretary of Sedesol for Mexico'' after ''United States''.

[(2)**]** *(3)* In section 3(2) (16 U.S.C. 4402(2)), by striking ''Committee on Merchant Marine and Fisheries of the United States House of Representatives'' and inserting ''Committee on Resources of the House of Representatives''.

[(3)**]** *(4)* In section 3(5) (16 U.S.C. 4402(5)), by inserting ''of 1973'' after ''Species Act''.

(5) In section 3(6) (16 U.S.C. 4402(6)), by inserting after ''1986'' the following: '', and by the Secretary of Sedesol for Mexico in 1994, and subsequent dates''.

[(4)**]** *(6)* In section 4(a)(1)(B) (16 U.S.C. 4403(a)(1)(B)), by striking ''section 3(2)(B)'' and inserting ''section 3(g)(2)(B)''.

[(5)**]** *(7)* In section 4(c) (16 U.S.C. 4403(c)), in the matter preceding paragraph (1), by striking ''Commission'' and inserting ''Council''.

[(6)**]** *(8)* In section 5(a)(5) (16 U.S.C. 4404(a)(5)), by inserting ''of 1973'' after ''Species Act''.

(9) In section 5(b) (16 U.S.C. 4404(b)), by striking ''by January 1 of each year,'' and inserting ''each year''.

(10) In section 5(d) (16 U.S.C. 4404(d)), by striking ''one Council member'' and inserting ''2 Council members''.

[(7)**]** *(11)* In section 5(f) (16 U.S.C. 4404(f)), by striking ''subsection (d)'' and inserting ''subsection (e)''.

[(8)**]** *(12)* In section 10(1)(C) (16 U.S.C. 4409(1)(C)), by striking ''western hemisphere pursuant to section 17 of this Act'' and inserting ''Western Hemisphere pursuant to section 16''.

[(9)**]** *(13)* In section 10(1)(D) (16 U.S.C. 4409(1)(D)), by striking the period and inserting ''; and''.

[(10)**]** *(14)* In section 16(a) (16 U.S.C. 4413), by striking ''western hemisphere'' and inserting ''Western Hemisphere''.

(b)(1) Section 112(1) of Public Law 101–593 (104 Stat. 2962) is amended by striking ''and before the period''.

(2) Paragraph (1) of this subsection shall be effective on and after the effective date of section 112(1) of Public Law 101–593 (104 Stat. 2962).

SEC. 9. CHESAPEAKE BAY INITIATIVE.

Section 502(c) of the Chesapeake Bay Initiative Act of 1998 (16 U.S.C. 461 note; Public Law 105–312) is amended by striking ''2003'' and inserting ''2008''.

Mr. REID. I ask unanimous consent that the committee reported amendments be agreed to; the bill, as amended, be read three times and passed; the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (H.R. 3908), as amended, was read the third time and passed.

NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT OF 2002

Mr. REID. I ask unanimous consent the HELP Committee be discharged from further consideration of H.R. 4664 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4664) to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Madam President, I am pleased the Senate will consider and pass today, the National Science Foundation Doubling Act. This bill is the product of extensive bipaprtisan, bicameral negotiations among the House of Representatives Committee on Science, the Senate Committee on Health, Education, Labor, and Pensions, and the Senate Committee on Commerce, Science, and Transportation. It is based on S. 2817, which I introduced with Senator HOLLINGS, Senator MIKULSKI, and Senator BOND. I commend them, together with Senator GREGG, Senator MCCAIN, House Science Committee Chairman BOEHLERT, Congressman NICK SMITH, and Congressman RALPH HALL for their leadership in crafting this important legislation.

NSF performs two key functions for the federal governmnet and the broader research community. It supports basic research and development in math, science, engineering, and technology, and it promotes math and science learning at every level, from K–12 through post-graduate education.

Few people realize how influential NSF has been to their daily lives. NSF has funded basic research leading to the creation of doppler weather radar, retail bar codes, speech recognition software, magnetic resonance imaging machines, and even World Wide Web browsers, such as Netscape and Microsoft's Internet Explorer. NSF education initiatives of the late 1980s were the forerunners of the standards-based school reform movement embraced throughout the Nation today and most recently in the new No Child Left Behind Act governing nearly all federal elementary and secondary education programs.

We can and should build on NSF's record in improving the lives of millions of Americans. The 20th Century was the era of the industrial age, and the 21st Century will be the era of information technology and the life sciences.

The bill before us doubles NSF's budget authority over the next five years. It matches the growth of the National Institutes of Health over the last five years. We double budget authority for research and development in the physical sciences and theoretical mathematics, because they support advances in the health sciences and because they are valuable in their own right.

I am particularly proud that the legislation before us authorizes a new secondary school systemic initiative at NSF that will develop model school reforms to improve high school student math and science performance and better prepare all students for college-level and technical work. For too long, federal policy has paid scant attention to the needs of secondary school students. Senator JEFFORDS and I have been working extensively in this area. I commend him for his leadership and look forward to continued work with him on the needs of secondary students.

The bill before us supports model math and science partnerships between institutions of higher education and local school districts to improve the knowledge and teaching techniques of current and future math and science teachers. The math and science partnership provisions are based on proposals offered by the Administration, Senator FRIST, Senator ROBERTS, Senator ROCKEFELLER, and Senator BINGAMAN. They track a strong body of educational research that emphasizes the importance of training math and science teachers to improve student performance in those important subject areas.

This legislation supports institutions of higher education in increasing the number of students, particularly women and minorities, who study toward and obtain degrees in science, math, engineering, and technology. Senator LIEBERMAN, Senator MIKULSKI, and Senator BOND are leaders on this issue, and I commend them as well. We have an economic need and a national security imperative to increase the number and quality of students studying science, math, engineering, and technology at the post-secondary level.

Finally, the bill before us reforms NSF's program on major research and facilities equipment, to help prioritize projects and guard against cost overruns and approval of proposals that have not received adequate analysis. This is an area of concern for Senator CLINTON, Senator BOND, and Senator MIKULSKI, and I commend them for this initiative. Quality and merit should be the touchstones of our Nation's investment in the sciences.

The National Science Foundation Doubling Act is a thoughtful piece of bipartisan legislation that prepares us for the future. I urge my colleagues to support it.

Mr. HOLLINGS. Madam President, today, the Senate will pass legislation that authorizes the doubling of the National Science Foundation budget by fiscal year 2007. As you all know, NSF is the nation's premier federal science agency that invests in basic research across all disciplines. We rely on NSF research to open new frontiers of science, and I am proud that we can pass this important legislation today.

We have approached this legislation in concert with our friends on the Health, Labor, Education, and Pensions Committee, Senators KENNEDY and GREGG. Once again, it has been a pleasure to work with Chairman BOEHLERT and ranking member RALPH HALL of the House Science Committee. Obviously, we could not have produced this product without Senator MCCAIN, Senator ROCKEFELLER, and the other members of the Commerce Committee. We were also pleased to work with our friends, Senators BOND and MIKULSKI, who have been leaders on the NSF.

This doubling bill is vital. The Hart-Rudman Commission on National Security, and former speaker Newt Gingrich, warned that our failure to invest in science and to reform math and science education was the second biggest threat to our national security. NSF is well positioned to address this threat. After all, NSF invests in math and science education from kindergarten all the way through to the post-doctoral level and beyond. This bill allows the Foundation to increase that investment, while reaffirming our commitment to women, minorities, and people with disabilities. These under-represented groups, together, make up more than half of our nation's work force and are only increasing. Letting these groups fall by the wayside would not only threaten our economic competiveness, but also our national security.

It is often said that more than one-half of our nation's economic growth since World War I has stemmed from technology driven by science. Let me give just one example of how NSF's investments can spur our economy. NSF is the leading agency in the National Nanotechnology Initiative. Nanotechnology—which is the science of manipulating matter at the atomic and molecular level—will cut across every scientific discipline, including materials and manufacturing, healthcare and medicine, energy and the environment, agriculture, biotechnology, information technology, and national security. Worldwide, the market for nanotechnology is expected

to be $1 trillion annually within 10 to 15 years. NSF's cross-disciplinary approach, which includes groundbreaking research into the way society and this new technology will interact, will help this nation take advantage of Nanotechnology sooner, better, and with greater confidence.

Finally, I want to note that NSF is responsible for the overall health and well-being of the research enterprise in this country. Congress is now completing its 5-year commitment to double funding for the National Institutes of Health. We made that investment because we want to cure and prevent disease. But increasingly, it's not just the biomedical research that NIH supports that brings us breakthroughs. Recent advances in biomedical science have relied on advances in fields such as computer science, physics, and chemistry. For example, the sequencing of the human genome was enabled by powerful computers networked in innovative ways. The commitment that we are making today to science at NSF will build our base knowledge in non-medical fields to complement the research done at NIH.

NSF research is not just for large universities. The Foundation's continued support for the EPSCoR program supports the development of the science and technology resources of individual states like South Carolina, through partnerships that involve the state's universities, industry, government, and the Federal research and development enterprise. These partnerships put researchers in these states in a better position to compete and win NSF grants.

Mr. President, I think these arguments are solid, simple, and straightforward. We can talk about NSF's past outstanding contributions to science. We can talk about the future and the importance of science and technology to our economy. But, Mr. President, where the rubber meets the road, we have to stop talking and invest, with real money, in the science and engineering enterprise that will guaranty the health, economic viability, and security of our future. I, for one, appreciate the hard work that NSF has done over the past 52 years promoting the progress of science, and I thank my Senate colleagues for supporting me in providing this agency the resources needed to conquer tomorrow.

Mr. LIEBERMAN. Madam President, I am proud with my Senate colleagues, particularly Senators KENNEDY, GREGG, and HOLLINGS, in expressing support for this historic legislation, which will help ensure that our country continues to be a leader in scientific and technological innovation. I also want to extend my appreciation to Chairman BOEHLERT of the House Science Committee for his leadership in moving this strongly bipartisan legislation.

The reality is that technological and scientific innovation is now widely understood to be the major driver of economic growth, not to mention a critical factor in our military superiority. Education is essential to ensuring that the American workforce possesses the skills necessary to meet these innovation needs. The provisions included in this legislation will help give universities and colleges in Connecticut and nationwide the tools they need to boost our domestic pool of brainpower—the next generation of people who will incubate and implement the next generation of ideas to expand our economy.

I am extremely pleased that the bill passed today includes all of the key elements of the Technology Talent Act of 2001 S. 1549, legislation that I and my colleagues, most notably Senators MIKULSKI, BOND, FRIST and DOMENICI, first proposed a year ago today. The Technology Talent Act of 2001, ''Tech Talent Act'', sought to stimulate economic growth by boosting the number of math, science, technology and engineering graduates from U.S. institutions of higher learning. House Science Committee Chairman BOEHLERT introduced similar legislation in the House , H.R. 3130, on October 16, 2001.

In keeping with the Tech Talent Act, the National Science Foundation Act of 2002 ''NSF Authorization Act approved today establishes a framework for a multi-year competitive grant program that would award performance-based grants to institutions of higher learning to increase the number of math, science, technology and engineering graduates. The legislation will formally authorize an existing program at NSF that was inspired by and modeled after Tech Talent Act—the Science, Mathematics, Engineering,and Technology talent Expansion Program, STEP. STEP, has already received Federal appropriations for fiscal year 2002 and elicited more than 170 applications from interested colleges and universities, of which 16 were awarded grants. I am pleased that Naugatuck Valley Community College in my home state was selected to be one of the first grantees under the program and have every confidence that it will lead the Nation in developing creative and effective ways to build a 21st century workforce.

The provisions in the NSP Authorization Act before us today achieves the same goals as were proposed in my Tech Talent Act. The following analysis describes the growing talent gap that threatens America's leadership in science and technology and clarifies the goals, concepts, and themes underpinning both my original legislation and the STEP, or Tech Talent, provisions of the NSF Authorization Act.

America's technological prowess is unequaled in the world today—which is why, despite our economic slowdown and the financial burdens of prosecuting the war against terror and ensuring our collective defense, we still have the strongest, most vibrant economy on the planet. However, our long-term competitive standing and economic security could well be at risk if we do not address a troubling trend line in our workforce, the mismatch between the demand and supply of workers with science and engineering training.

Studies show that the number of jobs requiring significant technical skills is projected to grow by more than 50 percent in the United States over the next ten years. But outside of the life sciences, the number of degrees awarded in science and engineering has been flat or declining. This has helped fuel a well-chronicled shortage of qualified New Economy workers.

We have tried to temporarily plug this human capital hole with a stopgap of foreign workers. Unfortunately, there is a broad consensus among high-tech leaders and policymakers that it would be a serious mistake to prolong this dependence and essentially render our GDP contingent on the supply of H–1 B visa holders.

That may sound like a bit of an overstatement to some. But the reality is that technological innovation has been a key enabler of our economic and military dominance over the last half century. It is widely acknowledged, moreover, that we cannot continue to expand our economy in the future if we don't take steps now to expand our domestic pool of human intellectual capital.

Now, most answers to serious economic challenges flow from the private sector, which is where growth must occur. But there are things that the Federal Government can do to help, particularly when it comes to educating and training our workforce. We can provide leadership, focus, and not least of all resources, and that was the purpose of the Tech Talent Act as introduced, and STEP as is included in this NSF legislation.

Specifically, the Tech Talent program aims to fix a critical link in this ''tech talent'' gap—undergraduate education in science, math, engineering, and technology. As established in our bill, it would provide competitive grants to institutions of higher learning, from universities to community colleges, to encourage them to find creative methods for increasing the number of graduates in these disciplines.

This is not another scholarship program, but a targeted, results-driven initiative that goes straight to the gatekeepers. We're not asking them to change their admissions policies, but, in effect, to design new missions. Come up with effective ideas, and we will provide the dollars to make them work.

For example, institutions could propose to add or strengthen the interdisciplinary components of undergraduate science education. Or they could establish targeted support programs for women and minorities, who are 54 percent of our total workforce, but only 22 percent of scientists and engineers, to increase enrollment and graduation numbers in these fields. Or they could partner with local technology companies to provide summer industry internships for ongoing research experience.

This initiative was conceived with strong bipartisan, bicameral support. The Tech Talent Act, as noted, was introduced last year by Senators MIKULSKI, BOND, FRIST, DOMENICI, and myself; the House companion bill, H.R. 3130, was introduced by House Science Committee Chairman BOEHLERT and Representative LARSON. By the end of the year, Congress had agreed to appropriate $5 million for this fiscal year to jumpstart the program in the form of NSF's STEP, even though our authorizing legislation had not yet been passed. Most recently, the Senate VA–HUD Committee Appropriations bill for fiscal year 2003 included $20 million for the program.

The program also has extremely broad support outside the Congress. The Administration has supported Tech Talent as a priority, including funding for it in its budget request for FY 2003. In addition, the response from leaders in industry, academia, and educational communities, also has been tremendous, we have received letters of support from TechNet, Semiconductor Industry Association, National Alliance of Business, K–12 Science, Mathematics, Engineering & Technology Coalition, American Association of State Colleges and Universities, Texas Instruments, and the American Society for Engineering Education, to name but a few.

Even more encouraging are the preliminary data obtained from NSF's STEP. NSF received 177 applications requesting a total of $59.7 million in aid, clear evidence of the vast interest in, and need for, the Tech Talent program among undergraduate institutions seeking to implement reforms in science and math education. In its first year, the program has awarded 16 grants to colleges and universities.

The NSF Authorization Act passed today will do much to enhance the efforts already underway at NSF in this area and to permanently establish ''Tech Talent'' as a national priority. I want to make clear the intent of a few provisions in this legislation as their implementation will be critical to the success of the program.

The intent of H.R. 4664, expressed in section (8)(a)(7)(A), is to prioritize funding for programs in fields of science, mathematics, engineering, and technology that have witnessed a period of stagnant of declining enrollment and degree conferrals, especially where such declines have resulted, or are likely to result, in adverse social, economic, technological, or military costs. It deserves clarification that a declining trend can be indicated not only through an absolute decrease in the number of students enrolling or graduating in a particular field, but through a relative decrease in the proportion that students of a particular field constitute relative to the total number of students enrolled or graduating across all fields.

For example, statistics from the National Science Foundation, NSF, demonstrate that between 1985 and 2000, the number of bachelor's degrees awarded declined from 77,572 to 59,536 in engineering, and from 16,270 to 14,580 in the physical sciences. Furthermore, the NSF predicts that the number of jobs requiring skills and backgrounds in information technology will vastly outstrip the number of people capable of filling such positions over the next decade. The negative consequences of such trends with respect to economic growth, technological innovation, and gainful employment have been widely documented and should represent near to medium-term priorities for Tech talent funding.

In emphasizing the need to remediate stagnant or declining trends, we recognize and appreciate previous criticisms regarding the difficulty of accurately modeling future employment scenarios and of forecasting areas of societal need. Nevertheless, we believe that investments must bear a relationship to desired outcomes if limited funds are to be allocated intelligently. The NSF is therefore expected to undertake efforts to the best extent it can to identify and account for broader social considerations, including generally anticipated industry requirements or imbalances between the number of students graduating across different fields, in determining fields appropriate for prioritization. To this end, the NSF may require applicants to specify the specific societal needs being addressed by their proposals and to articulate how such proposals would further the remediation of targeted needs.

The fundamental goal of the Technology Talent Act as introduced was to increase the number of graduates with expertise in math, science, technology and engineering to meet the critical needs of our U.S. businesses, industries, research community and military. As such, the intention of sections (8)(a)(7)(B) and (8)(a)(7)(D)(i) of H.R. 4664 is to require applicants to clearly establish measurable targets to both increase the number of students studying toward degrees in science, mathematics, technology and engineering, and to increase the number of students who have completed degrees, concentrations, or certificates in these fields. Therefore, it is intended that applicants that fail to establish goals for both enrollment and completion shall be considered inadequate.

Likewise under section (8)(a)(7)(D)(ii), it is intended that the Director shall terminate funding in the case of a grantee that has failed to make substantial progress toward meeting the targets established in section (8)(a)(7)(D)(i) for increasing the number of students completing degrees, concentrations or certificates in science, mathematics, technology and engineering. However, I would encourage the Director to work with grantees and provide technical assistance to help ensure that grantees make substantial progress during the first three years of the grant toward meeting the targets established in (8)(a)(7)(D)(i) and to achieve such targets by the end of the grant period. I further believe that it is inherent in this legislation that grantees that successfully meet their targets established in (8)(a)(7)(D)(i) shall be eligible to compete for subsequent grants.

I believe that this NSF bill provides a real boost to efforts that are being undertaken in parts of the country to address our technical workforce challenge. As such, it is the intention that innovative consortias between institutions of higher education and non-profits, industry or state or local governments are eligible to compete for grants under the STEP program per section (8)(a)(7)(F). In particular, I believe that legislation under (8)(a)(7)(F)(iii) allows for non-profits established on behalf of such high-quality and proven consortias to apply directly for grants.

For example, the State of Texas passed legislation last year that created a consortium—the Texas Engineering and Technical Consortium, TETC, among private industry and 32 colleges and universities to increase the number of students graduating from Texas schools with degrees in electrical engineering and computer science. Grants are awarded to universities and colleges to support curriculum changes, bridge programs, and various forms of student and faculty support to help increase the retention rate of students pursuing degrees in these areas and to attract and retain more underrepresented groups. This collaborative effort has received funding from Advance Micro Devices, Texas Instruments, Hewlett Packard, Motorola, Intel, Applied Materials and Sabre, with in-kind support from AeA and TechNet. The state matches private and other contributions up to $5 million per year.

In April, grants worth $5.3 million were awarded to fund 33 projects as 23 institutions. The appeal of this program is that industry, academia and the state are working cooperatively and collaboratively to address a pressing workforce need, rather than on a school-by-school or company-by-company basis. While it is still too early to determine the success of these projects, which were funded at 64 percent of the potential grant amount, the institutions are projecting a 13 percent increase in total student numbers in these programs for fall 2003. If fully funded, that increase could go as high as 23 percent. This is just the type of innovation that the Tech Talent is meant to encourage.

Finally, the real success the version of the ''Tech Talent'' program encompassed in this legislation will be based on the successful replication and expansion of model programs supported through this grant program at all of our higher education institutions. Therefore, I believe it is critical that the Director follow the intent of the original language as introduced in S.

1549, section (5)(a), and H.R. 3130, section (4)(d), and select an independent evaluative organization to develop metrics for measuring the impact of the program, particularly on the number of students enrolled, academic performance of students, persistence to degree completion, and placement in post-graduate education or career pathways, and to identify the program approaches assisted under this program that are the most effective in increasing the number of students obtaining degrees in science, mathematics, technology and engineering.

In addition, both S. 1549 and H.R. 3130 intend for the Director to regularly disseminate information on the activities conducted by grantees and the results of programs assisted under this grant program, including best practices, to participating institutions of higher education and other interested institutions of higher education. Similarly, I believe it is imperative to share the findings of programs assisted under STEP grants with Congress through interim and final reports so that we may make better policy decisions to enhance our nation's standing as a scientific and technological leader.

We all realize that solving the undergraduate problem is not going to single handedly close our talent gap. At the same time, we should also realize that the talent gap cannot be closed without first solving the problem at the undergraduate level. Therefore, I am pleased by the Senate's unanimous support today for the NSF Authorization Act of 2002, and the STEP, or Tech Talent, provisions encompassed therein. In doing so, we will be helping to ensure that the young minds of today will be capable of mastering and fueling the high-tech economies of tomorrow.

Ms. MIKULSKI. Madam President, I rise today to join with Senator KENNEDY, Senator HOLLINGS, Senator GREGG, Senator MCCAIN, and Senator BOND to urge passage of the National Science Foundation Doubling Act.

On July 12, 2002, Senator KIT BOND and I joined together and called on our Senate colleagues to join us in an effort to double the budget of the National Science Foundation over five years. We said at that time, that just as we worked collectively to double the NIH budget, now was the time for a parallel effort on behalf of the fundamental research supported by the NSF.

NSF's impact over the past half century has been monumental—especially in the field of medical technologies and research. The investments have also spawned not only new products, but entire new industries, such as biotechnology, the internet, and e-commerce. Medical technologies such as biotechnology, the internet, and e-commerce. Medical technologies such as magnetic resonance imaging, ultrasound, digital mammography and genomic mapping could not have occurred, and cannot now improve to the next level of proficiency, without underlying knowledge from NSF-supported work in biology, physics, chemistry, mathematics, engineering, and computer sciences.

Today, with this bill, we take an important step to ensure the well-being of this Nation and its citizens with passage of this bill to double the funding for the basic research and science education activities of the National Science Foundation over the next five years.

Some might ask, ''Why should we do this now?'' Let me try and answer that question.

We have seen some dramatic increases in research and development investments during the past decade, largely from industry. These investments have contributed to this country's standing as a global economic powerhouse.

However, according to the National Science Board—in its latest report on science indicators—developments abroad could affect U.S. preeminence in the years to come. The Board says that the United States finances 44 percent of the total worldwide investment in R&D—equal to the combined total of Japan, the United Kingdom, Canada, France, Germany and Italy.

But other nations are increasing their R&D investments and focusing on areas such as physical sciences and engineering, which receive comparably less funding in the United States. Those changes could lead to the creation of new centers for research excellence abroad, which will encourage many of those who have come here from other countries and have become a part of our science enterprise to return home.

The fact is that this country's future competitiveness rests on our ability to develop a U.S. work force that has the skills necessary to meet the increased competition coming from abroad.

In this country, R&D investments by U.S. industry have contributed to a steady stream of innovations and economic growth. We are seeing new partnerships develop that connect firms and universities, nonprofit organizations and government.

Meanwhile, the balance of R&D investments continues to shift. As industry R&D grew to nearly 75 percent of the national total by 2000, Federal expenditures remained essentially flat over the past decade.

At the same time federal research expenditures in life sciences have grown, from 41 to 47 percent of the federal total between 1990 and 2000. However, the combined share of physical sciences and engineering in federal research total dropped from 37 to 29 percent in the same period.

Changes in the U.S. economy have spilled into the workforce. Information- and technology-based changes in the economy have created new opportunities for highly trained workers.

Science and engineering occupational fields are growing faster than the overall growth of the American work force. the Bureau of Labor Statistics predicts that during this decade, hi-tech occupations will grow by 47 percent, compared to 15 percent for the labor force as a whole.

Despite many state and national reforms initiated during the last decade, the quality of mathematics and science education at the precollege level is not where it should be. America's high school students continue to lag behind in international achievement measures in science and mathematics. U.S. high school students taking physics lag behind students in Norway, Sweden, the Russian Federation, Denmark, Germany, Australia and seven other countries.

A persistent issue in science and mathematics education remains the size and adequacy of the teaching force. According to the National Commission on Mathematics and Science Teaching for the 21st Century, the nation's schools will need to hire 2.2 million teachers, including 240,000 middle and high school mathematics and science teachers, in the next decade.

The need for teachers is most pronounced in urban and rural areas and within specific disciplines and grade levels of mathematics and science. A survey of urban school districts, by the Council of the Great City Schools and Recruiting New Teachers, Inc., in 1998–99, indicated that up to 95 percent of our urban school districts had an immediate demand for high school science and mathematics teachers.

A high percentage of science and mathematics teachers lack even a minor in their teaching field, with 56 percent of public secondary students receiving instruction in the physical sciences from teachers without a major or minor in the physical sciences. And as many as 50 percent of new teachers in urban school districts leave the teaching profession within their first three years, further exacerbating shortages.

Solving the problem of producing more high-quality, homegrown scientists and engineers—and a well educated workforce—depends upon solving the math and science education problems we have at the elementary and secondary levels of our school system.

The bill before us today authorizes substantial growth in all areas of basic research—including the physical, engineering, biological, and computer sciences—fields vital for progress in just about every other area of science including biomedical research. The bill also puts a high priority on cutting edge programs such as information technology, nanotechnology and plant genome research.

Under this bill, the NSF budget would grow from today's level of $5 billion to nearly $10 billion by fiscal year 2007 which should allow for substantial growth in both the size of the average award as well increase the number of awards NSF is able to make. Increasing the size of the grants will benefit those currently conducting research. Increasing the number of awards should help

those individuals who are just starting their careers in science as well as attract more women and minorities into our science and technology enterprise.

In the area of math and science education, the bill firmly establishes the President's Math and Science Partnership program at the National Science Foundation. This is a new effort designed to create strong connections between state and local school districts with our institutions of higher education.

This bill also includes a provision for a new undergraduate ''tech talent'' program. The ''tech talent'' program is designed to provide financial support to undergraduate students to pursue bachelor degrees in science and engineering—all in an effort to help meet today's and tomorrow's workforce needs.

The funding in this bill will also help increase the graduate student stipends in both the NSF fellowship programs as well as in the support graduate students receive as research assistants on the NSF research grants. Under this bill, NSF's entire education and human resources program would grow from $875 million in fiscal year 2002 to almost $1.8 billion by fiscal year 2007.

Finally, this bill includes two provisions that relate to the National Science Board. These are ''good government'' provisions that give the National Science Board, the policy making body of the Foundation, the authority and funding to hire its own staff. Our rationale is to ensure that the Board remains independent with respect to its policy making and oversight responsibilities. This is particularly important as Congress attempts to double the NSF over the next five years. Finally, it is equally important to know that these provisions do not preclude the Board and the NSF from continuing to work closely together as they have over the years such as in the staffing of NSB committees, subcommittees, and task forces and the development of the biennial Science and Engineering Indicators report.

As a Nation, we have a big challenge ahead of us as we enter the new millennium. Our world has changed and we must do what is necessary to meet the new challenges that will surely come our way. The sustained and effective investment in our Nation's research and education enterprise is one of the keys to meeting those challenges. I urge all my colleagues to join us in enacting this important investment in the future of our country.

NSF REAUTHORIZATION: NSF DOUBLING ACT

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

Mr. KENNEDY. I would be happy to yield to the Senator from Iowa.

Mr. HARKIN. I see that in this legislation, there is an authorization for the Plant Genome Project, a program that had previously been authorized only in appropriations acts.

Mr. KENNEDY. That is correct.

Mr. HARKIN. Is the intent of the mangers in including this provision merely to provide a permanent authorization for the Plant Genome Project, and not to state a preference by the Senate for plant genomics over other agricultural genomics programs when it comes to additional funding provided through appropriations?

Mr. KENNEDY. The Senator is correct. That plant genomics language included in the NSF doubling legislations is only to establish an authorization, it does not state a preference for plant genomics over other agricultural genomics programs that might be provided through later appropriations acts.

Mr. HARKIN. I thank the Senator. I think that is an important point because Senator LUGAR and I worked hard in the Agricultural Research, Extension, and Education Reform Act of 1998 to authorize an agricultural genomics program administered by the National Science Foundation because we felt a balanced genomics program was essential to keeping U.S. agriculture productive and competitive.

While I think the plant genomics program is an excellent one, I sincerely hope that any further increases provided for agricultural genomics be open to animal and microbiological research as will, not just plants. We need a balanced portfolio of agricultural research to best capitalize on the resources devoted to agriculture-related genomics research. I would not want anyone to think that the Senate was now backtracking on the progress we made with the passage of the 1998 agricultural research legislation.

Mr. KENNEDY. It is certainly not the manager's intent to limit the Agricultural, Research, Extension, and Education Reform Act of 1998.

Mr. HARKIN. I thank the Senator for that. I thank the Senator for yielding.

Mr. REID. I understand Senators KENNEDY, GREGG, and HOLLINGS have a substitute amendment at the desk; I ask that that amendment be considered and agreed to, the motion to reconsider be laid upon the table; the bill, as amended, be read three times and passed; the motion to reconsider be laid upon the table; the title amendment be agreed to; and any statements be printed in the RECORD with no intervening action or debate.

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

The amendment (No. 4958) was agreed to.

(The amendment is printed in today's RECORD under ''Text of the Amendments.'')

The bill (H.R. 4644), as amended, was read the third time and passed.

The amendment (No. 4959) was agreed to, as follows:

Amend the title so as to read: ''An Act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.''.

ORDERS FOR FRIDAY, NOVEMBER 15, 2002

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business tonight, it stand in adjournment until tomorrow at 9:45 a.m. I further ask that on Friday, immediately following the prayer, 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 of morning business until 10 a.m. with the time equally divided between the two leaders or their designee; and that at 10 a.m. the majority leader, Senator DASCHLE, or his designee be recognized.

Further, that the live quorum with respect to cloture motions filed with respect to the Homeland Security Act be waived.

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

ARMED FORCES TAX FAIRNESS ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5557, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5557) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

TAX STATUS OF SERVICE PERSONNEL ON DIEGO GARCIA

Mr. BAUCUS. The distinguished Senator from Louisiana, Ms. LANDRIEU has raised an issue with respect to the legislation before us. That legislation, H.R. 5557, deals with tax benefits for military service personnel. Senator LANDRIEU would like clarification from the Administration on the status of service men and women on the Island of Diego Garcia. These service personnel have participated in military operations as part of Operation Enduring Freedom and will participate in future military operations from that location. There is a question whether these members of the armed forces are entitled to be treated in the same manner as if such services were in a combat zone.

Mr. GRASSLEY. Let me respond to the distinguished chairman on this point. At the request of the Senator from Louisiana, our staffs made inquiries of the administration on this question this evening. In discussion with Treasury officials, our staffs have been assured that the Treasury Department will look into this matter and work

with the Senator from Louisiana to address the questions raised by the Senator. We look forward to an expeditious response from the Administration.

Mr. BAUCUS. I thank my good friend from Iowa.

Mr. HARKIN. Madam President, I am pleased that we are passing the Armed Services Tax Fairness Act that will make a number of useful tax changes benefitting our military personnel including the National Guard and Reserve. It includes a provision that I introduced that broadens the allowable membership of veterans organizations so ancestors and descendants can be members. This will allow veterans organizations, particularly at the local chapter level to preserve as tax exempt a variety of their activities which otherwise would be subject to tax as the number of veterans who are members decline.

Unfortunately, because of opposition from the House, this measure does not include a provision passed by the Senate on an earlier version of the Armed Services Tax Fairness Act that I feel very strongly about. I introduced it earlier this year. It was companion to a measure introduced by Congressman RANGEL.

My bill blocks the ability of the very rich to reduce their taxes by renouncing their U.S. citizenship. The Joint Tax Committee has estimated that it will raise $656 million from a very few people who I call Benedict Arnolds. These are people who turn their back on their country which provided so well for them so they can avoid paying their fair share of U.S. taxes.

Under current law, there are special rules that apply to these former citizens that appear to recover funds lost to the Treasury. But, they are full of holes. Under the current regime, for 10 years after a U.S. citizen renounces his or her citizenship with a principal purpose of avoiding U.S. taxes, the person is taxed at the rates that would have applied had he or she remained a citizen. Actually the tax is nominally on a broader base of income and on more types of transactions. In addition, if the expatriate dies within 10 years of the expatriation, more types of assets are included in his or her estate. But, the reality is that taxes are very often not paid.

The reality is that once a person has expatriated and removed U.S. assets from U.S. jurisdiction, it is extremely difficult to enforce the current rules, particularly for an entire decade after the citizenship is renounced. The measure I introduced simply provides that the very act of renouncing ones citizenship triggers the recognition of tax. So, rather than collecting tax every time an asset is sold over the next decade, my bill treats all of the assets of an expatriate as having been sold the day prior to when the person renounces their citizenship. The taxes are due up front rather than over time. In regard to estate taxes, rather than attempting to collect the tax from the estate of an expatriate not in U.S. jurisdiction, my measure taxes the inheritance of an heir remaining in the U.S. in such a way as to remove any tax benefit from the renouncement of citizenship.

Madam President, $656 million in revenue from these very few former citizens is a lot of revenue that must be made up by loyal Americans or in higher debt that Americans will face. I intend to reintroduce my measure at the beginning of the next Congress and will be working hard for its passage at the earliest possible point.

Mr. REID. I ask unanimous consent that the Baucus amendment at the desk be agreed to, the bill be read three times and passed, the motion to reconsider be laid on the table, and any statements be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 4961) was agreed to.

(The amendment is printed in today's RECORD under ''Text of the Amendments.'')

The bill (H.R. 5557), as amended, was read the third time and passed.

PROGRAM

Mr. REID. Madam President, I announce that a motion to proceed to the terrorism insurance conference report is possible at about 10 a.m. tomorrow.

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