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Senate

HOMELAND SECURITY ACT OF 2002—Continued

THE SAFETY ACT

Mr. CHAFEE. Madam President, I would like to thank the Republican Leader for his willingness to address concerns raised by me and our colleagues from Maine regarding certain provisions in H.R. 5005, the Homeland Security Act of 2002.

In the interests of clarity, I wanted to discuss one aspect of the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act of 2002, which is included in H.R. 5005. The SAFETY Act provides that the ''government contractor defense'' will be available to certain sellers of anti-terrorism technology. In *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 108 S. Ct. 2510 (1988), the U.S. Supreme Court recognized that the government contractor defense offers relief to certain defendants from liability for design defects. It is my understanding that the drafters of the SAFETY Act were aware of the Boyle decision and intended for the government contractor defense to apply solely to design defect claims, rather than offering blanket relief to any and all causes of action.

Mr. LOTT. I concur with the Senator from Rhode Island. It is clear that the government contractor defense contained in the SAFETY Act could be raised only in response to design defect claims.

Mr. CHAFEE. I thank the Republican Leader, and look forward to the opportunity to correct three other provisions of the Homeland Security Act when the 108th Congress convenes in January.

FIRST RESPONDERS

Mr. DAYTON. Madam President, I would like to speak about a very important first responder matter which, I hope, the Senate will include in the Homeland Security Act of 2002.

By definition, emergency management usually occurs in crisis. The incident managers must assess the emergency, organize the staff, and direct their responses under very difficult conditions. Currently, however, many first responders are not fully prepared for attacks like September 11, 2001.

NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

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By order of the Joint Committee on Printing.

MARK DAYTON, *Chairman.*

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The Homeland Security Act of 2002 includes provisions to improve the preparedness of emergency response providers. It is also designed to improve the Federal Government's response to terrorist attacks and other major disasters.

To date, however, most of the homeland security training and consulting contracts have been awarded to Fortune 500 companies. Postsecondary educational institutions have been left out of the process. It is essential that our country's colleges and universities also collaborate on the design of homeland defense-integrated emergency management and training systems. Demonstration programs should train first responders to use new technologies that would reduce the devastations from terrorist attacks. They can integrate these technologies into management procedures that will improve accountability, command, and control. The results of those demonstration programs could then be disseminated nationwide.

Am I correct to assume that funding for colleges and universities to develop homeland defense-integrated emergency management and training systems could be provided through provisions in the Homeland Security Act of 2002?

Mr. LIEBERMAN. I will request that the new Secretary of the Homeland Security Department give attention to the concerns about emergency management raised by the Senator from Minnesota, and I hope that homeland defense-integrated emergency management and training systems will be given due consideration for funding through grants from the extramural programs.

Mr. DAYTON. I thank the Senator for his consideration and support.

BACKGROUND CHECKS FOR TRUCK DRIVERS

Mr. McCAIN. Madam President, last November, Congress included a provision in section 1012 of the USA Patriot Act, P.L. 107–56, which requires all commercial truck drivers who haul hazardous materials to undergo a background records check before receiving or renewing their Commercial Driver's License, CDL, endorsement to haul hazmat. Unfortunately, over a year has passed and regulations to promulgate this requirement have not been issued.

Mr. HOLLINGS. I want to associate myself with the concerns raised by my colleague. This is a very important issue to both of us. In fact, we worked together in a bipartisan fashion on S. 1750, the Hazmat Endorsements Requirements Act, which would clarify existing law and guide the process for administering the checks. The Senate Commerce Committee approved S. 1750 in April without objection. However, the Senate has not taken up this legislation, nor has the Department of Transportation issued a rulemaking to implement Section 1012.

Last week, we took an important step forward in addressing Port and Maritime Security when we passed S. 1214. That important measure includes requirements for background records checks for many port workers, and clarifies that if a driver holds a valid CDL with a hazardous materials endorsement obtained after a background records check, the driver would not need to have a duplicative check to access secure port areas. Unfortunately these checks are not being performed and it is unlikely that will change until the DOT issues a rule or the Congress approves legislation to address concerns regarding the hazmat endorsement background records check requirements enacted last year.

Mr. McCAIN. That is correct. We have not fully addressed the issue of background checks for commercial drivers and more work remains.

Mr. HOLLINGS. I hope we can continue our bipartisan work on this important issue early next year to ensure the requirements in the USA Patriot Act will be carried out and that truck drivers are afforded a right to a formal appeals process.

Mr. McCAIN. I agree that the issue must be addressed. In the absence of any regulatory action by DOT, I will certainly want to continue our joint efforts to provide the appropriate guidance to DOT and the states on this important security matter.

Mr. HOLLINGS. I thank my colleague and look forward to working with him on this issue during the next Congress.

AGRICULTURAL PROVISIONS

Mr. HARKIN. Madam President, as Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, I want to enter into a colloquy with the ranking minority member of the Committee, Senator LUGAR, regarding the agricultural provisions in the compromise homeland security legislation.

Mr. LUGAR. I am pleased to join with my colleague to discuss some of the agricultural provisions in this legislation. A provision in Section 421 dealing with the transfer of certain agricultural inspections from the U.S. Department of Agriculture—USDA—to the new Department of Homeland Security—DHS—needs clarification. This section requires that USDA and DHS enter into a transfer agreement and stipulates that the agreement shall address USDA supervision of training of employees who will be carrying out agricultural inspection functions at the new DHS and the transfer of funds from USDA to the new DHS. We want to make clear that we expect that the transfer agreement shall include these components and that USDA will be responsible for agricultural inspection training and that appropriate funds would be transferred from USDA to the new DHS.

Mr. HARKIN. I agree with your interpretation of that provision. I also want to provide additional explanation about a section that originated from our mutual concern about the safety of food that enters our country. Like you, I have been concerned that agencies that inspect foods and food products that come through our borders do not have the ability to share information in order to jointly track shipment and other crucial information. As a result, we crafted a provision, now included in this legislation, to ensure that information systems—i.e., computers—will be coordinated across agencies with border security responsibilities. This includes agencies that will be housed in the new DHS as well as those like the Food and Drug Administration and the Food Safety Inspection Service—that will not, but have a homeland security function.

Mr. LUGAR. That is an important provision in this legislation. I also want to clarify a provision related to the transfer of the Plum Island Animal Disease Center from USDA to the new DHS. Due to a technical error, there appears to be a contradiction between Section 303(3) and Section 310 of the House passed bill. The intent of this bill is to transfer the assets and liabilities of this center, which is now part of USDA, but not the USDA personnel or functions. While I am fairly confident this technical error will yet be rectified, in implementing this new law, I would expect that the language in Section 310 would govern.

Mr. HARKIN. Thank you for that clarification. Finally, we are aware that the Chairman and ranking minority member of the House Agriculture Committee, during consideration of this legislation in the House, entered into the RECORD their understanding of how these agricultural provisions would be implemented. While I question whether or not it is necessary to transfer Plum Island to the new DHS at this time, I concur with the House's interpretation of the provisions that are included.

Mr. LUGAR. I also concur with their interpretation which follows and would expect that these agricultural provisions be carried out consistent with this description. I ask unanimous consent it be printed in the RECORD.

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

Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture. Transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security and requires the Secretary of Agriculture and the Secretary of Homeland Security, upon completion of the transfer, to enter into an agreement providing for continued access by USDA for research, diagnostic and other programs.

The Committee recognizes the critical importance of the Plum Island Animal Disease Center to the safety and security of animal agriculture in the United States. The Committee expects that the transfer of this foreign animal disease facility to the new DHS shall be completed in a manner that minimizes any disruption of agricultural research, diagnostic or other USDA activities. Likewise, the Committee expects that funds that have and continue to be appropriated for the maintenance, upgrade, or replacement of agricultural research, diagnostic and

training facilities at the Plum Island Animal Disease Center shall continue to be expended for those purposes.

The Committee shares the goal of expanding the capabilities of the Plum Island Animal Disease Center. Likewise, the Committee supports the accompanying goal of building agro-terrorism prevention capabilities within the new DHS. With this in mind, the Committee fully expects that in the absence of alternative facilities for current USDA activities, the Secretary of Homeland Security shall make every possible effort to expand and enhance agricultural activities related to foreign animal diseases at the Plum Island Animal Disease Center.

Sec. 421. Transfer of Certain Agricultural Inspection Functions of the Department of Agriculture.

(a) Transfers to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities.

The Committee is aware that the Agricultural Quarantine and Inspection Program of the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) conducts numerous activities with respect to both domestic and international commerce in order to protect the health of agriculturally important animals and plants within the United States. Within the new DHS will be created a mission area of Border and Transportation Security. In order that the new streamlined border security program operates efficiently, the Committee has transferred to the new DHS the responsibility for certain agricultural import and entry inspection activities of the USDA conducted at points of entry. This transfer will include the inspection of arriving passengers, luggage, cargo and means of conveyance into the United States to the Under Secretary for Border and Transportation Security. In addition to inspection at points of entry into the United States, responsibility for inspections of passengers, luggage and their means of conveyance, at points of departure outside the United States, where agreements exist for such purposes, shall be the responsibility of the Secretary of Homeland Security. The provision allows the Secretary of Homeland Security to exercise authorities related to import and entry inspection functions transferred including conducting warrantless inspections at the border, collecting samples, holding and seizing articles that are imported into the United States in violation of applicable laws and regulations, and assessing and collecting civil penalties at the border. The Committee intends that USDA will retain the responsibility for all other activities of the Agricultural Quarantine and Inspection Program regarding imports including pre-clearance of commodities, trade protocol verification activities, fumigation activities, quarantine, diagnosis, eradication and indemnification, as well as other sanitary and phytosanitary measures. All functions regarding exports, interstate and intrastate activities will remain at USDA.

(b) Delineates the laws governing agricultural import and entry inspection activities that are covered by the transfer of authorities.

The Committee is aware that the authority to inspect passengers, cargo, and their means of conveyance coming into the United States is derived from numerous statutes that date back, in some cases, more than 100 years. The Committee does not intend that the reference to these statutes should be construed to provide any authority to the Secretary of Homeland Security beyond the responsibility to carry out inspections (including pre-clearance inspections of passengers, luggage and their means of conveyance in such countries where agreements exist for such purposes) and enforce the regulations of USDA at points of entry into the United States.

(c) Excludes quarantine activities from the term ''functions'' as defined by this Act for the purposes of this section.

While agricultural inspection functions, as well as those related administrative and enforcement functions, shall be transferred and become the responsibility of the Secretary of Homeland Security, the legislation retains all functions related to quarantine activities and quarantine facilities within USDA. Although the Committee has excluded quarantine activities from those functions transferred to the new DHS, the Committee does not intend to preclude the Secretary of Homeland Security from taking actions related to inspection functions, such as seizure or holding of plant or animal materials entering the United States. These authorities fall within the purview of inspection related enforcement functions that shall be transferred to the Secretary of Homeland Security.

(d) Requires that the authority transferred to the Secretary of Homeland Security shall be exercised in accordance with the regulations, policies and procedures issued by the Secretary of Agriculture; requires the Secretary of Agriculture to coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the covered laws related to the functions transferred under subsection (a); provides that the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue guidelines and directives to ensure the effective use of personnel of the Department of Homeland Security to carry out the transferred functions.

One intention of this legislation is to create a streamlined Border and Transportation Security program at points of entry into the United States. With regard to the protection of animal and plant health, the Committee does not intend or expect the new DHS to make the determination of what animals, plants, animal or plant products, soils, or other biological materials present an unacceptable risk to the agriculture of the United States. Policies and procedures regarding actions necessary to detect and prevent such unacceptable risks shall remain the responsibility of the Secretary of Agriculture. Likewise, policies and regulations defining restrictions on movement into the United States of substances that would pose a threat to agriculture shall continue to be the responsibility of the Secretary of Agriculture.

The Committee has provided authority for the Secretary of Homeland Security to issue directives and guidelines in consultation with the Secretary of Agriculture in order to efficiently manage inspection resources. When exercising this authority, the Committee expects that the agricultural inspection function at points of entry into the United States shall not be diminished, and as a result, the Committee expects that Secretary of Homeland Security shall ensure that necessary resources are dedicated to carrying out the agricultural inspection functions transferred from the Department of Agriculture.

(e) Requires the Secretary of Agriculture and the Secretary of Homeland Security to enter into an agreement to effectuate the transfer of functions. The agreement must address the training of employees and the transfer of funds. In addition, the agreement may include authority for the Secretary of Homeland Security to perform functions delegated to APHIS for the protection of domestic livestock and plants, as well as authority for the Secretary of Agriculture to use employees of the new DHS to carry out APHIS functions.

The Committee is aware of the unique nature and the specialized training necessary for effective and efficient border inspection activities carried out by the Agricultural Quarantine and Inspection Program. The Committee expects that the training of personnel and detector dogs for this highly specialized function will continue to be supervised by the Department of Agriculture. While a large proportion of the personnel employed by the Agricultural Quarantine and Inspection Program is permanently stationed at one of 186 points of entry into the United States, the Committee is aware that the Secretary of Agriculture commonly redeploys up to 20% of the border inspection force in order to manage agricultural pests and diseases throughout the United States. In completing the transfer of Agricultural Quarantine and Inspection Program border inspectors to the DHS, the Committee expects that the Secretary of Agriculture and the Secretary of Homeland Security will enter into an agreement whereby inspection resources, where possible, would continue to be made available to the Secretary of Agriculture in response to domestic agricultural needs.

(f) Provides that the Secretary of Agriculture shall transfer funds collected by fee authorities to the Department of Homeland Security so long as the funds do not exceed the proportion of the costs incurred by the Secretary of Homeland Security in carrying out activities funded by such fees.

Beginning in fiscal year 2003, the unobligated balance of the Agricultural Quarantine and Inspection Fund will be transferred to other accounts within USDA and will be used to carry out import and domestic inspection activities, as well as animal and plant health quarantine activities, without additional appropriations. Fees for inspection services shall continue to be collected and deposited into these accounts in the manner prescribed by regulations issued by the Secretary of Agriculture. In effectuating the transfer of agricultural import inspection activities at points of entry into the United States, the Committee intends that funds from these accounts shall be transferred to the DHS in order to reimburse the DHS for the actual inspections carried out by the Department. The Committee expects that the Secretary of Agriculture shall continue to manage these accounts in a manner that ensures the availability of funds necessary to carry out domestic inspection and quarantine programs.

(g) Provides that during the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security up to 3,200 full-time equivalent positions of the Department of Agriculture.

(h) Makes conforming amendments to Title V of the Agriculture Risk Protection Act of 2000 related to the protection of inspection animals.

FEDERAL ALCOHOL AND TOBACCO STATUTES

Mr. GRASSLEY. Madam President, it is clear that the Secretary of the Treasury presently possesses the authority to administer the Federal alcohol and tobacco statutes referenced in the bill before us. These authorities currently are delegated to the Bureau of Alcohol, Tobacco and Firearms and now will be delegated to the new Tax and Trade Bureau. I appreciate this colloquy to confirm that the language in section 1111(c) (1) concerning the transfer to the Department of Justice not only excludes the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms

that will be retained within the Department of the Treasury as set forth in paragraph (2) of this section, but also excludes the functions of the Secretary of the Treasury that relate to these retained authorities, functions, personnel, and assets.

Mr. BAUCUS. The Senator is correct.

Mr. GRASSLEY. I also wanted to confirm that section 1111(b) as it relates to alcohol and tobacco only invests the Bureau of Alcohol Tobacco, Firearms and Explosives at the Department of Justice with the responsibility to investigate with respect to the Title 18 laws pertaining to the smuggling of alcohol and tobacco. All other investigatory responsibilities pertaining to alcohol and tobacco remain at the Department of the Treasury under the new Tax and Trade Bureau, or as otherwise delegated under existing law.

Mr. BAUCUS. The Senator is correct and his reading is consistent with the provisions of this legislation.

Mr. GRASSLEY. Finally, I wish to confirm that Treasury retained the authority to audit or investigate violations such as false or inaccurate records of production, false or inaccurate tax returns, failure to respond to delinquency notices, unlawful transfers in bond, and the unlawful production, labeling, advertising and marketing of alcoholic beverages.

Mr. BAUCUS. That is correct, and I appreciate my good friend from Iowa for clarifying these points.

PRESERVING COAST GUARD MISSION PERFORMANCE

Mrs. MURRAY. Madam President, I would like to thank the chairman of Governmental Affairs Committee, the Senator from Connecticut, for his tireless efforts and leadership concerning the creation of the Department of Homeland Security. Our country is facing a range of threats that we must address—from port and airport security to cyber terrorism. We need funding for a new organizational structure to reduce these risks.

I also would like to engage in a colloquy with the ranking member of the Committee on Appropriations, the Senior Senator from Alaska, regarding the Coast Guard. The men and women of our Coast Guard make significant contributions to our nation each and every day, and they deserve our support and admiration.

Last week, our colleague from Alaska addressed an important section in this legislation, Section 888, which governs the Coast Guard's role in the new Department of Homeland Security. His statement clearly established that it is the intent of this provision that the Coast Guard's non-homeland security missions and capabilities must be maintained without significant reduction when the Service transfers to the new Department.

As the chairman of the Transportation Appropriations Subcommittee and as a Senator from a coastal state, I emphatically agree with my Alaska colleague's remarks about the intent and effect of Section 888. I also would like to ask him some questions about the Coast Guard and its role in the Homeland Security Department.

Does my colleague from Alaska agree that the United States Coast Guard is integral to the security of this country, and that the Coast Guard provides a wide range of services to our nation? Does he also recognize that some of these services are related to homeland security while others are not? For instance, the Coast Guard provides vital services in the areas of marine safety, search and rescue, aids to navigation, fisheries enforcement, marine environmental protection, and ice operations. While these traditional missions do not directly contribute to national security, they do ensure the safety of our citizens and our environment.

Mr. STEVENS. I firmly agree with my colleague from Washington about both the Coast Guard's role in securing our nation and the importance of its non-homeland security missions and capabilities.

Mrs. MURRAY. Madam President, does the Senator from Alaska believe that it is imperative that these essential non-homeland security missions be maintained, and that the language in the bill clearly identifies the need to protect these critical services?

Mr. STEVENS. I strongly agree with this imperative and with my colleague's interpretation of Section 888. Indeed, Section 888 mandates this protection.

Mrs. MURRAY. Madam President, as the Senator from Alaska has previously indicated, the essential non-homeland security missions are to be protected pursuant to Section 888. It is also my understanding that the Coast Guard organizational structure shall be maintained. To ensure that we achieve our objectives, the Inspector General of the Department shall conduct an annual review to assess the Coast Guard performance of all its missions, with a particular emphasis on examining the non-homeland security missions. Is this the understanding of the Senator from Alaska?

Mr. STEVENS. I share my colleague's understandings on these matters.

Mrs. MURRAY. Madam President, does the Senator from Alaska agree that any significant changes to the authorities, functions, missions and capabilities of the Coast Guard can be implemented only if they are specified in subsequent legislation? And to that end, does he believe the language contained in the bill will serve to protect the non-homeland security missions of the Coast Guard while moving the organization into an important homeland security role?

Mr. STEVENS. I do agree. Section 888 is a clear statement that Congress will play a major role in deciding whether there would be any significant changes to the Coast Guard in these areas. The language also preserves the Service's non-homeland security missions while permitting it to perform important homeland security missions.

Mrs. MURRAY. As the ranking member of the Appropriations Committee, the Senator from Alaska is aware that, as part of the fiscal year Transportation Appropriations bill reported unanimously in July, the Committee mandated that the Coast Guard submit quarterly mission hour reports detailing precisely how the Coast Guard has allocated its human and capital resources by mission for the preceding quarter.

The Committee also granted the Commandant unprecedented budget flexibility with the dramatically increased funds provided above the fiscal year 2002 level to address simultaneously his homeland security needs while ensuring that his other critical missions return to their pre-September 11, 2001 levels.

Finally, the Committee required the Commandant to submit a detailed plan as part of his fiscal year 2004 budget request to show us precisely how he would maintain such mission balance. I am sure that the Senator from Alaska agrees with me that, notwithstanding the fact that the fiscal year 2003 Transportation Appropriations bill has been entangled in the larger delay in the Appropriations process, the bipartisan leadership of the Appropriations Committee expects the Commandant to move forward with the submission of these reports.

Mr. STEVENS. Yes, I concur with the Senator that the Committee should begin receiving these reports without delay so that we can monitor the Coast Guard's progress in complying with not only the Appropriations Committee's directives but with the requirements articulated under Section 888 of the Homeland Security Act.

Mrs. MURRAY. It is with great disappointment that I have to tell the Senator from Alaska that I am greatly concerned by some preliminary indications from the Department of Transportation Inspector General, IG, that the Coast Guard may not have fulfilled its statutory obligations to fully fund mandated improvements to its Search and Rescue Program in fiscal year 2002.

As part of the Department of Transportation and Related Agencies Appropriations Act, 2002, the Committee mandated that not less than $14,541,000 be used solely to address the many deficiencies that the IG found with the Coast Guard's readiness in the area of Search and Rescue. We also mandated that the Inspector General monitor the Coast Guard's compliance with this directive.

While the Inspector General's office has not yet finalized its report, I am greatly concerned by preliminary indications that the Coast Guard did not, I repeat "not fulfill the requirement in the law. This is precisely the kind of concern that makes it essential that we continue to monitor the Coast Guard's compliance with Appropriations Committee directives as well as

with Section 888 of the Homeland Security Act. Again, I commend your leadership in this area and look forward to working with you and Admiral Collins, the Commandant, on these issues in the future.

I also want to thank the Chairman of the Governmental Affairs Committee again for his foresight and leadership in the efforts to create the Department of Homeland Security.

Mr. SHELBY. Madam President, as the Ranking Member of the Transportation Appropriations Subcommittee, I strongly agree with the remarks made by my distinguished colleague from Alaska last week regarding the Coast Guard and its treatment in the Homeland Security legislation. I commend his leadership to preserve the traditional role of the Coast Guard as it becomes an agency of the Department of Homeland Security.

The unique strength of the Coast Guard in its multi-mission operational capability—the ability to perform a variety of missions for the nation. It is one of several agencies to be subsumed into the new Department that has both on-homeland security and homeland security missions. It is critical to maintain all of the Coast Guard's missions and capabilities instead of allowing one mission area to eclipse any other. Section 888 takes a significant step forward in preventing that from happening by preventing assets, personnel, and budget resources from being diverted away from the Coast Guard's traditional missions, including rescuing mariners in distress.

Madam President, I share the concerns expressed by the Senator from Alaska about the utmost importance of maintaining the Coast Guard's non-homeland security missions and capabilities. When I became Chairman of the Subcommittee in the next Congress, I shall look forward to working closely with him as the Full Appropriations Committee Chairman to ensure that Section 888 is implemented as Congress intends.

Ms. COLLINS. I would like to thank the Senior Senator from Alaska for the leadership he has shown in helping to preserve the traditional functions of the Coast Guard after it becomes part of the new Department of Homeland Security. Maine and Alaska share a common interest in preserving the Coast Guard's traditional functions, including its search and rescue mission, which are so critical to our fishing communities.

The Senior Senator from Alaska and I teamed up in the Governmental Affairs Committee to ensure that, when we transfer the Coast Guard to the Department of Homeland Security, we do not leave its traditional missions behind. Our language ensured that the authorities, functions, assets, and personal of the Department would be maintained intact and without reduction after its transfer to the new Department except as specified in subsequent Acts.

I am pleased that the fundamental elements and purposes of our Coast Guard amendment are included in the final compromise homeland security bill. Section 888 of the final compromise measure is intended to preserve the traditional functions of the Coast Guard such as marine safety, search and rescue, aids to navigation, living marine resources, and ice operations. The Coast Guard will also be a separate and distinct entity in the new Department, and the Commandant of the Coast Guard will report directly to the Secretary of Homeland Security, thus preventing a demotion from the Commandant's current status in the Department of Transportation.

There is, however, a question that I would like to address to my friend from Alaska. It is my understanding that Section 888 of the final compromise bill is intended to prohibit changes in the Coast Guard's personnel, assets, or authorities that would adversely impact the Service's capability to perform its non-homeland security functions. Is that also the Senator's understanding of this provision?

Mr. STEVENS. Yes, that is my understanding also.

Ms. SNOWE. I would like to enter into a colloquy with several of my colleagues from coastal States regarding Section 888 of the final version of the Homeland Security Act of 2002. The provisions of Section 888 were drafted to preserve the traditional roles and missions of the Coast Guard and ensure they are not altered or diminished.

Since September 11, 2001, the Coast Guard has taken on additional homeland security responsibilities resulting in its largest peacetime port security operation since World War II. While our new reality requires the Coast Guard to maintain a robust homeland security posture, these new priorities must not diminish the Coast Guard's focus on its other traditional missions such as marine safety, search and rescue, aids to navigation, fisheries law enforcement, and marine environmental protection.

As a Senator from a coastal State, and as the ranking member on the Oceans, Atmosphere, and Fisheries Subcommittee of the Senate Commerce Committee, I can attest that all these missions are critically important and that the American people rely on the Coast Guard to perform them each and every day.

The language in Section 888, which I developed with Senators STEVENS and COLLINS, strikes the proper balance and ensures the Coast Guard's non-homeland security missions will not be compromised or decreased in any substantial or significant way by the transfer to the new Department of Homeland Security.

First and foremost, it ensures that the Coast Guard will remain in distinct entity and continue in its role as one of the five Armed Services. The Coast Guard plays a unique role in our government, in which it serves as both an armed service as well as a law enforcement agency, and this must not be changed or altered.

This language in Section 888 maintains the primacy of the Coast Guard's diverse missions by establishing the Coast Guard as a distinct agency under the Secretary of Homeland Security and mandates that the Coast Guard Commandant will report directly to the Secretary, rather than to or through a Deputy Secretary.

Additionally, this section prevents the Secretary of this new Department from making substantial or significant changes to the Coast Guard's non-homeland security missions or alter its capabilities to carry out these missions, except as specified in subsequent Acts. It also prohibits the new department from transferring any Coast Guard missions, functions, or assets to another agency in the new Department except for personnel details and assignments that do not reduce the Service's capability to perform its non-homeland security missions.

This section also requires the Inspector General of the new Department to review and assess annually the Coast Guard's performance of its non-homeland security missions and to report the findings to the Congress.

I also am pleased to see the inclusion of my amendment requiring the new Homeland Secretary, in consultation with the Commandant, to report to Congress within 90 days of enactment of this Act on the benefits of accelerating the Coast Guard's Deepwater procurement time line from 20 years to 10 years. The Deepwater project, which will recapitalize all of the Coast Guard assets operating 50 or more miles from our coasts, is already underway. However, the Coast Guard must wait up to 20 years, in some instances, to acquire already existing technology. I believe that we must accelerate the Deepwater acquisition project and acquire these much-needed assets for the Coast Guard now, not 20 years down the road.

Madam President, Section 888 is a strong statement by the Congress that the Coast Guard is an essential component of the new Department and that its non-homeland security missions and capabilities must be maintained due to their overriding importance, not only to coastal States such as Maine, but also to the entire nation.

Mr. LIEBERMAN. Madam President, as manager of the legislation to create a Department of Homeland Security, I want to share with the Senate my views on the meaning and intent of several key provisions in H.R. 5005, the final homeland security legislation approved by the Senate on November 19, 2002. These provisions have been through several iterations and they have been debated extensively.

H.R. 5005 is the result of over a year of deliberations begun last October when I introduced legislation (S. 1534) with Senator SPECTER to create a Department of Homeland Security. That legislation was subsequently combined

with legislation by Senator GRAHAM (to create a White House Office for Combating Terrorism) and became S. 2452, which was reported out of the Committee on Governmental Affairs on May 22, 2002.

Before the Senate had a chance to consider that bill, however, the President announced his support for a Department of Homeland Security. The Administration's bill, first submitted to Congress on June 18, 2002, encompassed almost all of S. 2452's organizational elements regarding the Department. The Governmental Affairs Committee held hearings to consider the administration's proposals, and, I prepared an amendment to S. 2452 that was considered, and adopted, at a July 24–25 business meeting of the Committee. That expanded version of S. 2452 went a considerable way to incorporate the administration's proposals.

In late July, the House of Representatives passed its version of the Homeland Security bill, H.R. 5005. This House bill became the base bill for floor consideration in the Senate, and the amended version of S. 2452 was offered on the Senate floor as SA 4471 to H.R. 5005.

The following statement will discuss various provisions in H.R. 5005 and, where appropriate, their relationship to similar provisions in SA 4471. It is intended to supplement a statement and other material I submitted for the RECORD on September 4, 2002, (S8159–S8180) which interpreted key provisions in SA 4471 (also referred to as the Committee bill).

INTELLIGENCE

Title II, Subtitle A, Section 201 of H.R. 5005, establishes a Directorate for Information Analysis and Infrastructure Protection. This is a critical provision that goes to the heart of the weaknesses that have been exposed in our nation's homeland defenses since September 11, 2001—that is, the lack of information sharing related to terrorist activities between intelligence, law enforcement, and other agencies. This directorate stems from the President's legislative submission in June, which included a proposal to create an information analysis and infrastructure protection directorate in the Department. However, the President's concept has been altered and expanded in response to testimony before the GAC and input from key Senators. The version in H.R. 5005, while not exactly what the GAC recommended, represents a substantial improvement over the President's June 18th, 2002 proposal. If fully implemented, and if the new department and the various agencies responsible for gathering and providing intelligence properly interpret its provisions, it will improve our capacity to fuse that intelligence in order to prevent terrorist attacks before they occur.

S. 2452, as originally reported on May 22, 2002, and based largely on recommendations by the bi-partisan Hart-Rudman Commission, included directorates for critical infrastructure, emergency preparedness, and border security. The President's June 18th proposal added a fourth directorate for ''information analysis and infrastructure protection.''

SA 4471 was developed after examining the President's proposal and hearing from expert witnesses on the critical need for a national level focal point for the analysis of all information available to the United States to combat terrorism. On June 26 and 27, the GAC held hearings on how to shape the intelligence functions of the proposed Department of Homeland Security—to determine how, in light of the failure of our government to bring all of the information available to various agencies together prior to September 11, 2001, the government should receive information from the field, both foreign and domestic, and convert it, through analysis, into actionable information that better protects our security.

The GAC's hearings focused specifically on the relationship between the Department of Homeland Security and the Intelligence Community. The hearings featured testimony from some of our country's most noted experts in intelligence issues, including Senators BOB GRAHAM and RICHARD SHELBY, the chairman and ranking member of the Senate Intelligence Committee. Other witnesses included Lt. Gen. Patrick M. Hughes, former director of the Defense Intelligence Agency; Jeffrey Smith, former General Counsel of the Central Intelligence Agency; Lt. Gen. William Odom, former Director of the National Security Agency; Chief William B. Berger, President of the International Association of Chiefs of Police; and Ashton B. Carter, former Assistant Secretary of Defense for International Security Policy. Finally, CIA Director George Tenet and FBI Director Robert Mueller also testified.

Senator GRAHAM's written testimony stated that the Intelligence Committee's hearings thus far have uncovered several factors that contributed to the failures of Sept 11—one of which is ''the absence of a single set of eyes to analyze all the bits and pieces of relevant intelligence information, including open source material.'' Senator SHELBY's written testimony stated that ''most Americans would probably be surprised to know that even nine months after the terrorist attacks, there is today no federal official, not a single one, to whom the President can turn to ask the simple question, what do we know about current terrorist threats against our homeland? No one person or entity has meaningful access to all such information the government possesses. No one really knows what we know, and no one is even in a position to go to find out.'' General Patrick Hughes, former director of the Defense Intelligence Agency, echoed these points. His testimony stated that, ''in our intelligence community, we currently have an inadequate capability to process, analyze, prepare in contextual and technical forms that make sense and deliver cogent intelligence to users as soon as possible so that the time dependent operational demands for intelligence are met.''

These hearings made it clear that: (1) there is currently no place in our government where all intelligence available to the government is brought together to be analyzed, (2) the Department of Homeland Security requires an all-source intelligence analysis capability in order to effectively achieve its mission of preventing, deterring, and protecting against terrorist attacks, (3) the intelligence function should be a smart, aggressive customer of the intelligence community, (4) the intelligence function must have a seat at the table when our nation's intelligence collection priorities are determined, (5) the Department is already a significant collector of intelligence-related information, through such agencies such as the Customs Service and the Coast Guard being transferred into the Department, and (6) the Department must have sufficient access to information that is collected by intelligence, law enforcement, and other agencies. This final point was underscored by Senator SHELBY, who testified that the relatively limited ''access to information'' provisions in the President's proposal were unacceptable, and that it would be a mistake if they were adopted.

The President's proposal was to create an ''information analysis and critical infrastructure protection division''—whose most important role, as CIA Director Tenet testified at the GAC hearing on June 27, 2002, would be ''to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States.'' Its purpose would be to focus the intelligence function on detecting and mitigating against threats to critical infrastructure rather than the entire range of potential threats. Consequently, the intelligence analysis function in the Department of Homeland Security would not be designed to uncover terrorist plots or prevent acts of terrorism before they occurred. The Governmental Affairs Committee rejected this more limited approach and subsequently approved a more robust intelligence directorate, along with a separate directorate for critical infrastructure protection, which were incorporated in SA 4471. Some of these improvements are now incorporated in H.R. 5005.

Most importantly, like SA 4471, H.R. 5005 makes it clear that the purpose of the information analysis function in the Department goes beyond critical infrastructure protection to encompass disseminating intelligence in order to deter, prevent, and respond to all terrorist threats. Section 201(d) of H.R. 5005, which describes responsibilities of the Under Secretary for Information

Analysis and Infrastructure Protection, at paragraph (1), states: ''to access, receive, and analyze law enforcement, intelligence information, and other information from agencies from the Federal Government, State and local government agencies), and private sector entities, and to integrate such information in order to—(A) identify and assess the nature and scope of terrorist threats to the homeland; (B) detect and identify threats of terrorism against the United States; and (C) understand such threats in light of actual and potential vulnerabilities of the homeland.'' Clause (B) especially establishes that the information analysis function must be designed in order to ''detect and identify'' threats of terrorism.

In addition, Section 201(d)(9) states that the responsibilities of the Under Secretary (for information analysis and infrastructure protection) shall include the following: ''to disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.'' Again, it is important that the new information analysis division focus on doing everything within its power to deter, prevent and preempt, acts of terrorism, while also ensuring that our nation is adequately prepared to respond.

As noted earlier, the President's June 18th proposal would have established a more limited function primarily designed to assess threats and vulnerabilities to our critical infrastructure. This is an important task and will clearly be a major focus of the Department of Homeland Security, but the Department's information analysis role will now encompass all terrorist threats, not just those to critical infrastructure. Many potential terrorist attacks—for example a bomb in a shopping mall and attacks using weapons of mass destruction—are not directed at critical infrastructure, but at producing mass casualties. Thus, the intelligence analysis function in the Department can and must focus on the full range of threats that we face. And it must have the capacity to access and properly analyze all of the information about terrorist attacks that our government possesses.

Secondly, though it falls short of the Committee's recommendation, the final legislation does establish dedicated leadership for both the information analysis and infrastructure protection functions. SA 4471 established separate, Senate confirmed Under Secretaries for ''intelligence analysis'' and ''critical infrastructure protection.'' This was to ensure that focused leadership—with sufficient clout—was provided for each of these complex, and major challenges facing our government. With 85 percent of our critical infrastructure owned by the private sector, it is clear that full time leadership will be required to ensure that adequate protective measures are identified and put in place. Similarly, the tremendous challenge of overcoming barriers to information sharing within the intelligence community and establishing a robust intelligence analysis division will likely occupy a significant amount of time of the Secretary and Under Secretary.

H.R. 5005 takes a somewhat different approach: like the President's June 18th proposal, it establishes a single Under Secretary with overall responsibility for both information analysis and infrastructure protection. However, in Title II, Section 201, (b)(1) and (b)(2) it also creates two Assistant Secretaries to lead information analysis and infrastructure protection, respectively. Earlier, Title I, Section 103 of the legislation establishes several officers who shall be appointed by the President ''with the advice and consent of the Senate,'' including not more than 12 Assistant Secretaries (Sec. 103 (a)(8)). The Assistant Secretaries for information analysis and infrastructure protection will clearly occupy two of the most critical positions in our government: consequently, Congress' expectation is they will be among the 12 Assistant Secretaries who will be appointed by the President with the advice and consent of the Senate.

Third, responding to the testimony of Senator SHELBY and others, the SA 4471 provided broad, routine access to information for the Secretary of Homeland Security. The assumption behind the Committee's approach was that, unless the President determined otherwise, all information about terrorist threats, including so-called ''unevaluated intelligence,'' possessed by intelligence agencies would be routinely shared by intelligence agencies and other agencies with the Department of Homeland Security. In contrast, the President's proposal would curtail the Secretary's access to unanalyzed information. The Secretary would have routine access to reports, assessments and analytical information. But, except for vulnerabilities to critical infrastructure, the Secretary would receive access to unanalyzed information only as the President may further provide.

H.R. 5005 has wisely moved towards SA 4471. In Section 202 (a), H.R. 5005 states that, ''except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.'' This is crucial because the Secretary must have access to the information he or she deems necessary to protect the American people, and cannot simply rely on agencies that have historically been reluctant to share information to determine what the Secretary should have.

In Section 202(b)(1) the legislation provides that the Secretary may enter into cooperative agreements with agencies to provide access to such information. At the same time, if no request has been made, or no agreement has been entered into, agencies are still required to provide certain information that is specified in the legislation. This includes, at Section 202(b)(2) (A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary; (B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed; (C) all other information relating to significant and credible threats of terrorism, whether or not such information has been analyzed; and (D) such other information or material as the President may direct.

These provisions require agencies to provide significant amounts of information to the Secretary, even in the absence of a cooperative agreement. With respect to the information required in Section 202(b)(2)(C); in many cases, it may be impossible for agencies to know if certain information is related to ''significant and credible threats'' of terrorism precisely because that can only be determined once the information is fused with information from others. Consequently, to meet the statutory requirement, agencies should clearly endeavor to collect requested information, even if it is not already available, and they should err on the side of providing more, rather than less, information that is already on hand to the Department's analysts. This is clearly the best way to help ensure that the Department can effectively carry out its mandate to prevent, deter, and preempt terrorist attacks.

Finally, like SA 4471, H.R. 5005 makes the Department responsible for working with the Director of Central Intelligence to protect sources and methods and with the Attorney General to protect sensitive law enforcement information (Section 201(d)(12)). Also, as the Committee recommended, the substitute formally includes the elements of the Department concerned with analysis of foreign intelligence in the ''intelligence community'' (Section 201(h)) while also empowering the Secretary to consult with the Director of

Central Intelligence and other agencies on our nation's intelligence gathering priorities (Section 201(d)(10)). These provisions will ensure that the Department becomes a full partner with the Central Intelligence Agency and other agencies in our intelligence community, and that is has a crucial seat at the table in all proceedings where intelligence-gathering priorities are established.

Though H.R. 5005 is not exactly what the Governmental Affairs Committee recommended in SA 4471, it does contain key aspects of the Committee's approach and establishes a single point in our government with the responsibility for receiving and assessing all information about terrorist threats to our homeland. Thus, it does represent a very significant improvement over the Administration's proposal. As a result, the information analysis and infrastructure protection function in the Department, assuming it is properly implemented, will greatly improve our nation's overall capacity to prevent, deter, protect against, and respond to terrorist threats against our homeland.

SCIENCE AND TECHNOLOGY

The Department will have profound scientific and technological needs, and both the immediate and long-term success of its mission will require the implementation of a broadly-coordinated, tightly-focused, and sustained effort to invest in critical areas of research, accelerate technology development, and expedite the transition and deployment of such technologies into effective use. H.R. 5005 attempts to meet this objective by creating a strong, coherent, and well-funded Directorate of Science and Technology. The Directorate established in this legislation follows directly from the model embodied in the homeland security bill passed by the Senate Governmental Affairs Committee, SA 4471, and explicated in the Chairman's Statement on September 4, 2002 (CONGRESSIONAL RECORD, pages S8162–S8164). In keeping with that model, the Directorate will be headed by a Senate-confirmed Under Secretary for Science and Technology with expansive responsibilities, as outlined in Section 302, for directing and managing homeland security research, development, demonstration, testing, and evaluation (RDDT&E) activities; coordinating the federal government's civilian efforts, as well as developing a national policy and strategic plan, for meeting homeland security R&D needs; advising the Secretary and supporting the Department's efforts to analyze risks and threats; ensuring the rapid transfer and deployment of technologies capable of advancing homeland security objectives; and conducting research on countermeasures for biological and chemical threats.

RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING & EVALUATION

With respect to his RDDT&E responsibilities, the Under Secretary will act through an array of mechanisms and authorities established in H.R. 5005. The primary driver of innovation within the Directorate will be a Homeland Security Advanced Research Projects Agency (HSARPA), which is conceived to be similar in purpose and organization to the highly successful Defense Advanced Research Projects Agency (DARPA) within the Department of Defense (DOD). Over the past five decades, DARPA has been recognized as one of the most productive engines of technological innovation in the federal government. Its success has been grounded in its ability to recruit outstanding scientific and technical talent, promote creativity and adaptability under a lean, flexible organizational structure, and entice collaboration from other R&D entities by leveraging an independent source of funds. Because the HSARPA created in H.R. 5005 is purposefully patterned after the nearly identical Security Advanced Research Projects Agency (SARPA) contained in SA 4471, the legislative intent concerning the missions, roles, Acceleration Fund, and structure of that organization (see Chairman's Statement on September 4, 2002, CONGRESSIONAL RECORD, pages S8162–8163) are, of course, straightforwardly applicable to HSARPA.

In order to enable HSARPA to achieve parallel success to DARPA, Section 307 of H.R. 5005 provides HSARPA with a $500 million Acceleration Fund to support key homeland security R&D both within and outside of the federal government, leverage collaboration from R&D entities external to the Department, and accelerate the development, prototyping, and deployment of homeland security technologies. The Secretary is likewise provided with DARPA's flexible authority to hire and manage top-flight personnel. Although SA 4471 placed limits on this authority by setting a ceiling of 100 personnel who may be hired pursuant to this authority and instituting a 7-year sunset provision [SA 4471, Section 135(c)(3)(C)], those limits have been eliminated in H.R. 5005 to allow the Secretary greater discretion in exercising such authority commensurate with need [Section 307(b)(6)]. In a later section, Section 831, H.R. 5005 also confers the Secretary with another important authority currently available to the DOD—the ability to engage in ''other transactions'' for both research and prototype projects. This flexible contracting authority for such projects has been integral to DARPA's success, and HSARPA will therefore have the same authority. While the legislation vests this authority directly in the Secretary, it is clearly and specifically contemplated that such authority will be delegated appropriately to other officials within the Department, particularly the Under Secretary for Science and Technology and the Director of HSARPA, for use in connection with R&D and prototyping activities under their direction or management, including extramural RDDT&E projects and projects supported by the Acceleration Fund. Nothing in this legislation should be construed as requiring or encouraging HSARPA to adopt or replicate any specific programs within DARPA, such as the Total Information Awareness Program, or as conferring HSARPA with any additional authority to overcome privacy laws when developing technologies for information-collection.

Separate provisions for the Department's other extramural and intramural RDDT&E activities are set forth in Section 308. These provisions are not intended to supercede the specific provisions established for HSARPA under Section 307, and should not be in any way limiting on HSARPA. Regarding the university-based center or centers for homeland security described in Section 308(b)(2), legislative intent regarding the need for flexible application of this provision in order to avoid unfairly favoring one or more particular institutions was clarified in the November floor statements of the Republican manager of the final bill, Senator PHIL GRAMM. It should therefore be emphasized that the criteria listed under Section 308(b)(2)(B) should not be considered absolute or dispositive in nature, but rather, as factors that should be considered in the context of national homeland security needs and the relative strengths of candidate institutions in meeting those needs. Consistent with this intent, Section 308(b)(2)(C) specifically provides the Secretary and the Under Secretary with full ''discretion'' in determining whether, how, and when to implement these provisions. Consideration of additional relevant criteria to supplement (and, within their discretion, to supercede) those delineated under Section 308(b)(2)(B) is specifically contemplated in Section 308(b)(2)(C). This subsection anticipates as the Secretary and Under Secretary exercise their discretion that they actively engage in a comprehensive, dispassionate, and competitive review of available institutions to determine the optimal selection for serving national interests. It is contemplated that consortia of universities capable of meeting particular areas of required expertise would be eligible to serve as a university center or centers; therefore, there is no restriction on such consortia being considered under Section 308(b)(2). To assure full oversight of the fairness of the selection process, the Secretary is required to report to Congress under Section 308(b)(2)(C) on the full details of the selection and implementation of the university centers.

Regarding the headquarters laboratory described in Sections 308(c)(2)–(c)(4), it deserves reiterating that the establishment of such a headquarters laboratory is not mandatory under the legislation. The Secretary and the Under Secretary should use their discretion in determining whether the designation of such a laboratory is necessary and would better assist the Directorate in fulfilling its functions. It

is the intent of H.R. 5005 that the Directorate coordinate and draw broadly upon the full range of S&T resources and expertise available in the federal government rather than creating new, duplicative stovepipes. Accordingly, the risks attaching to the latter should be weighed carefully against the potential benefits of establishing a single headquarters laboratory. As an alternative, the Secretary could certainly opt to select a group of institutions and laboratory elements with expertise in a variety of fields to fill the pertinent need.

Consequent to the principle of affording the Department with rapid, non-bureaucratic, expansive, and flexible access to existing federal S&T capabilities, the legislation in Section 309 provides the Secretary with authority to utilize any of the Department of Energy (DOE) laboratories and sites through a variety of mechanisms, most notably, joint sponsorship agreements, and in Section 309(g), establishes an Office for National Laboratories within the Directorate to create a networked laboratory system among the DOE laboratories to support the missions of the Department. With regard to Section 309(c), it should be clarified that this provision is limited to those programs and activities that are transferred from the DOE to the Department under this legislation. There is no general requirement or obligation within this or any other provision to execute or maintain separate contracts for work commissioned by the Department to non-transferred DOE laboratories or sites or their operators.

INTERAGENCY COORDINATION AND THE NATIONAL POLICY AND STRATEGIC PLAN

Notwithstanding the mechanisms described above for enabling the Department to engage and support important homeland security R&D, H.R. 5005 recognizes that the vast bulk of research and development relevant to homeland security will continue to occur outside the direct control of the Department—in other agencies, in academia, and in the private sector. A critical challenge, therefore, will be to ensure that the Department has the proper tools and mechanisms to elicit cooperation across a wide range of disparate R&D entities, each with their own missions and priorities, and to coordinate their collective efforts in service to homeland security goals.

A key coordination mechanism envisioned by the legislation is the development of a national policy and strategic plan as described in Section 302(2). This national policy and strategic plan integrates the concepts of the National Strategy for Combating Terrorism and the technology roadmap articulated in SA 4471 [Title III and Section 135(c)(2)(B)] into a single national blueprint for meeting S&T goals and objectives for homeland security. It is intended that a comprehensive technology roadmapping exercise (which is commonly accepted within the S&T community as a prerequisite to optimal organization and coordination of large-scale R&D projects) serve as a basis for, and central component of, the larger policy and plan, and that the resulting roadmap, policy, and plan provide the framework within which all relevant stakeholders, both within and outside of government, will coordinate on a common homeland security RDDT&E agenda.

Effective coordination will also require a forum and body through which intensive communication and collaboration may occur. Along these lines, the legislation in Section 311 establishes a Homeland Security Science and Technology Advisory Committee (''Advisory Committee'') consisting of representatives from academia and the private sector to both advise the Department and coordinate with communities outside the federal government in conducting homeland security R&D. The utility of having an external, independent entity to inform and guide intra-Department and interagency S&T efforts has been previously demonstrated by the advisory group assembled by the National Academy of Sciences (NAS) in response to the September 11th attacks. This group, which published a prominent review of the government's homeland security R&D efforts in June 2002 (Making the Nation Safer: The Role of Science and Technology in Countering Terrorism), played an important and constructive role in identifying and stimulating much needed improvements. Section 311 requires a similar entity to be established that may, among other things, advise the Department by continuously critiquing homeland security S&T efforts in a ''red team'' capacity or function, and recommending new approaches for the Department and outside agencies. It is specifically anticipated that the National Research Council of the NAS, drawing on its extensive network of S&T contacts and the expertise it developed in compiling its June 2002 report, will select appropriate candidates for membership onto the Advisory Committee [Section 311(b)(2)], as well as support the Advisory Committee's work on an ongoing basis. The Advisory Committee is initially authorized for three years, which is a reasonable time period to permit the Secretary to meaningfully assess the Advisory Committee's efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Advisory Committee has provided, or is likely to provide, useful support and functionality to the Department, it is anticipated that the Secretary will reconstitute or re-establish the Advisory Committee pursuant to his authority under Section 871(a).

With respect to R&D coordination among the federal agencies, H.R. 5005 does not specifically carry over the Homeland Security Science & Technology Council (''S&T Council'') from SA 4471 given that it may be unnecessarily redundant to create a new interagency council when interagency coordination mechanisms already exist in the form of the National Science and Technology Council (NSTC) and its various subcommittees. This does not diminish the importance of such an interagency body to the homeland security R&D effort. To the contrary, an active interagency coordination entity must be considered fundamental to enabling the Secretary and the Under Secretary to fulfill their core responsibilities of coordinating the federal government's civilian homeland security R&D efforts [Section 302(2)] and carrying out the Department's S&T agenda through coordination with other federal agencies [Section 302(13)]. The omission of the interagency S&T Council from H.R. 5005 assumes that the NSTC and the Office of Science and Technology Policy (OSTP), working with the Secretary and the Under Secretary, will establish and promote the strong interagency coordination mandated in Sections 302(2) and 302(13). Consequently, the Secretary, the Under Secretary, the OSTP, and all members of the NSTC are expected to commit to ensuring the viability of the NSTC as a productive coordination mechanism. In the event that such faith proves to be misplaced, a separate interagency group composed of senior R&D representatives from relevant federal agencies and officials from the Executive Office of the White House should be immediately constituted by the Secretary and the Under Secretary based on the authorization for interagency S&T coordination contained in Sections 302(2) and 302(13). These provisions also constitute a directive to agencies with S&T expertise in areas pertinent to homeland security to fully and actively participate in such interagency efforts.

SCIENTIFIC AND TECHNICAL SUPPORT, RISK ANALYSIS, AND THE HOMELAND SECURITY INSTITUTE

Another major set of responsibilities assigned to the Under Secretary relates to providing specialized advise, expertise, and support to other actors within the homeland security organization [Sections 302 (1), (2), and (3)]. Perhaps the most critical of such responsibilities is supporting the Department with respect to assessing, analyzing, and mitigating homeland security threats, vulnerabilities, and risks. Section 302(2) calls for including coordinated threat identification within the national policy and strategic plan, and Section 302(3) specifically calls for the assessment and testing of ''homeland security vulnerabilities and threats.'' Although primary responsibility for coordinating and integrating risk analysis and risk management resides with the Secretary and the Under Secretary for Information Analysis and Infrastructure Protection, the highly complex and technical issues inherent to modern risk analysis methods demand substantial scientific and technical expertise. Section 302(3) mandates that the Under Secretary for S&T support

the Under Secretary for Information Analysis and Infrastructure Protection in this regard. Therefore, Section 305 addresses the problem of obtaining the necessary S&T expertise by giving the Secretary broad authority to establish or contract with Federally Funded Research and Development Centers (FFRDCs), which could perform functions not only related to R&D, but extending to risk, threat, and vulnerability analysis. While this authority is discretionary, H.R. 5005 anticipates that it will be exercised actively in accordance with need. In fact, so compelling was the NAS's recommendation in its June 2002 report to create an independent, non-profit institution for critical analysis and decision support, that H.R. 5005 includes another provision to trigger immediate exercise of the broad FFRDC authority. Specifically, Section 312 mandates the creation of a Homeland Security Institute (''Institute'') focusing expressly on capabilities related to risk analysis, scenario-based threat assessments, red teaming, and other functions relevant to homeland security. The Institute is initially authorized for three years, which is a reasonable time period to permit the Secretary to meaningfully assess the Institute's efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Institute has provided, or is likely to provide, useful support and functionality to the Department, it is anticipated that the Secretary will, pursuant to his authority under Section 305, renew, reconstitute, or re-establish the Institute with appropriately expanded or modified functions to service the Department's ongoing and expanding risk assessment mission.

TECHNOLOGY TRANSITION

The Under Secretary is responsible for ensuring that technologies capable of supporting homeland security are quickly tested, evaluated, transitioned, and deployed to appropriate users within or outside the Department. Section 302(6) explicitly requires the Under Secretary to establish a system for transferring such technologies. This system should include processes and mechanisms for identifying homeland security actors and entities with unmet technological needs; matching such entities and needs with available technologies or, if none are readily available, assisting in the development, testing, evaluation, and deployment of new technologies to meet identified needs; ensuring viable technology transition paths for products of homeland security R&D, including HSRAPA-derived technologies; aligning internal R&D priorities and programs to technological needs inside or outside the Department; communicating externally with both technology developers and users to promote alignment of extra-Departmental R&D efforts with homeland security-related technological needs; providing technology developers with information and guidance on interfacing with governmental customers of homeland security technologies; and providing technical assistance to potential governmental users of homeland security technologies. To support the Under Secretary in executing these responsibilities, Section 313 establishes a Technology Clearinghouse (''Clearinghouse'') to serve as a national point-of-contact for both technology developers and potential users. The Clearinghouse must coordinate with the Technical Support Working Group (TSWG), and may fully integrate with the TSWG. In light of the fact that the mission of the TSWG dovetails with, and is fully embraced by, that of the Directorate, it is contemplated that the Under Secretary may assume full or joint management, technical, and/or policy oversight of the TSWG.

TESTING AND EVALUATION OF TECHNOLOGIES FOR INTERNAL ACQUISITION AND DEPLOYMENT

With respect to technologies being considered for internal use Department-wide or within one or more of its constituent entities, intelligent and well-coordinated testing, evaluation, procurement, and deployment will be crucial given that the new Department will have extensive technological needs, requirements, and dependencies. Too often, government agencies are hampered and distracted from their fundamental missions as a result of unstructured, technically unsophisticated approaches to technology acquisition and deployment that generate interoperability problems downstream. In order to effectively carry out the requirement for the Under Secretary to comprehensively conduct, direct, integrate, and coordinate the demonstrating, testing, and evaluation activities of the Department as articulated in Sections 302(4), 302(5), and 302(12), the Secretary and the Under Secretary should implement procedures to ensure that new technologies being considered for acquisition will be compatible and interoperable with other existing or anticipated technologies. New technologies should not be permitted to move to acquisition without the Under Secretary's sign off on the prior stages in the innovation process, particularly the demonstration, testing, and evaluation stages. The Under Secretary is understood to occupy the role of the Department's chief technology officer, and it is anticipated that he will be provided with responsibilities and authorities befitting that role. Accordingly, the Secretary shall act through the Under Secretary to operationally test and evaluate all major systems targeted for potential acquisition by any entity within the Department, and grant the Under Secretary authority to approve or reject such systems in his discretion. Nothing in this provision is to be construed as proscribing other Departmental entities from undertaking testing and evaluation activities so long as they do so in coordination with, and subject to the final approval of, the Under Secretary. The Under Secretary should also coordinate with the Department's Chief Information Officer, the Under Secretary for Management, and other federal agencies in promoting government-wide compatibility and interoperability of homeland security technologies and systems.

By vesting in the Under Secretary the full and broad authority to manage the Department's full spectrum of innovation, from basic research [Sections 302(4), 302(5), 302(11), and 302(12)] through demonstration, testing, and evaluation [Sections 302(4), 302(5), and 302(12)] to transition and deployment [Section 302(6)], the Under Secretary will have the means and mandate to initiate a powerful, systematic approach to innovation that generates new technologies for combating terrorism and ensures integrated acquisition and use of such technologies. Placing control of all the key innovation stages with the Under Secretary is critical to assuring that research, development, demonstration, testing, evaluation, and deployment in the Department do not become disjointed and fractured so that a coherent innovation process can prevail.

RESEARCH ON COUNTERMEASURES FOR BIOLOGICAL AND CHEMICAL THREATS

True preparation for future biological, chemical, radiological, and nuclear attacks will depend upon the development of vaccines and medicines to combat the most likely threats. At present, our nation is woefully unprepared for this type of attack. In his June 28, 2002 testimony before the Senate Governmental Affairs Committee, Dr. J. Leighton Read discussed the barriers to the development of a national medical arsenal to combat terrorism. The federal government has a long and successful history in conducting basic biomedical research. The National Institutes of Health within the Department of Health and Human Services (HHS) have served as an international model for funding and conducting human health-related research. However, in facing biological and chemical terrorism, we face a new challenge. In addition to encouraging basic research and training the next generation of scientists, the federal government will have to deliver actual pharmaceutical products and will have to deliver them quickly. Unlike the traditional pharmaceutical market, companies that choose to develop drugs to fight bioterrorist attacks that may never occur will not be able to rely on an existing market. Yet producing actual products to meet biological and chemical threats will depend upon private sector involvement. As a result, the Under Secretary should incorporate the goal of engaging the private sector into develop biothreat countermeasures into every level of his strategy, and adopt plans and policies to enable such private sector participation to occur.

H.R. 5005 provides tools to accomplish this task. While Section 302(4) states generally that the Under Secretary's responsibilities do not extend

to human health-related research and development activities, this provision should be construed consistent with other specific provisions in H.R. 5005 ascribing the Under Secretary a major role in addressing biological and chemical threats related to terrorism, a role which will require the Under Secretary to conduct specific types of human health-related research and development activities. Section 302, therefore, does not circumscribe the Under Secretary's authority to conduct research necessary to implement the major biothreat-related functions delineated in Sections 302(2) (requiring the Under Secretary to develop a national policy and plan that addresses, among other things, chemical and biological terrorist threats, and further requiring the Under Secretary to coordinate the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats), 302(5) (requiring the Under Secretary to direct, fund, and conduct national research and development for detecting, preventing, protecting against, and responding to terrorist attacks, which perforce include those involving biological or chemical agents), 302(8) (requiring the Under Secretary to collaborate with the Secretary of Agriculture under the Agricultural Bioterrorism Protection Act of 2002), 302(9) (requiring the Under Secretary to collaborate with the Secretary of HHS in determining biological agents and toxins to be listed as select agents), 303(1)(A) (transferring control and management of certain chemical and biological national security programs within the Department of Energy into the Department of Homeland Security), and Sections 303(2) and 1708 (establishing and transferring into the Department a National Bio-Weapons Defense Analysis Center).

The National Bio-Weapons Defense Analysis Center (''Center'') established and transferred in H.R. 5005 will, in particular, require the Under Secretary to engage in extensive human health-related R&D. The Center is intended to lead the Department's research efforts on bioterrorism by developing ''countermeasures to potential attacks by terrorists using weapons of mass destruction'' (Section 1708). The Center will conduct research on bioterrorism, and by definition, this should include study of the pathogenesis of bioterrorist agents, the immune response to these pathogens, and research on vaccines, drugs, and other medical antidotes. Since the Center is placed under the direction and management of the Directorate, the Under Secretary is conferred with substantial obligations to conduct human health-related R&D.

While the Secretary clearly has the authority to conduct the type of R&D discussed above internally, H.R. 5005 contemplates that the civilian human health-related countermeasures research carried out by HHS shall remain under the direction of the Secretary of HHS. Sections 304(a) and (b) mandate that while the Secretary of HHS shall retain authority for such research, he shall collaborate with the Secretary of Homeland Security in developing between the two Departments a coordinated strategy and outcome measurements for these research activities. As outlined in H.R. 5005, it is crucial that such research reflect the overall national policy and strategic plan developed by the Secretary and the Under Secretary under Section 302(2), and that the efforts of the two Departments be fully in concert. In the biothreat and chemical threat areas, the Secretary should work to ensure the resulting policy, plan, and benchmarks mandated under Section 302(2) reflect what is most needed and what pharmaceutical products can be timely developed against the most likely and dangerous threats to the public. Since this will require participation from the private sector, the policy and plan, which will include a technology roadmap, must necessarily include a strategy for translating basic science results into product development within the private pharmaceutical and biotechnology sectors.

EMERGENCY PREPAREDNESS AND RESPONSE

The Department will coordinate the federal response to disasters. This responsibility will encompass natural and manmade disasters, terrorist attacks and all incidents involving weapons of mass destruction, and other large-scale emergencies. In addition, the Department will assist the Secretaries of Health and Human Services and the Department of Agriculture in responding to public health and agricultural emergencies. The Directorate for Emergency Preparedness and Response was designed to spearhead this effort within the Department.

In order to accomplish these tasks the Department will need an interdisciplinary, well funded, and well-organized Directorate of Emergency Preparedness and Response. The initial design of this directorate was established by the Senate Governmental Affairs Committee in S. 1534. This original design was refined by the Governmental Affairs Committee amendment, SA 4471, and further explained by the Chairman's statement on September 4, 2002 (CONGRESSIONAL RECORD, pages S8162–S8164). Consistent with this original design, H.R. 5005 establishes a Directorate that includes the essential federal emergency response agencies and offices.

The Directorate shall build and direct a comprehensive national incident management system and consolidate existing federal emergency response plans into a single, coordinated national plan as outlined in H.R. 5005, Sections 502(5), 502(6), and 507(b)(1–2). States and localities should have access to and information about these systems and plans to ensure optimal coordination during an emergency. These plans should encompass all affected governmental entities and reflect both local and national needs. The consolidated federal response plan, outlined in Sections 502(6) and 507(b)(1–2), must interface with state and local response plans and should utilize local resources wherever possible.

INTEROPERABILITY

The planning responsibilities of the Under Secretary shall include the development of a comprehensive plan and effort for improving communication interoperability during emergency response (H.R. 5005, Section 502(7)). In developing the communication technology and interoperability, the Under Secretary must pay particular attention to the development, support and utilization of effective telemedicine networks, as well as the application of advanced information technology to effective training for and delivery of emergency medical services.

STANDARDS

In order to implement the missions delineated in Section 502, the Directorate shall establish and disseminate standards for equipment, personnel, training, resources, and the resulting emergency response. Standards shall be used as benchmarks for training and acquisition to ensure a uniform quality and interoperability during a response. The Under Secretary shall use these standards to provide recommendations and guidance to state and local governments.

PUBLIC HEALTH AND AGRICULTURAL EMERGENCIES

The Secretaries of Health and Human Services and the Department of Agriculture shall retain the authority to oversee the federal response to public health and agricultural emergencies, respectively. This authority includes the authority to declare such emergencies. However, these agencies shall fully collaborate with the new Department which shall support these agencies in their response, especially with regards to chemical, biological, radiological, and nuclear weapons. The Department should serve as an active and involved resource during bioterrorist and agroterrorist attacks. As outlined in Section 887 of H.R. 5005, the Department shall work in conjunction with the Department of Health and Human Services, the Federal Bureau of Investigation, and other engaged federal agencies to optimize information sharing between agencies commencing forthwith, as well as before and after the declaration of a public health emergency. This provision was intended to ensure that all involved agencies have all the information necessary to effectively perform their role in the federal response. See also, Section 892.

TRAINING

In order to help ''ensure the effectiveness of emergency response efforts'' as required in Section 502(1) of H.R. 5005, the Directorate shall lead federal efforts to train first responders in disaster response. The term, first responder, shall include law enforcement,

fire fighting, emergency medical, health care, and volunteer personnel. To be effective, training shall encompass exercises, on-line computer simulations, drills, courses, and other interactive learning environments. Personnel should be trained in every aspect of emergency response, including prevention/preparation, mitigation, active response, and recovery efforts. Training should include utilization of the Noble Training Center, transferred to the new Department as part of the Office of Emergency Preparedness (Section 503(5)) and other training sites and campuses within the Federal Emergency Management System, as well as full coordination with the National Guard. Finally, the Directorate shall improve, and train first responders in use of, governmental on-line resources to ensure they have the latest information available during a response.

STRATEGIC NATIONAL STOCKPILE

Authority to oversee the Strategic National Stockpile shall be transferred to the new Department. In H.R. 5005, this transfer of authority is described in Sections 502(3)(B), 503(6), and 1705. This language clarifies that the existing structure of the Stockpile program, as described in Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), shall remain intact. The Stockpile shall continue to be a multi-agency effort, with significant roles for the Department of Veterans Affairs and the Department of Health and Human Services. In particular, the Department should continue to incorporate the recommendations of the Centers for Disease Control and Preparedness (CDC) and the Office of the Assistant Secretary for Public Health Emergency Preparedness (OPHEP), within the Department of Health and Human Services, in determining the composition of the stockpile and the parameters for its use. The Department shall consult the CDC and OPHEP in deciding which medications, vaccines, and medical supplies are most appropriate for the Stockpile (Section 1705(a)(1)(C)). The Department shall also coordinate with the Secretary of Health and Human Services in determining the need to deploy the stockpile, on an incident-by-incident basis. The Under Secretary should continue to use the resources of Department of Veterans' Affairs in procuring and storing the contents of the Stockpile (Section 1705(a)(1)(B)). And the Under Secretary shall call upon the Department of Defense and the National Guard to help transport and secure the contents of the stockpile as appropriate.

THE OFFICE OF EMERGENCY PREPAREDNESS

SA 4471 described, in detail, the transfer of the Office of Emergency Preparedness (OEP) from the Department of Health and Human Services to the Department. The transfer of OEP was retained in H.R. 5005 in sections 502(3)(B) and 503(5). Since the Office of Emergency Preparedness is not defined in statute, it should be clarified that the transfer of OEP shall include the Office and all of its component agencies. This includes the National Disaster Medical System, the Metropolitan Medical Response System, the Noble Training Center, the Special Events Disaster Response program, and all other programs directed by OEP. Of course, nothing in the final legislation should be construed to mean that the transfer of the OEP programs shall result in the transfer of personnel whose primary duties reside outside of OEP.

THE NATIONAL DISASTER MEDICAL SYSTEM

For example, the National Disaster Medical System (NDMS) is an interagency program. It involves personnel, facilities, and equipment from the Department of Health and Human Services, the Department of Veterans Affairs, the Department of Defense, and other federal agencies. The personnel and assets from these departments that are deployed by NDMS during the an emergency response, but whose primary day to day roles are central to the missions of agencies outside of the Department, shall remain part of their home agencies. This includes members of the Disaster Medial Assistance Teams (DMATs), the Disaster Mortuary Assistance Teams (DMATs), and the Veterinary Medical Assistance Teams (VMATs). The transfer of the NDMS component of OEP shall be restricted to the management, organizational, and coordinating personnel, functions, and assets.

THE METROPOLITAN MEDICAL RESPONSE SYSTEM

Similarly, the transfer of the Metropolitan Medical Response System (MMRS) does not include transfer of member hospitals. Rather it shall consist of a transfer of the grant programs and related personnel. The MMRS grants have been used to improve hospital and first responder preparedness in select metropolitan regions across the country. Administration of these ongoing grants will become part of the new Department.

Although H.R. 5005 transfers the authority of the Secretary of the Department of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness for OEP (Section 503(5)), the Under Secretary shall at all times attempt to maximize communication and interaction between OEP and its component programs and the Department of Health and Human Services, which will be crucial in meeting the Directorate's mission requirements. As the preceding discussion illustrates, OEP will have to coordinate efforts of personnel from several different agencies. But in addition, OEP and its programs must remain integrated into the larger national public health infrastructure. Particular efforts should be made to coordinate OEP programs with the Office of the Assistant Secretary for Public Health Emergency Preparedness. This office, within the Department of Health and Human Services, is charged with coordinating intra and interagency health preparedness efforts. OEP should remain a part of this larger whole.

CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES

Section 505 of H.R. 5005 addresses two critical issues. First, it is imperative that the efforts to improve our public health infrastructure and their emergency preparedness remain under the control of the Secretary for Health and Human Services, although coordinated with the Secretary. On June 28, 2002 the Governmental Affairs Committee heard testimony from several public health experts. In their testimony, the witnesses concurred that in order to be functional during an emergency, public health preparedness efforts had to be integrated into the larger public health system. This ''dual-use'' improves underlying public health efforts while ensuring health providers remain familiar with emergency preparedness networks and programs. Their testimony pointed out that dual-use was particularly important during a response to a biological attack. In this case, the terrorist attack may not be immediately apparent and detection may depend upon the ability of normal health care systems to detect unusual patterns of illness. H.R. 5005 also stressed this important theme through Section 505 and language in Section 887, which calls for interaction between the agencies before and after the declaration of a public health emergency.

Section 505 stipulates that the Department of Health and Human Services shall retain primary authority over efforts 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.'' In this regard, the Secretary of Health and Human Services shall have authority to set priorities and preparedness goals. However, the Secretary of Health and Human Services, working through the Assistant Secretary for Public Health Emergency Preparedness, must develop a coordinated strategy for these activities in collaboration with the Secretary (Section 505(a)). In doing so, the Secretary of Health and Human Services will also collaborate with the Secretary in establishing benchmarks and outcome measures for success. Nothing in Section 505 should be interpreted as disrupting ongoing preparedness efforts within the Department of Health and Human Services. All ongoing emergency preparedness grants should continue. Selection criteria and the evaluation of grant application shall continue to be determined by the Department of Health and Human Services, consistent with Section 505 provisions.

HUMAN RESOURCES MANAGEMENT

H.R. 5005 contains two key provisions relating to employees at the new Department—section 841, which governs

the establishment of a human resources management system, and section 842, which deals with labor-management relations at the Department. These provisions have been among the most contentious in debate on this legislation.

The Administration has consistently sought what it calls ''flexibility'' in the personnel area, by which it means a carte blanche to waive civil service protections and union rights of the employees at the Department. Sections 841 and 842 of H.R. 5005 are significantly more protective in this regard than the provisions in the President's original proposal (i.e., the one released June 18, 2002), but these sections remain a major disappointment. A risk remains of politicization, arbitrary treatment, and other personnel abuses in the federal government, in a way that may damage the merit-based workplace federal employees and the American people have come to depend on. I hope what I fear does not come to pass, and that this Administration and future Administrations will not overstep bounds, overexert authority, and thereby undermine the effectiveness of the new Department. I have summarized below the protections that sections 841 and 842 do provide.

Establishment of Human Resources Management System. Section 841 authorizes the Secretary, jointly with the Director of the Office of Personnel Management (OPM), to prescribe a ''human resources management system'' (HRMS) for the Department. The section provides that the HRMS may waive certain provisions of the civil service statutes, and specifies required procedures by which the system is to be developed, negotiated, and adopted.

When it comes to the creation of a HRMS, the law still requires that employees in the new Department will be hired, promoted, disciplined, and fired in conformity with all merit system principles and in violation of no prohibited personnel practices. If and when existing civil service rights and protections come up for consideration in the development of a HRMS, the Administration may waive, modify, or otherwise affect such rights and protections only to the extent it can clearly demonstrate that they clearly conflict with the homeland security mission, and that they are not being waived merely in the interest of administrative convenience. Fair and independent procedures must be maintained for employees with grievances, such as those who allege abuse or corruption within the Department. Changes to the system must be carefully crafted through negotiation and collaboration with employees and their representatives; and, if a disagreement arises, the period of at least 30 days that section 841 requires for bargaining and mediation between the Administration and the employee representatives must be substantial and in good faith, not cosmetic.

The provisions in section 841 that allow a HRMS to waive statutes are precisely drawn, detailing which parts of the United States Code may be waived, modified, or otherwise affected and which parts may not. For example, the legislation specifically forbids waiver of merit system principles or prohibited personnel practices. Furthermore, as to provisions referred to in 5 U.S.C. §§2302(b)(1), (8) and (9), the legislation forbids waiver not only of the provisions themselves, but also of provisions implementing those protections through affirmative action or through any right or remedy. Sections 2302(b)(1), (8) and (9) include laws against discrimination, against reprisal for whistleblowing, and retaliation for exercising rights. Section 841 thus assures that the HRMS will not affect employees' ability to appeal a personnel action to the Merit Systems Protection Board, under existing law, in a case where the employee alleges a discrimination, retaliation, or reprisal covered and referred to by §§2302(b)(1), (8) and (9). Section 841 also requires the HRMS to ensure that employees may organize and bargain collectively, subject only to exclusion from coverage or limitation on negotiability established by 5 U.S.C. chapter 71 or other law.

Furthermore, the grant of waiver authority under section 841 refers explicitly and only to part III of title 5, United States Code. Section 841 thus grants no authority to waive any provision of law outside of part III. This means, for example, that the HRMS may not waive, modify, or otherwise affect such government-wide employee rights and protections as, for example: (1) the Office of Special Counsel's authority to investigate any prohibited personnel practice and seek corrective action or disciplinary action from the Merit Systems Protection Board (MSPB) (5 U.S.C. §§1211 et seq.); (2) employees' right to seek corrective action from the MSPB in a case of reprisal for whistleblowing (5 U.S.C. §§1221–1222); (3) the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended; printed as an appendix to 5 U.S.C.); (4) Veterans benefits (including appeal rights to MSPB) (38 U.S.C.); and (5) the Fair Labor Standards Act of 1938 (29 U.S.C. §§201 et seq.). Likewise, some of the right and protections applicable to particular agencies or groups of employees being transferred to the Department are set forth in portions of the United States Code outside of part III of title 5, or were not enacted by Congress as incorporated into the United States Code at all, and these rights and protections may not be waived by the HRMS.

While the waiver authority granted by section 841 is broad, the provisions noted above and other provisions that may not be waived under section 841 can afford significant protections against politicization, arbitrary action, and abuse. The Secretary and the Director must be scrupulous in not attempting to waive, modify, or otherwise affect any provisions of law that are beyond the express waiver authority, because such an attempt would violate section 841.

Labor-Management Relations. 5 U.S.C. §7103(b)(1) states that the President may issue an executive order excluding any agency from coverage under the Federal Sector Labor-Management Relations Statute (FSLMRS) if the President determines: that the agency has a primary function in intelligence, counterintelligence, investigative, or national security work, and that the provisions of the FSLMRS cannot be applied consistent with national security. Section 842 of H.R. 5005 builds on that existing provision by stating that, for the President to issue an executive order excluding an agency transferred to the Department, not only must the criteria in 5 U.S.C. §7103(b)(1) be satisfied, but also two additional clarifying criteria must be satisfied: that the mission and responsibilities of the agency materially changed, and that a majority of the employees in the agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

That provision would provide employees at the Department some appropriate measure of stability in their labor relations, although the provision is subject to a subsequent provision of section 842. The President can override the earlier provision if he determines that the earlier provision would have a substantial adverse impact on the Department's ability to protect homeland security, and provides Congress a detailed written finding explaining the reasons for the determination. The President has to give the Congress 10 days' advance notice by submitting the written explanation. At the expiration of the ten day period, the President would then have the power to issue an executive order under 5 U.S.C. §7103(b)(1) under the criteria of that section only.

I still fail to understand why any President would need to remove collective bargaining rights from federal employees, whose union rights are very limited in comparison with the private sector, and who have a long history of helping to protect the homeland and continue to do the same protective work in the new Department. But if and when this President or a future President does move to eliminate collective bargaining within a unit of the Department, the President can take this step only if it is truly essential to national security and homeland security and not merely a convenience to management. This requires that the Department's leadership must first make good-faith efforts to work cooperatively with the unions before the President can determine that union representation is incompatible with national security or homeland security.

And the written explanation that the President is required to provide to Congress must of course be thorough and specific. The requirement reflects a bipartisan concern that this Administration and future Administrations must

make the case for stripping workers of their right to bargain collectively before issuing an Executive Order. The President must provide Congress a comprehensive and specific explanation on the threshold issue of how and why the right of workers in a particular agency or subdivision to collectively bargain would have a substantial adverse impact on homeland security.

Other provisions. Two other provisions of H.R. 5005 relating to human resources management warrant comment.

Section 881 requires that the Secretary, in consultation with the Director of OPM, shall review the pay and benefit plans of each agency transferred to the Department and, within 90 days, submit a plan to Congress for ensuring the elimination of disparities, especially among law enforcement personnel. Nothing in section 881 provides for how the elements of the plan shall be put into effect, however, so I believe it would be desirable for the plan to identify the specific changes to law, regulation, and policy that would be needed to eliminate the disparities, and make specific recommendations for effecting those changes.

Section 1512(e) states that the Secretary, in regulations prescribed jointly with the Director of OPM, may adopt the rules, procedures, terms and conditions established by statute, rule, or regulation before the effective date of the Act in any agency transferred to the Department under the Act. This section 1512 contains the Savings Provisions for the reorganization effected by the Act, and subsection (e) is intended to enable the Secretary to keep a transferred agency subject to the same rules, procedures, terms and conditions that applied to the agency before the transfer. This provision does not, of course, provide authority to the Secretary to take a provision that was applicable to one agency before the effective date and apply it to another agency or other part of the Department.

Mr. THOMPSON. Madam President, putting a significant piece of legislation like this bill together is a difficult and time-consuming task. Many Senators have played important roles in this legislation, but the contributions of our staff members have also been of great significance. Without the aid of our staff members, little would get done in this institution. I would like to take a moment to recognize the hard work and dedication of just a few of the staff members who contributed significantly to this legislation.

For the Majority, I want to recognize the contributions of Chairman LIEBERMAN's staff, especially his staff director, Joyce Rechtschaffen, and Laurie Rubenstein, Mike Alexander, Kiersten Coon, Holly Idelson, Kevin Landy, Larry Novey, and Susan Propper. Also, let me acknowledge the contributions of staff to the other members of the Governmental Affairs Committee and of Sarah Walter of Senator BREAUX's staff, David Culver of Senator BEN NELSON's staff, and Alex Albert of Senator MILLER's staff.

IOn the Republican side, I must single out the work of Rohit Kumar of Senator LOTT's Leadership staff. He has been the linchpin around whom everything got done. We would have no bill without his persistence, diligence, and intellect. Mike Solon of Senator GRAMM's staff also placed a crucial role in developing the Gramm-Miller amendment on which much of the final legislation is based. David Morgenstern of Senator CHAFEE's staff was also helpful.

Finally, let me recognize my own staff on the Governmental Affairs Committee, who provided me with outstanding support. The successful adoption of this legislation is due to their hard work and constant efforts. Almost my entire staff was involved in some way or another with this bill. I want to recognize the efforts of Richard Hertling, my staff director on the Governmental Affairs Committee, who led the effort, and Libby Wood Jarvis, my legislative director. Other members of my staff whose assistance I wish to recognize are Ellen Brown, Bill Outhier, Mason Alinger, Alison Bean, John Daggett, Johanna Hardy, Stephanie Henning, Morgan Muchnick, Jayson Roehl, Jana Sinclair, and Elizabeth VanDersarl, along with Allen Lomax, a fellow in my office from the General Accounting Office.

Our staff members toil diligently and well, largely in anonymity. I think it appropriate on occasion to recognize their work publicly, so that Americans may share the knowledge of the members of this institution about how well served they are by our staff members.

I thank the Presiding Officer for allowing me to take this brief time to recognize the efforts of some of the staff members responsible for this bill.

Mr. KENNEDY. Madam President, soon after the vicious attacks of September 11, it became clear that Congress needed to act on a bipartisan basis to win the war on terrorism and protect the country from future attack. Congress quickly approved strong bipartisan legislation authorizing the use of force against the terrorists and those who harbor them. It also enacted bipartisan legislation to provide aid to victims and their families, to improve airport security, to give law enforcement and intelligence officials enhanced powers to investigate and prevent terrorism, to improve border security, and to strengthen our defenses against bioterrorism.

The September 11 attacks also demonstrated the need to consolidate overlapping functions and establish clear and efficient organizational structures within the Federal Government. I fully support these goals. Reorganization without reform, however, will not work. It is not enough to consolidate different agency functions, if the underlying problems relating to management, information sharing, and coordination are not also addressed. And we do the Nation a disservice if, in the course of reorganizing the Government, we betray the ideals that America stands for here at home and around the world.

We know that our Nation faces a very serious threat of terrorism. To protect our national security in today's world, we need an immigration system that can carefully screen foreign nationals seeking to enter the United States and protect our Nation's borders. Our current Immigration and Naturalization Service is not up to these challenges. For years, INS has been unable to meet its dual responsibility to enforce our immigration laws and to provide services to immigrants, refugees, and aspiring citizens.

The Lieberman homeland security bill included bipartisan immigration reforms that were carefully designed to correct these problems and bring our immigration system into the 21st century. It untangled the overlapping and often confusing structure of the INS and replaced it with two clear lines of command—one for enforcement and the other for services. It also included a strong chief executive officer to ensure accountability, a uniform immigration policy, and effective coordination between the service and the enforcement functions.

On these key issues, the Republican bill moves in exactly the wrong direction. It transfers all immigration enforcement functions to the Border and Transportation Security Directorate. Immigration service functions are relegated to the Bureau of Citizenship and Immigration Services, which lacks its own Under Secretary. These agencies will have authority to issue conflicting policies and conflicting interpretations of law. The formulation of immigration policy—our only chance to achieve coordination between these dispersed functions—will be subject to the conflicting views of various officials spread out in the new Department. With its failure to provide centralized coordination and lack of accountability, the Republican bill is a blueprint for failure.

The Republican bill also eliminates needed protections for children who arrive alone in the United States. Often, these children have fled from armed conflict and abuses of human rights. They are traumatized and desperately need care and protection. The Lieberman bill included safeguards, developed on a bipartisan basis, to ensure that unaccompanied alien children have the assistance of counsel and guardians in the course of their proceedings. Under this bill, immigration proceedings will remain the only legal proceedings in the United States in which children are not provided the assistance of a guardian or court-appointed special advocate.

Finally, the Republican bill will seriously undermine the role of immigration judges. Every day, immigration courts make life-altering decisions.

The interests at stake are significant, especially for persons facing persecution. We need an immigration court system that provides individuals with a fair hearing before an impartial and independent tribunal, and meaningful appellate review. The Republican bill undermines the role and independence of the courts and the integrity of the judicial process.

It vests the Attorney General with all-encompassing authority, depriving immigration judges of their ability to exercise independent judgement. Even more disturbing, the bill gives the Attorney General the authority to change or even eliminate appellate review. This result is a recipe for mistakes and abuse. An independent judicial system is essential to our system of checks and balances. Immigrants who face the severest of consequences deserve their day in court.

Today, many Americans are concerned about the preservation of basic liberties protected by the Constitution. Clearly, as we work together to bring terrorists to justice and enhance our security, we must also act to preserve and protect our Constitution. Unfortunately, the Republican bill undermines the civil rights and privacy safeguards that Senator FEINGOLD and I worked to include in the Lieberman bill. In particular, I am disappointed that the civil rights officer in the new Department will not be subject to Senate confirmation, and that there will not be a designated official in the Inspector General's Office to investigate civil rights violations.

These changes to the civil rights and privacy safeguards are particularly disturbing in light of the fact that the bill explicitly authorizes the new Department to engage in the controversial practice of data mining. This practice allows the Government to establish a massive data base containing public and private information, with files on every American. The bill provides no language ensuring that the Government acts in compliance with Federal privacy laws and the Constitution.

On the issue of worker rights, we should remember that union members risked and lost their lives and saved countless others through their actions on September 11. We will never forget the fine example that firefighters, construction workers, and many Government workers set that day. Union workers have also shown great bravery and sacrificed mightily in the service of homeland security since September 11. The postal workers and the hospital worker killed as a result of bioterrorism were all union members. The brave flight attendant whom the President recognized in the State of the Union Address for preventing terrorism was a member of a union.

The dedication and resolve of these union members truly represents the best of America. Over 43,000 of the Federal workers affected by the proposed Government reorganization are currently union members. On September 11, unionized Federal workers played critical roles at both the World Trade Center and the Pentagon as they worked round the clock to make our homeland secure. These are the workers who risk their lives each day to protect our Nation's borders.

This bill completely undermines the collective bargaining rights of the unionized employees transferred to the new Department on whom our security depends. It gives the President unlimited and unchecked authority to eliminate those collective bargaining rights. He only needs to claim that continued union rights would interfere with homeland security. Federal workers will also have no opportunity to meaningfully participate in creating the personnel system for the new Department. Moreover, this bill does not include any Davis-Bacon protections, despite longstanding Federal policy that workers should be paid prevailing wages on Federal construction projects. This bill displays a contempt for the Federal workers who serve with dedication every day to keep our Nation Safe.

Denying Federal workers fundamental rights will also undermine our Nation's homeland security at a time when we can ill afford it. Among the many lessons we have learned since September 11 about lapses in intelligence efforts connected with those events is that Federal workers need protection to be able to speak out when they believe our Nation's security is at risk. Without the protections afforded by a union, Federal workers will be far less likely to speak out and protect the public for fear of unjust retaliation.

The Republican bill's fundamental flaws were compounded to by the last-minute addition of numerous special-interest provisions. These provisions include the creation of new procedural barriers for the issuance of emergency security rules deemed essential to protect travelers by the Transportation Security Agency; an earmark for a new homeland security research center program at Texas A&M; and an exemption from the open-meetings requirement of the Federal Advisory Committee Act. The bill gives broad liability protection to manufacturers of ''anti-terrorism technology'' for claims arising from acts of terrorism. This provision will reduce the incentive of industry to produce effective antiterrorism products and limit the ability of victims to recover if future terrorist acts occur. It also shields from liability pharmaceutical companies that produce vaccine additives such as Thimerosal—the subject of pending litigation initiated by parents of autistic children. This provision has nothing to do with bioterrorism preparedness or homeland security—and everything to do with rewarding a large contributor to the Republican Party.

While I agree with my Republican colleagues that we need to reorganize the Government in responses to the challenges that we now face, I cannot support the deeply flawed bill now before the Senate. In too many aspects, it misses the opportunity for real reform and is likely to undermine, not strengthen, the security of our homeland.

Mr. WARNER. Madam President, I rise today to urge my colleagues to reject the pending Lieberman amendment to the homeland security bill. This amendment will prevent the President from gaining the authorities he needs to effectively deal with the very real and growing threat to our homeland. We should act, and act quickly. to give the President this authority.

The current amendment would keep the President from addressing a key issue in providing protection to our homeland, that is, the issue of liability risk which must be resolved if the private sector is to actively provide innovative homeland defense technologies and solutions. Some form of indemnification or limitation of lability has been a part of U.S., war efforts since World War II, as evidence by congressional passage of the War Power Act of 1941 2 weeks after Pearl Harbor, and, since 1958, the use of the National Defense Contracts Act, or Public Law 85–804, to indemnify contracts issued by the Department of Defense and other national security agencies.

To address the current terrorist threat, I have worked on the liability issue with the High Technology Task Force under the leadership of Senators ALLEN and BENNETT to fashion various solutions to enable America to access the best private sector products and technologies to defend our homeland. This is particularly important to those innovative small businesses who do not have the capital to shoulder significant liability risk.

The Lieberman amendment would nullify the compromise recently worked out with the House to limit this liability risk through limited tort reform. The Lieberman amendment would not provide any alternative to address the underlying problem. If this amendment passes what would be the incentives for This amendment is contractors to provide innovative solutions to our homeland security? For example, contractors will not sell chemical/biological detectors already available to DOD to other Federal agencies and State and local authorities because of the liability risk. Some of our Nation's top defense contractors will not sell these products because they are afraid to risk the future of their company on a lawsuit. There is an urgent need for authority to address this situation.

While my earlier proposal on indemnification, which is another approach to addressing liability risk, is not included in the current bill, I believe that the compromise language will go a long way to addressing the problem. If it appears that additional authorities are necessary to complement the language in this bill, I pledge to work in

the coming Congress to provide any necessary authority that the Present needs to ensure that innovative homeland defense technologies and solutions are available to the Federal State and local governments, as well as to the private sector.

I would also like to remark on the importance of Section 882 in the homeland security legislation to create an Office for National Capital Region Coordination within the new Department. This office will enable the Washington metropolitan region to prevent and respond to future terrorist attacks by coordinating the efforts of the Federal Government with state, local and regional authorities.

The September 11 attacks underscored the unique challenges the National Capital Region faces. As the seat of our Nation's Government, the location of many symbolic structures, the venue for many public events attended by large numbers of people, a key tourism destination point and home to thousands of Federal workers and lawmakers, it has been and may continue to be a prime location for potential future terrorist attacks.

The Washington metropolitan region needs a central Federal point of coordination for the many entities in the region which must deal with the Federal Government on issues of security. These authorities include the Federal Government, Maryland, Virginia and the District of Columbia, the Metropolitan Washington Council of Governments, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, the Military District of Washington, the judicial branch, the business community and the U.S. Congress. In no other area of the country must important decisionmaking and coordination occur between an independent city, two States, seventeen distinct local and regional authorities, including more than a dozen local police and Federal protective forces, and numerous Federal agencies.

A central Federal point of contact compliments the work of the Metropolitan Washington Council of Governments, COG, which established a comprehensive all-sector task force to improve communication and coordination when an incident of regional impact occurs. Currently, several Federal agencies have been involved in the task force, including the Office of Homeland Security, FEMA, the Office of Personnel Management, the Army Corps of Engineers, the Military District of Washington, the Department of Health and Human Services, the U.S. Public Health Service, and the Centers for Disease Control. Without a central Federal point of contact, it has been difficult, if not impossible, for effective coordination to occur among the region and these many entities.

For example, the Continuity of Operations Plans for several federal agencies are instructing employees to use Metrorail and Metrobus service in the event of an emergency. There is not a central Federal contact, however, for the Washington Metropolitan Area Transit Authority, WMATA, to work with to ensure that the Federal Government's needs are met and Federal employees are fully protected.

This new office within the Department of Homeland Security will resolve this problem by providing a much needed central Federal point of coordination. It will give all entities in the region a one-stop shop for dealing with the Federal Government on security issues, including plans and preparedness activities, including COG, WMATA, the Greater Washington Board of Trade and the Potomac Electric Power Company, PEPCO, whose statements have appeared in previous versions of the CONGRESSIONAL RECORD.

On behalf on the region's 5 million residents, I commend the House and Senate for recognizing the unique needs of our nation's capital in preventing and responding to terrorism by supporting creation of the Office for National Capital Region Coordination.

Passage of legislation to create a new Department of Homeland Security is crucial to our Nation's ability to respond to and prevent possible future terrorist attacks.

Mr. LEAHY. Madam President, the idea of coordinating homeland security functions in a cabinet-level department is a constructive one and a sounds one. In large part it originated in this body with legislation offered by Senator LIEBERMAN and Senator SPECTER, who deserve great credit for their work. President Bush, after initially opposing this idea, also deserves credit for coming to understand its value and for reversing his administration's resistance to it.

In the several months that the Congress has spent in writing and debating this complex bill, the issue has not been whether such a department should be created, but how it should be created. The Judiciary Committee, which I chair, has played a constructive role in examining these issues in our hearings and in providing guidance in the writing of this bill, and I have supported and helped to advance the key objectives envisioned for this new department. The fact that we are on the verge of enacting a charter for the new department is good for the Nation and our efforts to defend the American people against the threats of terrorism. Many of the ''hows'' that have found their way into this bill, and the process by which that has happened, are a needless blot on this charter. As we act to approve this charter, we should also feel obligated to remedy many of these ill-advised and ill-considered provisions in succeeding congressional sessions, through corrective steps and through close oversight.

As they come to understand some of the imprudent extraneous additions to this bill, many Americans will feel that their trust and goodwill have been abused, and I share their disappointment about several elements of this version of the bill that has been placed, without due consideration, before the Senate. This deal, negotiated behind closed doors by a few Republican leaders in the House and Senate and the White House, has been presented to us as a done deal. It includes several blatant flaws that should at the very least be debated. That is why I could not vote for cloture to end debate on a bill almost 500-pages long that was presented to us for the first time only five days ago, on November 14.

The bill undertakes a significant restructuring of the Federal Government by relocating in the new Department of Homeland Security several agencies, including the Immigration and Naturalization Service, the U.S. Secret Service, the Federal Emergency Management Agency, the Office of Domestic Preparedness, the Transportation Security Administration, the U.S. Customs Service, and the Coast Guard. In addition, many functions of the Bureau of Alcohol, Tobacco, Firearms and Explosives would be transferred to the Department of Justice.

Overall I support the President's conclusion that several government functions should be reorganized to improve our effectiveness in combating terrorism and preserving our national security, although he has been responsible for leading all of these agencies and fulfilling their responsibilities since assuming the Presidency in January 2001, and the President himself opposed significant reorganization until recently. Homeland security functions are now dispersed among more than 100 different governmental organizations. Testimony at a June 26, 2002, Judiciary Committee hearing illuminated the problem of such a confusing patchwork of agencies with none having homeland security as its sole or even primary mission. I had thought that the Department of Justice and FBI were the lead agencies responsible for the country's security in 2001 and 2002, but I understand why the President has come to realize that the lack of a single agency responsible for homeland security increases both the potential for mistakes and opportunities for terrorists to exploit our vulnerabilities.

The bill will bring under one cabinet level officer agencies and departments that share overlapping missions for protecting our border, our financial and transportation infrastructure and responding to crises. Having these agencies under a single cabinet level officer will help coordinate their efforts and focus their mission with a single line of authority to get the job done.

This is something that I support.

The bill also encourages information sharing. Our best defense against terrorism is improved communication and coordination among local, State, and Federal authorities; and between the U.S. and its allies. Through these efforts, led by the Federal government and with the active assistance of many

others in other levels of government and in the private sector, we can enhance our prevention efforts, improve our response mechanisms, and at the same time ensure that funds allotted for protection against terrorism are being used most effectively.

The recent sniper rampage in the Washington, DC area demonstrated the dire need for such coordination among Federal, State and local law enforcement agencies. Fortunately, we were able to see the productive results of effective information sharing and coordination with the arrests of the two alleged snipers on October 31.

While we all support increased sharing of relevant information with the new Department of Homeland Security by and among other Federal, State and local agencies, we must be careful that information sharing does not turn into information dumping. We want our law enforcement officials to have the information they need to do their jobs effectively and efficiently, with communications equipment that allows different agencies to talk to each other and with the appropriate training and tools so that multiple agencies are able to coordinate their responses during emergencies. We know that large amounts of information were collected, but never read or analyzed, before September 11, and we know that translators and resources are what we need to help make the already-gathered information useful.

There is no dispute that information sharing is critical, but we have to make sure we do not go overboard. Information dumping is harmful to our national security if the information is not accurate, complete, or relevant, or if it is dumped in such a bulk fashion that end-users are unable to determine its reliability. The legislation before us provides very broad authority for information collection from and sharing with not just Federal, State and local law enforcement authorities, but also other government agencies, foreign government agencies and the private sector. Highly sensitive grand jury information, criminal justice, and electronic, wire, and oral interception information is authorized to be shared to not just across this country but also around the world. Without clear guidance, this sweeping new authority can be a recipe for mischief. The Congress now will have an imperative to monitor vigilantly and responsibly the implementation of this new authority to ensure that the risks to the privacy of the American people and the potential for abuse do not become a reality.

This bill contains several constructive provisions, including establishment in the new Department of a Privacy Office and an Office for Civil Rights and Civil Liberties. The bill also includes the Sessions-Leahy bill, S. 3073, and whistleblower protections that the administration's original proposal rejected. In addition, as I will discuss in more detail in these remarks, the bill includes a prohibition on both the TIPS Program and a national identification system or card.

I am pleased the bill, in section 880, forbids the creation of Operation TIPS, a proposed citizen reporting program theoretically designed to prevent terrorism. The ill-designed program threatened to turn neighbors into spies and to discredit valuable neighborhood watch programs. When I questioned the Attorney General about the program earlier this year, I found his answers to be incomplete and far from reassuring. As such, I was prepared to offer an amendment in the Senate to bar Operation TIPS, and I welcome the House's strong opposition to the program that has made my amendment unnecessary.

Under the plan originally announced by the Justice Department, Operation TIPS would have enlisted millions of Americans as volunteers who would report their suspicions about their neighbors and customers to the government. This plan was criticized by Republicans and Democrats alike, and Justice Department officials then said they planned to make the program smaller than originally anticipated. But the Department never made clear how the program would work, what it would cost, or how the privacy interests of American citizens would be protected.

Indeed, the administration offered a constantly shifting set of explanations to Congress and the public about how Operation TIPS would work, leaving Congress unable even to evaluate a program that could easily lead to the invasion of the privacy of our fellow Americans. Even the Operations TIPS website offered differing explanations of how the program would work, depending on what day a concerned user accessed it. For example, before July 25, the web site said that Operation TIPS ''involving 1 million workers in the pilot stage, will be a national reporting system that allows these workers, whose routines make them well-positioned to recognize unusual events, to report suspicious activity.'' By contrast, the July 25 version declared that ''the program will involve the millions of American workers who, in the daily course of their work, are in a unique position to see potentially unusual or suspicious activity in public places.'' It was unclear whether these changes reflected actual changes in the Justice Department's plans, or whether they were simply cosmetic differences designed to blunt opposition to the program raised by concerned citizens, newspaper editorials, and Members of Congress.

The administration originally proposed Operation TIPS as ''a nationwide program giving millions of American truckers, letter carriers, train conductors, ship captains, utility employees, and others a formal way to report suspicious terrorist activity.'' In other words, the administration would recruit people whose jobs gave them access to private homes to report on any ''suspicious'' activities they discovered. Nor would this program start small; the Administration planned a pilot program that alone would have enlisted 1 million Americans.

We also never received a full understanding of how the Administration planned to train Operation TIPS volunteers. The average citizen has little knowledge of law enforcement methods, or of the sort of information that is useful to those working to prevent terrorism. Such a setup could have allowed unscrupulous participants to abuse their new status to place innocent neighbors under undue scrutiny. The number of people who would have abused this opportunity is undoubtedly small, but the damage these relatively few could do would be very real and potentially devastating. In addition, it was crucial that citizen volunteers receive training about the permissible use of race and ethnicity in their evaluation of whether a particular individual's behavior is suspicious, but the Justice Department seemed not to have considered the issue.

Even participants acting in good faith may have been prone to report activity that would not be suspicious to a well-trained professional. One law enforcement agencies are already operating under heavy burdens, and I questioned the usefulness of bombarding them with countless tips from millions of volunteers. As the Washington Post put it in a July editorial: ''It is easy to imagine how such a program might produce little or no useful information but would flood law enforcement with endless suspicions that would divert authorities from more promising investigative avenues.''

The administration's plan also raised important questions about how and whether information submitted by TIPS volunteers would be retained. Many of us were deeply concerned about the creation of a TIPS database that would retain TIPS reports indefinitely. When he testified before the Judiciary Committee in July, the Attorney General said that he, too, was concerned about this. He told us that he had been given assurances that there would be no database, but he could not tell us who had given him those assurances. Many months later, the administration's plans on this issue still are unclear. We simply cannot allow a program that will use databases to store unsubstantiated allegations against American citizens to move forward.

Opposition to Operation TIPS has been widespread. Representative ARMEY, the House Majority Leader, has led the fight against it in the House. The Postal Service refused to participate. The Boston Globe called it a scheme Joseph Stalin would have loved. In an editorial, The New York Times said: ''If TIPS is ever put into effect, the first people who should be turned in as a threat to our way of life are the Justice Department officials who thought up this most un-American of programs.'' The Las Vegas Sun said that ''Operation TIPS has the potential

of becoming a monster.'' The Washington Post said that the Administration ''owes a fuller explanation before launch day.''

In evaluating TIPS, we need to remember our past experience with enlisting citizen informants on such a grand scale. During World War I, the Department of Justice established the American Protective League, APL, which enrolled 250,000 citizens in at least 600 cities and towns to report suspicious conduct and investigate fellow citizens. For example, the League spied on workers and unions in thousands of industrial plants with defense contracts and organized raids on German-language newspapers. Members wore badges and carried ID cards that showed their connection to the Justice Department and were even used to make arrests. Members of the League used such methods as tar and feathers, beatings, and forcing those who were suspected of disloyalty to kiss the flag. The New York Bar Association issued a report after the war stating of the APL: ''No other one cause contributed so much to the oppression of innocent men as the systematic and indiscriminate agitation against what was claimed to be an all-pervasive system of German espionage.'' No one wants to relive those dark episodes or anything close to them.

I am pleased that we have achieved bicameral and bipartisan agreement that Operation TIPS goes too far, infringing on the liberties of the American people while promising little benefit for law enforcement efforts. If the administration comes to Congress with a limited, common-sense proposal that respects liberties, Congress will likely support it. But Congress cannot simply write a blank check for such a troubled program.

I am also pleased that the bill, in section 1514, states clearly that nothing in the legislation shall be construed to authorize the development of a national identification system or card. Given the other provisions in the bill that pose a risk to our privacy, this at least is a line in the sand which I fully support.

The House-passed bill also includes, in section 601, a provision that Senator SESSIONS and I introduced last month as S.3073. This provision will facilitate private charitable giving for servicemen and other Federal employees who are killed in the line of duty while engaged in the fight against international terrorism. Under current law, beneficiaries of members of the U.S. Armed Forces get paid only $6,000 in death benefits from the government, over any insurance that they may have purchased. Moreover, these individuals may not be eligible for payments from any existing victims' compensation program or charitable organization. The Session-Leahy provision will provide much-needed support for the families of those who have made the ultimate sacrifice for their country. It encourages the establishment of charitable trusts for the benefit of surviving spouses and dependents of military, CIA, FBI, and other Federal Government employees who are killed in operations or activities to curb international terrorism. This provision also authorizes Federal officials to contact qualifying trusts on behalf of surviving spouses and dependents, pursuant to regulations to be prescribed by the Secretary of Defense. This will help to inform survivors about benefits and to ensure that those who are eligible have the opportunity to access the money. It will also spare grieving widows the embarrassment of having to go to a charity and ask for money. Finally, for the avoidance of doubt, this provision makes clear that Federal officeholders and candidates may help raise funds for qualifying trusts without running afoul of federal campaign finance laws.

I am also pleased that, unlike the President's original, the current bill would ensure that employees of the new Department of Homeland Security will have all the same whistleblower protections as employees in the rest of the Federal Government. As we saw during the many FBI oversight hearings that the Judiciary Committee has held over the last 15 months, strong whistleblower protection is an important homeland security measure in itself.

Indeed, it was whistleblower revelations that helped lead to the creation of this Department. The President was vehemently opposed to creating the new Department of Homeland Security for 9 months after the September 11 attacks. Then, just minutes before FBI whistleblower Coleen Rowley came before the Judiciary Committee in a nationally televised appearance to expose potential shortcomings in the FBI's handling of the Zacarias Moussaoui case before 9/11, the White House announced that it had changed its position and that the creation of a new cabinet-level Department of Homeland Security was vital. Of course, that made it all the more ironic that the President's original proposal did not assure whistleblower protections in the new Department.

In any event, although the new Department has the same legal protections as those that apply in the rest of the government, the protections will mean nothing without the vigorous enforcement of these laws by the administration. The leadership of the new Department and the Office of Special Counsel must work to encourage a culture that does not punish whistleblowers, and the Congress—including the Judiciary Committee—must continue to vigorously oversee the new and other administrative departments to make sure that this happens.

While I am glad that the many employees of the new Department will have the same substantive and procedural whistleblower protections as other government employees, I wish that we could have done more. Unfortunately, a Federal court with a monopoly on whistleblower cases that is hostile to such claims has improperly and narrowly interpreted the provisions of the Whistleblower Protection Act. Senators GRASSLEY, LEVIN, AKAKA and I had proposed a bipartisan amendment to this measure that would have strengthened whistleblower protections in order to protect national security. The amendment was similar to S. 995, of which I am a cosponsor, and our amendment would have corrected some of the anomalies in the current law. It is unfortunate for the success of the Department and for the security of the American people that the amendment was not part of the final measure, and I hope that we can work to pass S. 995 in the 108th Congress.

The administration was slow to accept the idea for a cabinet-level department to coordinate homeland security, but experience in the months after the September 11 attacks helped in the evolution of the Administration's position. Soon after the President invited Governor Ridge to serve as the Director of an Office of Homeland Security within the White House, I invited Governor Ridge in October, 2001, to testify before the Judiciary Committee about how he would improve the coordination of law enforcement and intelligence efforts and about his views on the role of the National Guard in carrying out the homeland security mission, but he declined our invitation at that time. The administration would not allow Director Ridge to testify before Congress.

Without Governor Ridge's input, the Judiciary Committee continued oversight work that had begun in the summer of 2001, before the terrorist attacks, on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings with the Attorney General and with officials of the Federal Bureau of Investigation and the Immigration and Naturalization Service. In the weeks immediately after the attacks, the committee turned its attention to hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. Committee members worked in partnership with the White House and the House to craft the new anti-terrorism law, the USA PATRIOT Act, which was enacted on October 26, 2001.

We were prepared to include in the new anti-terrorism law provisions creating a new cabinet-level officer heading a new Department of Homeland Security, but we did not do so at the request of the White House. Indeed, from September, 2001, until June, 2002, the administration was steadfastly opposed to the creation of a cabinet-level department to protect homeland security. Governor Ridge said in an interview with National Journal reporters in May, 2001, that if Congress put a bill on the President's desk to make his position statutory, he would, ''probably

recommend that he veto it.'' That same month, White House spokesman Ari Fleischer also objected to a new department, commenting that, ''You still will have agencies within the Federal government that have to be coordinated. So the answer is: Creating a Cabinet post doesn't solve anything.''

In one respect, the White House was correct: Simply moving agencies around among departments does not address the problems inside agencies like the FBI or the INS—problems like outdated computers, hostility to employees who report problems, lapses in intelligence sharing, and lack of translation and analytical capabilities, along with what many have termed ''cultural problems.'' The Judiciary Committee and its subcommittees have been focusing on identifying those problems and finding constructive solutions to fix them. We have worked hard to be bipartisan and even nonpartisan in this regard. To that end, the Committee unanimously reported the Leahy-Grassley FBI Reform Act, S. 1974, to improve the FBI, especially at this time when the country needs the FBI to be as effective as it can be in the war against terrorism. Unfortunately, that bill has been blocked on the Senate floor since it was reported by the Judiciary Committee in April, 2002, by an anonymous Republican hold.

The White House's about-face on June 6, 2002, announced just minutes before the Judiciary Committee's oversight hearing with FBI Special Agent Coleen Rowley, telegraphed the President's new support for the formation of a new homeland Security Department along the lines that Senator LIEBERMAN and Senator SPECTER had long suggested.

Two weeks later, on June 18, 2002, Governor Ridge transmitted a legislative proposal to create a new homeland security department. It should be apparent that knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. Yet the administration's early proposal would have exempted the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply, nor would the conflicts of interest and accountability rules for agency advisors. The new department head would have the power to suspend the Whistleblower Protection Act and the normal procurement rules and to intervene in Inspector General investigations. In these respects, the administration asked us to put this new department above the law and outside the checks and balances these laws are there to ensure.

Exempting the new department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start—not the sure footing we all want for the success and endurance of this endeavor.

We all wanted to work with the President to meet his ambitious timetable for setting up the new department. Senate Democrats worked diligently to craft responsible legislation that would establish a new department but would also make sure that it was not outside the laws. We all knew that one sure way to slow up the legislation would be to use the new department as the excuse to undermine or repeal laws not liked by partisan interests, or to stick unrelated political items in the bill under the heading of ''management flexibility.'' Unfortunately, the Republican leadership and the White House have been unable to resist that temptation, even as they urge prompt passage of a bill unveiled for the first time only 5 days ago.

This bill has its problems. As I will discuss in more detail in the balance of my remarks, this legislation has five significant problems. It would: (1) undermine Federal and State sunshine laws permitting the American people to know what their government is doing, (2) threaten privacy rights, (3) provide sweeping liability protections for companies at the expense of consumers, (4) weaken rather than fix our immigration enforcement problems, and (5) under the guise of ''management flexibility,'' it would authorize political cronyism rather than professionalism within the new department. These problems are unfortunate and entirely unnecessary to the overall objective of establishing a new department of homeland security. Republican leaders and the White House have forced on the Senate a process under which these problem areas cannot be substantively and meaningfully addressed, and that is highly regrettable and a needless blot on this charter. Though I will support passage of this legislation in order to get the new department up and running, the flaws in this legislation will require our attention next year, when I hope to work with the administration and my colleagues on both sides of the aisle to monitor implementation of the new law and to craft corrective legislation.

First, the bill guts the FOIA at the expense of our national security and public health and safety. This bill eliminates a bipartisan Senate provision that I crafted with Senator LEVIN and Senator BENNETT to protect the public's right to use the Freedom of Information Act, FOIA, in order to find out what our Government is doing, while simultaneously providing security to those in the private sector that records voluntarily submitted to help protect our critical infrastructures will not be publicly disclosed. Encouraging cooperation between the private sector and the government to keep our critical infrastructure systems safe from terrorist attacks is a goal we all support. But the appropriate way to meet this goal is a source of great debate—a debate that has been all but ignored by the Republicans who crafted this legislation.

The administration itself has flip-flopped on how to best approach this issue. The administration's original June 18, 2002, legislative proposal establishing a new department carved out of FOIA exemption, in section 204, and required non-disclosure of any ''information'' ''voluntarily'' provided to the new Department of Homeland Security by ''non-Federal entities or individuals'' pertaining to ''infrastructure vulnerabilities or other vulnerabilities to terrorism'' in the possession of, or that passed through, the new department. Critical terms, such as ''voluntarily provided,'' were undefined.

The Judiciary Committee had an opportunity to query Governor Ridge about the administration's proposal on June 26, 2002, when the administration reversed its long-standing position and allowed him to testify in his capacity as the Director of the Transition Planning Office.

Governor Ridge's testimony at that hearing is instructive. He seemed to appreciate the concerns expressed by Members about the President's June 18th proposal and to be willing to work with us in the legislative process to find common ground. On the FOIA issue, he described the Administration's goal to craft ''a limited statutory exemption to the Freedom of Information Act'' to help ''the Department's most important missions [which] will be to protect our Nation's critical infrastructure.'' (June 26, 2002 Hearing, Tr., p. 24). Governor Ridge explained that to accomplish this, the Department must be able to ''collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities.'' (Id., at p. 23).

I do not understand why some have insisted that FOIA and our national security are inconsistent. The FOIA already exempts from disclosure matters that are classified; trade secret, commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA are designed to protect national security and public safety and to ensure that the private sector can provide needed information to the government.

Current law already exempts from disclosure any financial or commercial information provided voluntarily to the government, if it is of a kind that the provider would not customarily make available to the public. *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Such information enjoys even stronger nondisclosure protections than does material that the government requests. Applying this exception, Federal regulatory

agencies are today safeguarding the confidentiality of all kinds of critical infrastructure information, like nuclear power plant safety reports (*Critical Mass*, 975 F.2d at 874), information about product manufacturing processes land internal security measures (*Bowen* v. *Food & Drug Admin*., 925 F.2d 1225 (9th Cir. 1991), design drawings of airplane parts (*United Technologies Corp. by Pratt & Whitney* v. *F.A.A.*, 102 F.3d 6878 (2d Cir. 1996)), and technical data for video conferencing software (*Gilmore* v. *Dept. of Energy*, 4 F. Supp.2d 912 (N.D. Cal. 1998)).

The head of the FBI National Infrastructure Protection Center, NIPC, testified more than 5 years ago, in September, 1998, that the ''FOIA excuse'' used by some in the private sector for failing to share information with the government was, in essence, baseless. He explained the broad application of FOIA exemptions to protect from disclosure information received in the context of a criminal investigation or a ''national security intelligence'' investigation, including information submitted confidentially or even anonymously. [Sen. Judiciary Subcommittee On Technology, Terrorism, and Government Information, Hearing on Critical Infrastructure Protection: Toward a New Policy Directive, S. HRG. 105–763, March 17 and June 10, 1998, at p. 107]

The FBI also used the confidential business record exemption under (b)(4) ''to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received.'' NIPC was developing policies ''to grant owners of information certain opportunities to assist in the protection of the information (e.g., 'sanitizing the information themselves') and to be involved in decisions regarding further dissemination by the NIPC.'' Id. In short, the former administration witness stated: ''Sharing between the private sector and the government occasionally is hampered by a perception in the private sector that the government cannot adequately protect private sector information from disclosure under the Freedom of Information Act (FOIA). The NIPC believes that this perception is flawed in that both investigative and infrastructure protection information submitted to NIPC are protected from FOIA disclosure under current law.'' (Id.)

Nevertheless, for more than 5 years, businesses have continued to seek a broad FOIA exemption that also comes with special legal protections to limit their civil and criminal liability, and special immunity from the antitrust laws. The Republicans are largely granting this business wish-list in the legislation for the new Department of Homeland Security.

At the Senate Judiciary Committee hearing with Governor Ridge, I expressed my concern that an overly broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

Governor Ridge seemed to appreciate these risks, and said he was ''anxious to work with the Chairman and other members of the committee to assure that the concerns that [had been] raised are properly addressed.'' Id. at p. 24. He assured us that ''[t]his Administration is ready to work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.'' Id. at p. 25. This turned out to be an empty promise.

Almost before the ink was dry on the administration's earlier June proposal, on July 10, 2002, the administration proposed to substitute a much broader FOIA exemption that would (1) exempt from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent, (2) provide limited civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted designated information to the department over whether the regulatory action was prompted by a confidential disclosure, (3) preempt State sunshine laws if the designated information is shared with State or local government agencies, (4) impose criminal penalties of up to one year imprisonment on Government employees who disclosed the designated information, and (5) antitrust immunity for companies that joined together with agency components designated by the President to promote critical infrastructure security.

Despite the administration's promulgation of two separate proposals for a new FOIA exemption in as many weeks, in July, Director Ridge's Office of Homeland Security released The National Strategy for Homeland Security, which appeared to call for more study of the issue before legislating. Specifically, this report called upon the Attorney General to ''convene a panel to propose any legal changes necessary to enable sharing of essential homeland security information between the government and the private sector.'' (p. 33)

The need for more study of the administration's proposed new FOIA exemption was made amply clear by its possible adverse environmental, public health and safety affects. Keeping secret problems in a variety of critical infrastructures would simply remove public pressure to fix the problems. Moreover, several environmental groups pointed out that, under the administration's proposal, companies could avoid enforcement action by ''voluntarily'' providing information about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing information about spills or other violations without the written consent of the company that caused the pollution.

I worked on a bipartisan basis with many interested stakeholders from environmental, civil liberties, human rights, business and government watchdog groups to craft a compromise FOIA exemption that did not grant the business sector's wish-list but did provide additional nondisclosure protections for certain records without jeopardizing the public health and safety. At the request of Chairman LIEBERMAN for the Judiciary Committee's views on the new department, I shared my concerns about the administration's proposed FOIA exemption and then worked with Members of the Governmental Affairs Committee, in particular Senator LEVIN and Senator BENNETT, to craft a more narrow and responsible exemption that accomplishes the Administration's goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security without providing incentives to ''game'' the system of enforcement of environmental and other laws designed to protect our nation's public health and safety. We refined the FOIA exemption in a manner that satisfied the Administration's stated goal, while limiting the risks of abuse by private companies or government agencies.

This compromise solution was supported by the administration and other members of the Committee on Governmental Affairs and was unanimously adopted by that Committee at the markup of the Homeland Security Department bill on July 24, 2002. The provision would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Notably, the compromise FOIA exemption made clear that the exemption only covered ''records'' from the private sector, not all ''information'' provided by the private sector and thereby avoided the adverse result of government agency-created and generated documents and databases being put off-limits to the FOIA simply if private sector ''information'' is incorporated. Moreover, the compromise FOIA exemption clearly defined what records may be considered ''furnished voluntarily,'' which did not cover records used ''to satisfy any legal requirement or obligation to obtain any grant, permit, benefit (such as agency forbearances, loans, or reduction or modifications of agency penalties or rulings), or other

approval from the Government.'' The FOIA compromise exemption further ensured that portions of records that are not covered by the exemption would be released pursuant to FOIA requests. This compromise did not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement enforcement action, nor did the compromise preempt state or local sunshine laws.

Unfortunately, the new Republican version of this legislation that we are voting on today jettisoned the bipartisan compromise on the FOIA exemption, worked out in the Senate with the administration's support, and replaced it with a big-business wish-list gussied up in security garb. The Republican FOIA exemption would make off-limits to the FOIA much broader categories of ''information'' and grant businesses the legal immunities and liability protections they have sought so vigorously for over 5 years. This bill goes far beyond what is needed to achieve the laudable goal of encouraging private sector companies to help protect our critical infrastructure. Instead, it will tie the hands of the federal regulators and law enforcement agencies working to protect the public from imminent threats. It will give a windfall to companies who fail to follow Federal health and safety standards. Most disappointingly, it will undermine the goals of openness in government that the FOIA was designed to achieve. In short, the FOIA exemption in this bill represents the most severe weakening of the Freedom of Information Act in its 36-year history.

In the end, the broad secrecy protections provided to critical infrastructure information in this bill will promote more secrecy which may undermine rather than foster national security. In addition, the immunity provisions in the bill will frustrate enforcement of the laws that protect the public's health and safety.

Let me explain. The Republican FOIA exemption would allow companies to stamp or designate certain information as ''Critical Infrastructure Information'' or ''CII'' and then submit this information about their operations to the government either in writing or orally, and thereby obtain a blanket shield from FOIA's disclosure mandates as well as other protections. A Federal agency may not disclose or use voluntarily-submitted and CII-marked information, except for a limited ''informational purpose,'' such as ''analysis, warning, interdependency, study, recovery, reconstitution,'' without the company's consent. Even when using the information to warn the public about potential threats to critical infrastructure, the bill requires agencies to take steps to protect from disclosure the source of the CII information and other ''business sensitive'' information.

The bill contains an unprecedented provision that threatens jail time and job loss to any Government employee who happens to disclose any critical infrastructure information that a company has submitted and wants to keep secret. These penalties for using the CII information in an unauthorized fashion or for failing to take steps to protect disclosure of the source of the information are severe and will chill any release of CII information not just when a FOIA request comes in, but in all situations, no matter the circumstance. Criminalizing disclosures—not of classified information or national security related information, but of information that a company decides it does not want public—is an effective way to quash discussion and debate over many aspects of the Government's work. In fact, under this bill, CII information would be granted more comprehensive protection under Federal criminal laws than classified information.

This provision has potentially disastrous consequences. If an agency is given information from an ISP about cyberattack vulnerabilities, agency employees will have to think twice about sharing that information with other ISPs for fear that, without the consent of the ISP to use the information, even a warning might cost their jobs or risk criminal prosecution.

This provision means that if a Federal regulatory agency needs to issue a regulation to protect the public from threats of harm, it cannot rely on any voluntarily submitted information—bringing the normal regulatory process to a grinding halt. Public health and law enforcement officials need the flexibility to decide how and when to warn or prepare the public in the safest, most effective manner. They should not have to get ''sign off'' from a Fortune 500 company to do so.

While this legislation risks making it harder for the Government to protect American families, it will make it much easier for companies to escape responsibility when they violate the law by giving them unprecedented immunity from civil and regulatory enforcement actions. Once a business declares that information about its practices relates to critical infrastructure and is ''voluntarily'' provided, it can then prevent the Federal Government from disclosing it not just to the public, but also to a court in a civil action. This means that an agency receiving CII-marked submissions showing invasions of employee or customer privacy, environmental pollution, or government contracting fraud will be unable to use that information in a civil action to hold that company accountable. Even if the regulatory agency obtains the information necessary to bring an enforcement action from an alternative source, the company will be able to tie the government up in protracted litigation over the source of the information.

For example, if a company submits information that its factory is leaching arsenic in ground water, that information may not be turned over to local health authorities to use in any enforcement proceeding nor turned over to neighbors who were harmed by drinking the water for use in a civil tort action. Moreover, even if EPA tries to bring an action to stop the company's wrongdoing, the ''use immunity'' provided in the Republican bill will tie the agency up in litigation making it prove where it got the information and whether it is tainted as ''fruit of the poisonous tree''—i.e., obtained from the company under the ''critical infrastructure program.''

Similarly, if the new Department of Homeland Security receives information from a bio-medical laboratory about its security vulnerabilities, and anthrax is released from the lab three weeks later, the Department will not be able to warn the public promptly about how to protect itself without consulting with and trying to get consent of the laboratory in order to avoid the risk of job loss or criminal prosecution for a non-consensual disclosure. Moreover, if the laboratory is violating any State, local or Federal regulation in its handling of the anthrax, the Department will not be able to turn over to another Federal agency, such as the EPA or the Department of Health and Human Services, or to any State or local health officials, information or documents relating to the laboratory's mishandling of the anthrax for use in any enforcement proceedings against the laboratory, or in any wrongful death action, should the laboratory's mishandling of the anthrax result in the death of any person. The bill specifically states that such CII-marked information ''shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith.'' [H.R. 5710, section 214(a)(1)(C)]

Most businesses are good citizens and take seriously their obligations to the government and the public, but this ''disclose-and-immunize'' provision is subject to abuse by those businesses that want to exploit legal techniques to avoid regulatory guidelines. This bill lays out the perfect blueprint to avoid legal liability: funnel damaging information into this voluntary disclosure system and pre-empt the Government or others harmed by the company's actions from being able to use it against the company. This is not the kind of two-way public-private cooperation that our country needs.

The scope of the information that would be covered by the new Republican FOIA exemption is overly broad and would undermine the openness in government that FOIA was intended to guarantee. Under this legislation, information about virtually every important sector of our economy that today the public has a right to see can shut off from public view simply by labeling

it ''critical infrastructure information.'' Today, for example, under current FOIA standards, courts have required Federal agencies to disclose (1) pricing information in contract bids so citizens can make sure the government is wisely spending their taxpayer dollars; (2) compliance reports that allow constituents to insist that government contractors comply with federal equal opportunity mandates; and (3) banks' financial data so the public can ensure that federal agencies properly approve bank mergers. Without access to this kind of information, it will be harder for the public to hold its Government accountable. Under this bill, all of this information may be marked CII information and kept out of public view.

The Republican FOIA exemption goes so far in exempting such large amount of material from FOIA's disclosure requirements that it undermines Government openness without making any real gains in safety for families in Vermont and across America. We do not keep America safer by chilling Federal officials from warning the public about threats to their health and safety. We do not ensure our nation's security by refusing to tell the American people whether or not their federal agencies are doing their jobs or their Government is spending their hard earned tax dollars wisely. We do not encourage real two-way cooperation by giving companies protection from civil liability when they break the law. We do not respect the spirit of our democracy when we cloak in secrecy the workings of our Government from the public we are elected to serve.

Notably, another part of the bill, section 892, would further undermine Government sunshine laws by authorizing the President to prescribe and implement procedures requiring Federal agencies to ''identify and safeguard homeland security information that is sensitive but unclassified'' The precise type of information that would be covered by this new category of ''sensitive'' information that is not classified but subject to carte blanche executive authority to keep secret is not defined and no guidance is provided in the Republican bill as to how far the President may go.

As the Rutland Herald so aptly put it in an editorial on November 16, the Republicans ''are moving to cloak the Federal Government in an unprecedented regime of secrecy.'' The argument over the scope of the FOIA and unilateral executive power to shield matters from public scrutiny goes to the heart of our fundamental right to be an educated electorate aware of what our government is doing. The Rutland Herald got it right in explaining. ''The battle was not over the right of the government to hold sensitive, classified information secret. The government has that right. Rather, the battle was over whether the government would be required to release anything it sought to withhold.''

Second, extraneous provisions added by the House also pose significant privacy risks. As I noted before, increased information sharing is necessary but also poses privacy risks if the government is not properly focused on the information necessary to collect, the people appropriate to target for surveillance and the necessary controls to ensure that dissemination is confined to those with a need to know.

Recent press reports have warned that this bill will turn it into a ''supersnoop's dream'' because it will allow creation of a huge centralized grand database containing a dossier or profile of private transactions and communications that each American has had within the private sector and with the government. Indeed, in section 201, the bill authorizes a new Directorate for Information Analysis and Infrastructure Protection to collect and integrate information from government and private sector entities and to ''establish and utilize . . . data-mining and other advanced analytical tools.'' In addition, in section 307, the bill authorizes $500,000,000 next year to be spent by a new Homeland Security Advanced Research Projects Agency, HSARPA, to make grants to develop new surveillance and other technologies for use in detecting, preventing and responding to homeland security threats.

We do not want the Federal Government to become the proverbial ''big brother'' while every local police and sheriff's office or foreign law enforcement agency to become ''little brothers.'' How much information should be collected, on what activities and on whom, and then shared under what circumstances, are all important questions that should be answered with clear guidelines understandable by all Americans and monitored by Congress, in its oversight role, and by court review to curb abuses.

Other provisions added in haste to the Republican House-passed bill raise serious concerns about privacy protections for the sensitive electronic communications of law-abiding Americans. In particular, the so-called ''emergency disclosure'' amendment in section 225(d) would greatly expand the ability of Internet service providers to reveal private communications to Government agencies without any judicial authority or any evidence of wrongdoing.

As Americans move their lives online, the privacy of their sensitive e-mails, instant messages, and web traffic is of growing concern. Current law protects the privacy of electronic communications by prohibiting service providers from revealing the contents of those communications to anyone without proper lawful orders. Emergency disclosure provisions exist in the current law based on the reasonable premise that ISPs who encounter an imminent threat of death or serious injury should be able to reveal communications to law enforcement agencies on an emergency basis, even without judicial oversight. We just recently expanded that emergency exception a year ago in the USA PATRIOT Act to provide even more flexibility for service providers.

In practice, however, the emergency disclosure authority is being used in a different way. Reports in the press and from the field indicate that ISP's university and libraries are approached by Government agents and asked to disclose communications ''voluntarily'' for ongoing investigations. Providers are then faced with a terrible choice—turn over the private communications of their customers without any court order, or say ''no'' to a government request. Of course, many comply with the requests. Small providers have few legal resources to challenge such requests. The agents who are making the requests may be the same agents to whom the providers will have to turn for help in the event of hacking attacks on other problems. So without proper restrictions, such ''voluntary disclosure'' provisions risk becoming a major exception to the law. Section 225(d) takes this exception even further and turns it into a loophole big enough to drive a truck through. It would allow literally thousands of local, State and Federal employees to seek private e-mails, instant messages, and other sensitive communications without any judicial orders ad even a subpoena. ISPs could turn over those communications based on vague concerns of future injury to someone, even if those concerns are totally unreasonable.

Section 225(d) makes three important changes to the already very generous authorities for these extraordinary disclosures, which Congress gave to law enforcement in the USA PATRIOT Act just one year ago. First, it would remove the requirement that there be ''imminent'' danger of injury or death. Instead it would allow these extraordinary disclosures when there is some danger, which might be far in the future and far more hypothetical. As the Attorney General and the President have warned us consistently over the last year, the entire country faces some risk of future attack. Under this new language, there will always be a rationale for using the so-called ''emergency'' disclosure provision.

Second, section 225(d) would remove even the low hurdle that there be a ''reasonable belief'' in danger on the part of the ISP. Instead, this new provision would allow these sensitive disclosures if there is any good faith belief—even if totally unreasonable—of danger. Vague, incoherent, or even obviously fictitious threats of future danger could all form the basis for disclosing our most private electronic communications under this new provision of law.

Finally, section 225(d) would allow disclosure of sensitive communications to any local, State or Federal Government entity, not just law enforcement agents. That could include literally hundreds of thousands of Government employees. The potential for abuse is

enormous. More importantly, in cases of real threats of death or serious injury, it is law enforcement agencies—trained to deal with such situations and cognizant of legal strictures—who should be the first contact point for concerned citizens.

As a result of Section 225(d), many more disclosures of sensitive communications would be permitted without any court oversight. Moreover, these disclosures would happen without any notice to people—even after the fact—that their communications have been revealed. It would allow these disclosures to be requested by potentially thousands of government employees, ranging from cotton inspectors to dogcatchers to housing department administrators.

The public's most sensitive e-mails, web transactions, and instant messages sent to love ones, business associates, doctors and lawyers, and friends deserve the highest level of privacy we can provide. The provisions of section 225(d) make a mockery of our privacy laws, and the carefully crafted exceptions we have created in them, by allowing disclosure of our most private communications to thousands of Government officials based on the flimsiest of excuses. These provisions were never approved by any committee in the Senate, are not in the interests of the American people, and should not now be finding there way into the law of the land.

Third, the bill provides liability protections for companies at the expense of consumers. I am disappointed that the measure also contains sweeping liability protection for corporate makers of vaccines and any other products deemed to be ''anti-terrorism technology'' by the Secretary of Homeland Security. This unprecedented executive authority to unilaterally immunize corporations from accountability for their products is irresponsible and endangers the consumers and our military service men and women.

These provisions, for example, would apply to negligence, gross negligence and even willful misconduct in producing vaccines, gas masks, airport screening machines and any other ''anti-terrorism technology'' used by the general public and our service men and women.

In addition, the bill would completely eliminate punitive damages against the maker of such a defective product. Without the threat of punitive damages, callous corporations can decide it is more cost-effective to continue cutting corners despite the risk to American lives. This would let private parties avoid accountability in cases of wanton, willful, reckless, or malicious conduct.

There is no need to enact these special legal protections and take away the rights of victims of defective products. At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror, these ''tort reform'' proposals are unprecedented, inappropriate, and irresponsible. At the very moment that the President is calling on all Americans to be especially vigilant, this legislation lets special interests avoid their responsibility of vigilance under existing law.

I am disappointed that some may be taking advantage of the situation to push ''tort reform'' proposals that have been rejected by Congress for years. This smacks of political opportunism. I strongly oppose rewriting the tort law of each of the 50 States for the benefit of private industry and at the expense of consumers and our service men and women, and their families.

Further, I am saddened that this so-called compromise provides retroactive liability protection for some private airport security firms involved in the September 11th terrorist attacks. Last year, Congress explicitly excluded private airport security firms from the liability limits for airlines in the Aviation and Transportation Security Act because we did not know if any airport screening firm may have contributed to the September 11th attacks through willful misconduct or negligence. Unfortunately, we still do now know all the facts regarding the 9/11 attacks because the Bush Administration has opposed Congressional oversight and an independent commission to investigate the attacks.

This special-interest provision in the so-called compromise is a travesty to the families of the victims of September 11th. Indeed, I have already been contacted by a family member of a 9/11 victim outraged by this retroactive liability protection. I share their outrage.

I also find it particularly galling, that just because ''the White House wants it,'' this bill includes a provision that balantly puts the interests of a few corporate pharmaceutical manufacturers before the interests of thousands of consumers, parents, and children. Sections 714 through 716 give a ''get out of court free card'' to Eli Lilly and other manufacturers of thimerasol. Let's be clear, this provision has nothing to do with homeland security. Smallpox and anthrax vaccines do not use thimerosal. Thimerasol is a mercury-based vaccine preservative that was used until recently in children's vaccines for everything from hepatitis B to diphtheria. By making changes to the Vaccine Injury Compensation Program sought by the pharmaceutical industry, this provision cuts the legs out from under thousands of parents currently in court seeking compensation for the alleged harm caused by thimerosal.

For years, I have been working to remove sources of mercury from our environment because of the neurological effect of mercury on infants and children. Although Eli Libby's own documents show that they knew of the potential risks from mercury-based preservatives in the 1940s, its use was not stopped until 1999 when pediatricians and the Public Health Service acted. Instead of looking into why pharmaceutical companies and the Federal Government failed to act for so long or improving the current compensation system, the Homeland Security bill takes away the legal options of parents and gives pharmaceutical companies new protections from large penalties.

Fourth, the bill weakens immigration enforcement just when we need it the most. The Republican House-passed bill fails to take important steps to help fix and restructure our immigration agencies. This Republican package abandons the close coordination between immigration enforcement and immigration services that was included in the Lieberman amendment to the Homeland Security bill. Instead, immigration enforcement falls under the Undersecretary for Border and Transportation Policy, while immigration services are relegated to a bureau that lacks its own undersecretary. Apparently, the Undersecretary for Border and Transportation Security is expected to be an expert in immigration enforcement, FEMA, agriculture, and other issues. Meanwhile, there is no one figure within the Homeland Security Department who is responsible for immigration policy. Testimony before the Judiciary Committee showed clearly the numerous links between the enforcement of our immigration laws and provision of immigration benefits—it is unfortunate that this bill fails to acknowledge those links.

Unfortunately, this legislation fails to codify the Executive Office of Immigration Review appropriately. Instead of defining the functions, shape, and jurisdiction of the EOIR as the Lieberman amendment did, it simply says there shall be an EOIR and the Attorney General shall have complete discretion over it. It is critical that both immigrants and the Government have a meaningful opportunity to appeal adverse decisions, and we should have done more through this legislation to guarantee it.

In addition, I am disappointed that provisions designed to guarantee decent treatment for unaccompanied minors were not included in the Republican amendment. Through Senator FEINSTEIN's leadership, the Lieberman substitute assured that unaccompanied alien minors received counsel. The Judiciary Committee heard earlier this year from children who had been mistreated by the immigration system, and we had a real opportunity to solve that problem through this bill. We have failed to take advantage of that opportunity.

I will continue to work to ensure that the reorganization of our immigration service proceeds in as orderly and appropriate a fashion as possible. I have spoken often about the valuable service provided by employees of the Immigration and Naturalization Service in Vermont, and the need to retain their expertise in any reshuffling of the agency's functions. We will not make

our nation safer by alienating, underutilizing, or discarding knowledgeable employees, and I will do what I can to prevent that outcome.

Finally, the bill undermines the professionalism in favor of the ''management flexibility'' to engage in political cronyism at the new Department. Although it has already received substantial comment, I want to add my voice to those who have criticized the administration for its heavy-handed and wrong-headed approach to the rights of employees who will come under the new Department. At the same time we are seeking to motivate the Government workers who will be moved to the new Department with an enhanced security mission, the administration is insisting on provisions that threaten the job security for these hardworking Government employees.

The administration should not use this transition as an excuse to cut the wages and current workplace security and rights of the brave employees who have been defending the Nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely.

I represent some of those employees and have firsthand knowledge of their dedication to our nation and their jobs. Contrary to the administration's preelection rhetoric, where disputes over employment conditions have had potential effects on the public safety, they have been resolved quickly. I am disappointed that the bill we consider today contains so few protections for these vital employees, and that the White House chose to use these valuable public servants in an election year tactic.

So our vote today will help answer the question of whether a new Department of Homeland Security will be created—a question that has never really been at issue or in doubt. Perhaps there are members of the Senate who oppose creation of this Department, though I am not aware of such opposition. But many troubling questions remain about the ''hows'' as we move forward to charter this massive new agency. A process has been imposed on the Senate that prevents addressing them adequately in the remaining hours of this session. But answering and resolving these questions, in the interest of the security and privacy and well-being of the American people, will be an imperative that the administration and the next Congress must not shirk.

OFFICE OF DOMESTIC PREPAREDNESS

Mr. GREGG. Madam President, one of the Senate's highest priorities, and one of my own personal priorities, has been ensuring that State and local first responders are prepared to handle a terrorist attack, especially one involving weapons of mass destruction. One of the principal ways I have tried to do this is through the Office of Domestic preparedness at the Department of Justice. Through the Appropriations subcommittee that Senator HOLLINGS and I oversee, the Senate built ODP from a $5 million program into an $800 million program in just five years. Since 1998, ODP has been the focal point within the Federal Government for State and local jurisdictions to receive equipment grants, training, technical assistance, and exercise support for combating terrorism.

The original legislation creating the Department of Homeland Security would have combined the preparedness functions of ODP and the response functions of FEMA into a single Directorate, the Directorate of emergency Preparedness and Response. The problem with this framework is that the much larger FEMA would have dominated the new Directorate, and its priorities and philosophies would have obscured those of ODP. ODP possesses unique experience and expertise when it comes to preparing the State and local jurisdictions to handle terrorism. FEMA has very little experience with this side of the equation: its role has always been to respond after an event occurs.

FEMA employs something called the ''all-hazards'' approach to disaster response. Under the all-hazards approach, all disasters are handled the same way. But we cannot treat terrorism the same way we treat other disasters. The attack on the World Trade Center provides an excellent case in point. On September 11, New York City first responders treated the first explosion as a high-rise fire and set up their command center in Tower II. Because the responders employed a generic, all-hazards response, they did not anticipate the second explosion in Tower II. Our approach to terrorism must be different from our approach to natural disasters—it must be innovative and adaptive. It must anticipate a predatory adversary that constantly devises new ways to get around each new set of measures we take.

There are four key components, or ''pillars'', involved in combating terrorism: prevention, preparedness, crisis management, and consequence management. Justice has traditionally been responsible for preparedness, and FEMA has traditionally been responsible for consequence management, or disaster response. The Homeland Security legislation, as originally written, would have lumped these components together. However, the people who are responsible for responding in the immediate aftermath of an attack cannot also be responsible for carrying out sustained training, equipment, and exercise programs. These are programmatic initiatives that must be executed day in and day out. FEMA is a response agency. It will not be able to give terrorism preparedness the time and attention it deserves because it must constantly respond to disasters around the country.

The amendment I offered to the Homeland Security bill acknowledged the importance of consolidating the preparedness and response functions in the new Department of Homeland Security. However, the amendment set them apart in order to preserve both FEMA's and ODP's areas of expertise. The amendment created the Office for Domestic Preparedness under the Directorate of Border and Transportation Security and transferred terrorism preparedness functions to this new office from both the Justice Department and FEMA. Specifically, the new Office for Domestic Preparedness includes Justice's current Office for Domestic Preparedness and parts of FEMA's Office of National Preparedness. ODP will be responsible for all of our preparedness activities and FEMA will continue to have the lead for consequence management. Under this framework, the preparedness and response functions will be preserved, yet will be closely coordinated by the Secretary of Homeland Security. This is the best way to prevent FEMA's and ODP's critical functions from being blurred within the Department of Homeland Security.

The responsibilities of the new Office for Domestic Preparedness will be similar to what they are now under the Department of Justice: coordinating terrorism preparedness at the Federal level; assisting State and local jurisdictions with their preparedness efforts; conducting strategic and operational planning; coordinating communications at all levels of government; managing the preparedness grants to State and local jurisdictions; and assisting them in the implementation of the President's National Strategy. This is, in fact, one of the key reasons why I have pushed for the creation of the Office for Domestic Preparedness within the new Department. It ensures the continuity of preparedness assistance for State and local jurisdictions. The office they have looked to for the last five years for equipment, training, and exercise assistance will continue to exist, but under the leadership of the Undersecretary for Border and Transportation Security.

If not for this amendment, ODP would most likely have been subsumed by FEMA, and all of the work ODP has accomplished would have been lost. ODP's successful methodologies for providing assistance to State and local jurisdictions would have been scrapped in favor of FEMA's undeveloped and untested approach. An example of one such successful methodology is the system of accountability ODP established by requiring States to have a terrorism preparedness strategy before they could receive Federal funding. The State strategies have allowed ODP to make informed and strategic decisions about how to allocate funding for equipment, training, and exercises. FEMA has no such system in place. By keeping ODP's and FEMA's activities distinct, we preserve the progress each has made in their respective areas of expertise.

The amendment permits FEMA to concentrate on a mission that it is uniquely equipped to perform: disaster response. This is extremely important,

especially in light of the fact that there is an average of 34 major disaster declarations per year in the U.S. I know that my coastal State colleagues were very concerned that FEMA's natural disaster responsibilities, in particular its mission of responding to hurricanes, would be eclipsed by its new homeland security responsibilities. I am certain that this concern is shared by Senators from States that face the threat of earthquakes, floods, and wildfires. This provision makes it clear that FEMA is out of the preparedness business.

This was one of the primary reasons why I felt such an amendment was necessary. It will help prevent competition between terrorism response and natural disaster response within the new Department. Under the original legislation, the Directorate of Emergency Preparedness and Response would have been pressured on the one hand to focus its resources and attention on natural disasters, and on the other hand on combating terrorism. This competition would have weakened our level of preparedness for either type of disaster. By setting them apart within the new Department, we have built in a natural balance between these two critical areas.

I was disappointed to learn that some at FEMA are already busy planning ways to avoid having to execute the directive. I am told that FEMA intends, during the next few weeks, to re-designate all of the preparedness staff at the Office of National Preparedness as ''all-hazards staff''. By renaming them all-hazards, FEMA could retain its preparedness functions. These actions come despite the fact that at least 38 U.S. Senators believe those functions should reside at the Office for Domestic Preparedness and not at FEMA. These actions come despite our having negotiated in good faith with the White House. These actions come despite agreement among the Office of Homeland Security, the House of Representatives, and the Senate.

On a different note, it has recently come to my attention that the Office of Management and Budget is considering requiring State and local jurisdictions to match the Federal preparedness grants. OMB should not impose this requirement on State and local jurisdictions. They do not have the fiscal resources to support such a requirement. The equipment, training, and exercise initiatives that I have here discussed are part of a comprehensive National preparedness program. State and local jurisdictions will not be able to achieve the standards or readiness that are required, especially at this time of increased threat to our Nation, if they are forced to comply with matching requirements. In point of fact, State and local governments already bear most of the burden in protecting our Nation from terrorism. They—the first responders, who willingly and courageously put themselves in harm's way—protect the American people. Just after September 11, the President duly acknowledged how critical first responders are to our National security. We cannot shortchange them now. We are at war and the Federal Government must fully support our State and local first responders.

ODP has provided training to approximately 114,000 first responders and exercise support to more than 100,000 first responders nationwide. It has given out nearly $600 million in equipment grants to State and local jurisdictions since its creation in 1998. It also executed the largest terrorism exercise in U.S. history, TOPOFF. I have heard reports that those who participated in the multi-venue TOPOFF were the only ones truly prepared to handle the challenges presented on September 11. The amendment acknowledges that we do have an effective system in place and it preserves what has been accomplished.

The amendment I submitted acknowledges that the Office of Domestic Preparedness and FEMA both perform critical roles and must work closely together. I commend the administration for recognizing the need and working with the Senate to get the job done. I would also like to thank Senator LOTT for his excellent work on this bill, as well as his counsel Rohit Kumar. Finally, I would like to recognize Dean Kueter, Jr., of the National Sheriffs Association for his tireless work in generating grassroots support on this important issue.

Ms. MIKULSKI. Madam President, there is nothing more important than America's national security. I will vote for the Homeland Security Act because it organizes our Government to better detect, prevent and respond to acts of terrorism.

This bill organizes twenty-two very different agencies into a one-stop-shop for homeland security a single, mission-driven agency whose primary goal is protection of the homeland. Why is this important? Because it will improve our ability to detect terrorism before it occurs, by strengthening immigration systems, better coordination of intelligence. It will improve our ability to prevent terrorism, through stronger port security, border security, transportation security. It will improve our ability to respond to acts of terrorism through the Federal Emergency Management Agency.

Yet I am disappointed that this legislation has been politicized in addressing an issue as important as national security. Congress and the President shouldn't be Democrats or Republicans. We should be the Red, White, and Blue Party. In recent weeks, I've seen some cynical actions. I've seen Federal employees treated as if they're the enemy. I've seen a Vietnam War hero's patriotism questioned. I've seen this administration claim that the creation of a Department of Homeland Security was its idea and its priority, though we all know they long opposed it—just as they opposed the creation of a national commission to look at what went wrong on September 11. I've seen a package of special interest goodies forced into a bill for no other reason than pay-back politics.

Let's consider some of these issues. First, on Federal employees, I resent that I am being forced to chose between Homeland Security and protecting the rights of those who guard the homeland—our Federal employees who have the constitutional right to organize, to have freedom of assembly, to do collective bargaining. In standing up for America, why aren't we also standing up for those who are protecting America? Our brave and gallant Federal employees who are out there every day on the front line wanting to do their job, whether they are customs inspectors, border agents or FEMA's emergency workers.

Federal workers stand sentry every day to protect America. When our firefighters ran up those burning buildings at the World Trade Center, nobody asked if they were union. They didn't look at the clock or check their work rules. When our emergency workers from Maryland dashed over to be part of the mutual aid at the Pentagon, they were mission driven. They were there because they were union members. They belong to a union. They belong to a union called the United States of America. That's the union that they belong to, and that's the union they put first.

America is in the midst of a war against terrorism. We have a long way to go. Yet instead of focusing on the war effort, we're waging war on Federal employees. The administration must use this new flexibility responsibly and judiciously. It is not a blank check. If anyone takes undue advantage of this new flexibility, I will lead the charge to change it. But it is sad and disgraceful that the rights of our Federal employees were held hostage in an effort to make our Nation secure against terrorism.

I'm also disappointed with the special interest provisions that were added to this bill. The late Senator Wellstone added a provision on companies that move overseas to avoid paying U.S. taxes. His amendment would have prevented these corporations from being able to contract with the new Department of Homeland Security. Why does the House of Representatives insist on helping those companies who make their money in the U.S. but then turn their backs on the U.S.? What about their responsibility to the U.S.?

This legislation also provides immunity from liability for manufacturers of products or technologies that harm Americans. Why did the House think it's important to protect companies that are grossly negligent, and how does this improve the security of Americans?

Another special interest provision would provide liability protection for pharmaceutical companies that are being sued for using vaccine preservatives that some people believe have

caused autism. This should be decided by scientists and the courts: not by Members of the House of Representatives trying to sneak unrelated provisions into a bill on homeland security. The list of special interest pay backs goes on and on.

I strongly oppose the provisions of this bill that limit the rights of Federal employees, as well as the administration's plan to privatize much of the Federal workforce. I will continue to fight these proposals. I'm also disappointed that the House Republicans have used the need for homeland security to sneak so many special interest give backs into the bill.

Yet despite the serious problems with this bill, I will vote for it because it will enable our government to better detect, prevent and respond to terrorism. Nothing the Senate does is more important than providing security for America. That is why I will vote to create the Department of Homeland Security—for America's national security.

I'm tired of the cynical manipulation of the legislative process. I'm tired of the politicization of something as important as Homeland Security. I hope this is the last time that an issue of national security is politicized. Let's put these politics and hard feelings behind us. Let us get our act together, and let's show America we can govern. Let's show the bullies of the world we're willing to take them on.

Mr. MCCAIN. Madam President, I strongly support the creation of the Department of Homeland Security. I am a cosponsor of the Gramm-Miller substitute and the President's proposal, and have consistently voted to overcome Democratic roadblocks to create a Homeland Security Department. I want this legislation to be enacted, but the House-passed bill includes a number of egregious special interest riders that should not be part of this landmark measure.

If the legislative process had allowed us an opportunity to vote on many of the provisions Senators DASCHLE and LIEBERMAN are now seeking to strike, I believe most of them would have been rejected. Unfortunately, we now find ourselves in a ''take it or leave it'' situation. This is an artificial and unnecessary construct. The Homeland Security legislation effectuates the most dramatic restructuring of the Federal Government in half a century. With the goal of safeguarding our citizens, it creates a 170,000-person cabinet-level department that encompasses almost every governmental function that contributes to protecting Americans against terrorism in the United States. That the Senate is being told that the House will effectively kill the entire bill if this body dare remove politically motivated riders signals to me that the other chamber's priorities have become grossly confused.

I do not approach this vote lightly, but I must vote my conscience, just as each of my colleagues must do. I sincerely hope that upon resolution of the vote, we can move forward expeditiously with the House to resolve the differences and still send a bill to the President by the end of the week.

The Daschle-Lieberman amendment would strike seven special interest provisions that were included in this 484-page bill by the House.

Texas A&M: among them, the amendment proposes to strike a provision that many believe is designed to provide an earmark for Texas A&M University. Specifically, the House-passed bill requires the Secretary to designate a university-based center or centers for homeland security. However, the bill further stipulates 15 specific criteria to be used in making this designation, criteria that many suspect are tailored to describe only one university—Texas A&M. While the provision allows the Secretary to expand the criteria, it doesn't permit the Secretary to eliminate or alter the 15 criteria set forth in the bill.

How many colleges have ''strong affiliations with animal and plant diagnostic laboratories, expertise in water and wastewater operations, and demonstrated expertise in port and waterway security,'' not to mention 12 other requirements?

I have long opposed attempts in Congress to by-pass competitive, merit-based selection processes. There is absolutely no justification for attempting to do so in the Homeland Security bill for a function as important as the one to be fulfilled by the university-based centers.

The Safety Act: the Daschle-Lieberman amendment strikes a provision in the House-passed bill titled ''The SAFETY Act'', which purports to provide reasonable liability protections for antiterrorism technologies that would not be deployed in the absence of these protections.

I believe that real harm has been inflicted on our economy by trial attorneys' abuse of our tort system. I have seen the unfathomable greed of certain attorneys who use ''consumer protection'' as an excuse to extort billions of dollars from corporations, and ultimately, the same consumers they claim to protect. Outrageous awards that may benefit only the lawyers have stifled innovation, kept products off the market, and hurt consumers.

As chairman of the Commerce Committee, I have advanced legislation to reform products liability litigation, and overseen the enactment of a law to limit litigation and damages that might have arisen from the Y2K bug. Despite its potential to kill the bill because of opposition from trial lawyers, I voted to cap attorneys' fees on the comprehensive tobacco legislation that I sponsored. I am appalled that the demise of that bill opened the door for a private settlement under which a handful of lawyers have received literally billions of dollars, and I intend to ensure that these fees are closely examined in the Commerce Committee next year. In addition, I have repeatedly voted for limitations on damages for medical malpractice.

In short, I appreciate the need for legal reform and have long supported it. Despite this, I cannot support the ''SAFETY Act'', which never received a hearing in either chamber, and which was inserted into the House Homeland Security bill late in that chamber's process when Members decided that the government indemnification provisions previously considered would be too costly.

This ill-considered ''SAFETY Act'', which I understand is supported by defense contractors and others seeking liability protection, does not provide reasonable limitations on liability. Intentionally or not, it appears to eliminate all liability in tort claims against Sellers for the failure of any ''antiterrorism technology.'' Whereas previous tort reform measures have sought to limit the abuse of our system by avaricious lawyers, while protecting plaintiffs' rights to obtain a quick and reasonable award, no such balance is reflected in the ''SAFETY Act.''

While many of my Democratic colleagues object instinctively to liability limitations such as those in the SAFETY Act, including the creation of a Federal cause of action, the prohibition on punitive damages, and the requirement for proportional liability for non-economic damages, I have supported these concepts in the past, and continue to support them in this context. What I find objectionable, however, fatally so, is that the SAFETY Act was never the subject of any hearing, was never considered by a committee in either chamber, and, perhaps as a consequence, is to confused in its wording and concepts as to be almost incomprehensible.

While the need for liability protection for manufacturers and sellers of antiterrorism technologies may be very real, this is an issue of significant import that deserves more careful consideration. At a minimum, the SAFETY Act must be rewritten to ensure that its language is consistent with what I understand to be its intent. At present, it is not.

One particularly troublesome provision in the SAFETY Act appears to transform a common law doctrine known as the ''government contractor's defense,'' into an absolute defense to immunize the seller of an antiterrorism technology of all liability. This is a dramatic departure from current law and one that does not seem to have been well thought-out.

Currently, the ''government contractor's defense'' provides immunity from liability when the federal government has issued the specifications for a product; the product meets those specifications; and the manufacturer does not have any knowledge of problems with the product that it does not share.

While I am told that the House advocates of the SAFETY Act did not intend to provide protections for products whose specifications are not

issued by the government, or which do not meet these specifications, the bill language indicates otherwise. It says ''Should a product liability or other lawsuit be filed for claims . . . and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies to such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.''

What happens if the Seller submits proper information to the Secretary, and the Secretary certifies a technology, such as a vaccine or chemical detection device, but a year later there is a gross defect in the manufacturing process, and as a result, the product doesn't work and Americans are injured or killed in a terrorist attack. The language in the bill suggests that the Seller still is not liable. But who is? Can the injured victim seek compensation under the Federal Tort Claims Act? The SAFETY Act does not say. Should they be able to? This is one of many questions affecting plaintiffs that does not seem to have been contemplated or considered when the SAFETY Act was included on the House bill.

Clearly, Congress as a whole should work to address the legitimate liability concerns that may be keeping protective technology off the market. We should do this, however, thoughtfully, if swiftly, and ensure that the language reflects our considered intent.

Prohibition on Contracts with Corporate Expatriates: the Homeland Security bill prohibits the Secretary from contracting with any ''inverted domestic corporation'', which is an American corporation that has reincorporated overseas. More and more U.S. companies are using this highly profitable accounting scheme that allows a company to move its legal residence to offshore tax havens such as Bermuda, where there is no corporate income tax, and shield its profits from taxes.

I applaud efforts to discourage this practice. Already, at least 25 major corporations have reincorporated or established themselves in Bermuda or the Cayman Islands in the past decade. Although I understand that American tax policy has encouraged them to do so, corporations that have moved their legal headquarters offshore to avoid taxes give the appearance of ingratitude to the country whose sons and daughters are risking their lives today to defend them.

This provision, however, has not escaped untouched by special interests. Although the Senate adopted an amendment offered by the late Senator Wellstone that flatly barred the Secretary of Homeland Security from contracting with inverted domestic corporations unless doing so was in the interest of national security, the measure being offered to us on a ''take it or leave it'' basis contains loopholes you could drive a truck through or an entire fleet of trucks to be supplied by a relocated corporation. Although it generally prohibits the Secretary from entering into contracts with inverted domestic corporations, the House-passed measure allows the Secretary to waive this prohibition in the interest of homeland security, or to ''to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.''

The Daschle-Lieberman amendment tightens this loophole by permitting the Secretary to waive the contracting limitation only in the interest of homeland security. That is what this bill is about, it is not a jobs bill, or a fiscal belt-tightening bill. The Senate determined, in adopting the Wellstone amendment, that it was important to stop more corporations from adopting corporate ''flags of convenience.'' We should honor this.

Childhood Vaccines: among the most inappropriate provisions that the Daschle-Lieberman amendment strikes is a modification to the Childhood Vaccine Injury Act of 1986. The language included in the House-passed bill has far-reaching consequences and is wholly unrelated to the stated goals of this legislation. Inserted without debate in either chamber, this language will primarily benefit large brand name pharmaceutical companies which produce additives to children's vaccines with substantial benefit to one company in particular. It has no bearing whatsoever on domestic security.

The National Vaccine Injury Compensation, VIC, Program, established under the Childhood Vaccine Injury Act of 1986, set up a no-fault compensation program as an alternative to legal action to compensate children injured or killed by a vaccine. The VIC Program was adopted in response to a flood of plaintiffs' suits in the early 1980s which ravaged the vaccine industry. Incentives, such as limitations on damages, were established to encourage manufacturers to continue to produce safer vaccines, while education programs and an adverse reaction reporting system were established to ensure prevention of future vaccine injuries.

The 1986 law did not define ''vaccine,'' and suits emerged between families and manufacturers of vaccine additives, many of which are still ongoing. The language contained within the House-passed Homeland Security Act would modify the definition of a ''vaccine'' to include additives. Originally contained within a well-rounded bill written by my friend, Senator FRIST, this language served a sound purpose. However, I am concerned that the passage of these select provisions which benefit pharmaceutical manufacturers will eliminate the incentive to continue negotiations on the important reforms within Senator FRIST's bill which has been negotiated in the HELP Committee for close to a year. Additionally, unlike the bill in Committee, this language would intervene in ongoing litigation without modifying the statute of limitations for bringing a claim under the Vaccine Act, and in so doing, would leave families of some injured children with no available recourse.

As I stated earlier, I am not opposed to reasonable legal reform. I support a comprehensive reform package such as the bill sponsored by Senator FRIST, and hope that such a measure will pass early in the next Congress. It is wrong, however, to cherry pick provisions beneficial to industry and insert them in a Homeland Security bill and to leave for another day those provisions that protect children.

Special interests have no place in any congressional action, least of all one of this magnitude. For this reason, I am compelled to support the Daschle-Lieberman amendment. This administration has worked tirelessly with the House and Senate to produce an extraordinary restructuring of Government to better protect the American people. They have accomplished an amazing feat. Legislation of this gravity should not be sullied by a few special interest riders. I urge my colleagues to join me in striking them.

Mrs. FEINSTEIN. Madam President, today I voted for the Thompson substitute amendment to the Homeland Security Act—the largest restructuring of the Federal Government in over 50 years and perhaps the most important legislation considered in this Congress.

This historic legislation would create a new department combining some 22 Federal agencies with what would amount to about 200,000 Federal employees.

The bill would create one of the biggest departments in the U.S. Government, with an initial annual budget of at least $37 billion.

I voted for this legislation because our current terrorism policy is terribly disjointed and fragmented. I have long supported additional efforts to consolidate and coordinate our terrorism policy.

Currently, homeland security functions are scattered among more than 100 different Government organizations. There is much unnecessary overlap and duplication. There is also a failure to communicate and share information—making it hard to for the law enforcement and intelligence community to ''connect the dots'' to prevent a terrorist attack.

I also voted for the bill because I believe our country is currently at great risk. Terrorists are doing all they can to launch a catastrophic attack on our homeland.

The status quo is simply unacceptable. For example, just last week, I chaired a subcommittee hearing on a new report from released by Senators Hart and Rudman.

Their report is chilling—and its conclusion distributing. It reads:

A year after September 11th, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy.

The creation of a Homeland Security Department is critical to our efforts to try to prevent another devastating terrorist attack against us.

Now, for the first time in our history, this Nation will have one Federal agency charged with the primary mission of preventing terrorist attacks within the United States, reducing the vulnerability of the U.S. to terrorism at home, and minimizing damage and assisting in the recovery from any attacks that may occur.

The new department will have four major divisions: border transportation and security, emergency preparedness and response, science and technology, and information analysis and infrastructure protection.

The border directorate will include a number of key homeland security agencies, including Customs and the Transportation Security Agency.

The emergency preparedness directorate will include FEMA and some other smaller response agencies.

The science directorate will include a number of programs and activities of the Department of Energy, Department of Agriculture, and some agencies.

The information analysis directorate will synthesize and analyze homeland security information from intelligence and land enforcement agencies throughout the government.

This crucial division will identify and assess terrorist threats and vulnerabilities, issue warnings, and act to prevent terrorist acts against critical infrastructures such as bridges, dams, and electric power grids.

Other agencies such as the Coast Guard and Secret Service will be moved to the new department, and there will be an office to coordinate with state and local governments. The legislation also creates a Homeland Security Council in the White House to coordinate the domestic response to terrorist threats.

I am very pleased that this legislation does not neglect State and local law enforcement and first responders. No homeland security solution can be just federal. The reality is the 650,000 State and local law enforcement officers are additional eyes and ears in the war on terrorism. They cannot operate deaf, dumb, and blind.

Moreover, in the event of a terrorist attack, the first people on the scene will be local firefighters, emergency medical technicians, National Guardsman, and other people in the local community. The need proper information, organization, training, and equipment.

Thus, I am pleased that this legislation includes a measure I introduced to increase state and local access to federally collected terrorism information.

This legislation directs the President to establish procedures for sharing homeland security information with state and local officials, ensures that our current information sharing systems and computers are capable of sharing such information, and increases communications between government officials.

The bill also includes a broad exemption under the Freedom of Information Act for cybercrime and cyberterrorism information. This exemption will encourage the private companies that opoerate over 85 percent of our critical infrastructure to share information about computer break-ins with law enforcement—so criminals and terrorists can be stopped before they strike again and severely punished. I have long advocated for such an exemption, and am pleased that it ended up in the final bill.

While I strongly support the creation of a Homeland Security Department, I am disappointed that the bill we passed today includes a number of extraneous special interest provisions and lacks language to ensure appropriate oversight and transparency.

In addition, there is nothing in this legislation addressing what is perhaps the most pressing homeland security problem we face today: the vulnerability of our ports to terrorism.

The issue of port security was left to separate legislation that was passed last Thursday. In my view, that legislation does not go far enough. I believe that Congress needs to return to this issue next year and pass more comprehensive legislation.

The Hart-Rudman Independent Terrorism Task Force, for example, recently issued a report describing major holes in the security of our ports and endorsed such a comprehensive, layered approach.

This new comprehensive legislation would be based on S. 2895, the Comprehensive Seaport and Container Security Act of 2002, which I introduced last summer with Senators, KYL, HUTCHINSON, and SNOWE.

The Comprehensive Seaport and Container Security Act of 2002 is the result of hearings we have had in the Technology, Terrorism, and Government Information Subcommittee of the Senate Judiciary Committee as well as my testimony two years ago to the Interagency Commission on Crime and Security in U.S. Seaports.

The main section in the bill would create a Container Profiling Plan that would focus our nation's limited inspection resources on high-risk cargo.

In addition, the bill also contains provisions requiring: earlier and more detailed container information; comprehensive radiation detection; heightened container security measures—including high-security seals; restricted access to ports; increased safety for sensitive port information; enhanced inspection of cargo at foreign facilities; stronger penalties for incorrect cargo information; improved crime data collection; upgraded Customs service facilities; and better regulation of ocean transport intermediaries.

Unfortunately, we were not able to get much of this Bill included in the conference legislation that passed last week. Indeed, the Conference Bill even omits a number of security provisions included in S. 1214 as it passed the Senate.

That is why, in my view, we will need to revisit this issue early in the 108th Congress. I plan to work with my colleagues to fine-tune my legislation and reintroduce it. I hope that my colleagues will support it.

I am also disappointed with this bill because it does not contain the entire ''Unaccompanied Child Protection Act,'' bipartisan legislation I introduced at the beginning of this Congress and that was included as Title XII of the Lieberman substitute to H.R. 5005.

I have spoken on this issue in some detail already, but feel compelled to reiterate a few points.

Last year, over 5300 children came to this country unaccompanied by a parent or guardian and were held by the INS, many of them in detention facilities. these children have no rights. Many of them can't speak English, they can be detained for years, they have no resort to counsel, and they don't understand the process.

We all remember the Elian Gonzalez case. Every year, there are thousands of Elians. But unlike Elian, these children have no family members to help them navigate the immigration process. They are completely at the mercy of a complex bureaucratic and legal system they cannot begin to understand.

The good news is that this bill transfers authority over the care and custody of unaccompanied alien children from the INS to the Office of Refugee Resettlement within the Department of Health and Human Services.

The bad news is that almost all the ''help'' provisions for these children are left out. This bill is lacking because it does not provide either for a guardian ad litem, or pro bono legal assistance.

This is insufficient, and it is my full intention to reintroduce legislation in the next session to redress this, and to include pro bono counsel and guardian ad litem provisions.

Protecting children, on the one hand, must not prevent us from devising an immigration policy that protects us from those that would do America harm.

We do not want to burden the Secretary of Homeland Security with policy issues unrelated to the threat of terrorism. The Department will have a daunting mission as it is, and must never lose that focus.

Two positive steps regarding immigration include the transfer of the visa issuance process from the State Department to the Department of Homeland Security, thereby giving it the

regulatory and oversight authority over issuances and denials.

It also prohibits third-party visa processing, referred to as ''Visa Express'', to ensure closer scrutiny of visa applications and to preserve the integrity of the visa issuance process. These reforms are essential.

Overall, while this legislation's shortcomings cause me serious concern, I believe that they pale in comparison to the dangers facing America, both immediately and in the long-term, at home and abroad.

The terrorist threat to the United States is far too real, and in our freedom-loving country we must now do everything we can to protect our people.

And this, after all, is the Federal Government's paramount task—protecting our citizens. Further delay in creating a Department of Homeland Security would only leave us increasingly vulnerable—and this is something we simply cannot afford.

Ms. SNOWE. Madam President, I rise today in support of this bipartisan legislation creating a new Department of Homeland Security.

Since the horrific terrorist attacks of September 11, we have acted to increase our efforts to counter terrorism by strengthening borders, improving information sharing among agencies, and giving our law enforcement agencies the legal tools to investigate and prosecute terrorists and those that help terrorists financially.

Congress has considered and passed both the USA PATRIOT Act and the Enhanced Border Security and Visa Entry Reform Act which have both changed laws to ensure that providing for our national security in order to prevent future terrorist attacks is a top priority. This bill also ensures that the 22 agencies with a substantial role in protecting our homeland have the materials and resources they require.

This legislation is recognition that homeland security has taken on an entirely new meaning since 9/11. What was once a concern with terrorists acting against U.S. interests overseas has been realized and expanded to include those same acts happening right here at home. The war has been brought to the U.S. and we are now rising to the challenge.

This was precisely the type of thinking demonstrated by President Bush in the summer of 2001, when he instructed the intelligence community to provide an assessment of the threat posed by al-Qaida domestically rather than overseas. And President Bush did exactly the right thing in the wake of last year's horrific attacks when he established the Office of Homeland Security, now headed by Governor Ridge, to coordinate counter-terrorism activities by the various U.S. agencies and departments as well as develop an overall strategy. This strategy has culminated in the proposal of a new Department of Homeland Security.

As the principal advisor to the President on homeland security issues, the service of Governor Ridge has been exemplary. The time has come, however, for the perpetuity of purpose ensured by statutory status for a new Department of Homeland Security.

A Department responsible for safeguarding our homeland defense must not be dependent solely on the relationship between a particular President and his or her Homeland Security director. Rather, it must be run as efficiently and effectively as possible under the leadership of a permanent, cabinet level official. That is the only way to achieve the kind of ''continuity of urgency'' the security of our homeland demands.

The fact of the matter is, we cannot afford a descent into complacency when it comes to this life-or-death obligation to protect the American people. If ever there were a Federal responsibility, this is it.

And while my fervent hope and prayer is that we do not suffer another attack on or anywhere near the scale of 9/11, the reality is that, absent future tragedies and absent a cabinet-level homeland security department, we don't know what kind of attention the issue will receive 5, 10, 20 years down the road. Because the tendency is to focus on the most visible, pressing issues of the day, but we cannot allow ourselves to let down our guard, not for a moment, not a decade from now, not a quarter century from now, never.

So this initiative is not a knee-jerk reaction. It is not a passing whim—far from it. There is no serious debate about the fact that we are now in a new age that will not quickly pass. The threat will be pervasive, and enduring. The level of our vigilance must be equally so.

Under a new cabinet-level department, responsibility would rest with a Secretary of Homeland Security, a position created under law, who would manage the vital day-to-day functioning of the new department. Critically, this person would have their own budget, while they work closely with the administration to develop and implement policy. It is vital that this budgetary authority be granted—otherwise, the department will become a paper tiger, without the teeth that we all know a separate budget provides in terms of authority as well as the ability to get things done.

The bottom line is, I support the creation of the Department of Homeland Security—the largest re-organization of our Government since WWII—because it will centralize our efforts to prevent and respond to any future terrorist attack.

Currently, at least 22 agencies and departments play a direct role in homeland security, encompassing over 170,000 people. This legislation consolidates these various responsibilities into one Department which will oversee border security, critical infrastructure protection, and emergency preparedness and response.

Overall, the new Department, with the Secretary's leadership, will integrate the vast number of government agencies that formulate, support and carry out the functions critical to homeland security such as the border patrol, the Transportation Security Administration, TSA, and the Federal Emergency Management Agency, FEMA.

This new and dynamic Department will utilize all tools and resources of our Government to enhance our homeland security by strengthening and augmenting the preparation, communication, coordination and cooperation of not only the agencies that will be included, but the rest of the government including States and localities.

First, it is important to keep in mind that the functions of many of the agencies that will soon become a part of the new Homeland Security Department are integrated so that dividing them would be detrimental to the purpose of that agency, many of which have non-homeland security functions.

For example, as a member of the Finance Committee, I shared the concerns raised by other members of the committee about any division of the Customs Service when it relocates to the new Department. I supported the Finance Committee's position that Customs move into Homeland Security but that the Secretary of the Treasury maintain the legal authority to issue regulations relating to the customs revenue function.

Defending the country's borders and facilitating legitimate trade are intertwined functions that should not be separated. By moving Customs in its entirety into the Border and Transportation Directorate, this legislation recognizes that the personnel who perform trade enforcement and compliance activities at the border are the same personnel who perform inspections for security and other enforcement purposes. In addition, the information Customs receives from trade compliance examinations and manifests is the same information used to assess security risks for shipments. This information is the cornerstone of many of Custom's counter-terrorism efforts.

This bill also maintains a cohesive and complete Border and Transportation Security Directorate by transferring all key border and transportation security agencies to this directorate, including the Coast Guard, Customs, and TSA. This includes the Border Patrol and a restructured INS which is not included in the Lieberman bill where it is part of a separate Immigration Directorate. Thus, the Directorate responsible for border security is not responsible for the Border Patrol or inspecting aliens arriving at ports of entry.

The same is true for the Coast Guard. Since the terrorist attacks of September 11, the Coast Guard has conducted its largest port security operation since World War II to protect and defend our ports and waterways. But this significant amount of effort is simply not enough.

The Coast Guard needs to be positioned with the other transportation and border security agencies if we are going to improve interagency coordination, maximize the effectiveness of our resources, and ensure the Coast Guard receives the intelligence it needs. I strongly believe the Coast Guard is an outstanding role model for Homeland Security and will serve as a cornerstone upon which this new Department will be built.

At the same time, these new priorities must not diminish the Coast Guard's focus on its other traditional missions such as marine safety, search and rescue, aids to navigation, fisheries law enforcement, and marine environmental protection which are all critically important.

The legislative solution I developed with Senators STEVENS and COLLINS, that is included in the bill, strikes the proper balance and ensures the Coast Guard's non-Homeland Security missions will not be compromised by the transfer.

To the contrary, our language maintains the primacy of the Coast Guard's diverse missions by assuring the Coast Guard Commandant will report to the new Secretary of Homeland Security, rather than to a deputy secretary; assures no Coast Guard personnel or assets will be transferred to another agency; and provides a mechanism to annually audit the Coast Guard's performance of its non-homeland security missions.

I am pleased to see the inclusion of my amendment requiring the administration to report to Congress within 90 days outlining the benefits of accelerating the Coast Guard's Deepwater procurement timeline from 20 years to 10. The Deepwater project, which will recapitalize all of the Coast Guard assets used off of our coast, is already underway. However, the Coast Guard must wait up to 20 years, in some instances, to acquire already existing technology. We must accelerate the Deepwater acquisition project and acquire much needed assets for the Coast Guard now, not 20 years down the road.

Of course, securing our homeland requires that we figuratively ''push out our borders'' as far as possible, and that means we must consider the issuance of visas at our overseas embassies as another vital area to be addressed by legislation. After all, consular officers represent the first line of defense against terrorists seeking entry to the U.S. Entering the U.S. is a privilege, not a right, and this must be the attitude of those reviewing visa applications.

That is why I am pleased that this bill grants the Department of Homeland Security the authority to determine regulations for issuing visas and provides Homeland Security supervision of this process through the stationing of Homeland Security Department personnel in diplomatic and consular posts abroad.

This legislation also builds on a provision I included in the Enhanced Border Security and Visa Entry Reform Act establishing Terrorist Lookout Committees. These committees, comprised of law enforcement and intelligence agency personnel in our embassies, meet once a month to discuss names of terrorists or potential terrorists to be added to the lookout list. The inclusion of Homeland Security personnel to the Terrorist Lookout Committees will ensure that our first line of defense also has the input of this new Department.

I introduced Terrorist Lookout Committee legislation in 1995 as part of my efforts to strengthen our borders and increase information sharing. This, and legislation I introduced to modernize the State Department's antiquated microfiche lookout system, were a result of a trail of errors by our agencies with regard to Sheikh Rahman, the radical Egyptian cleric and mastermind of the 1993 World Trade Center bombing.

In working on terrorism and embassy security issues on the House Foreign Affairs International Operations Subcommittee, what we discovered was startling. We found that the Sheikh had entered and exited the country five times totally unimpeded, even after the State Department formally revoked his visa and even after the INS granted him permanent resident status. In fact, in March of 1992, the INS rescinded that status which was granted in Newark, New Jersey about a year before.

But then, unbelievably, the Sheikh requested asylum in a hearing before an immigration judge in the very same city, got a second hearing and continued to remain in the country even after the bombing with the Justice Department rejecting holding Rahman in custody pending the outcome of deportation proceedings and the asylum application, stating that ''in the absence of concrete evidence that Rahman is participating in or involved in planning acts of terrorism, the assumption of that burden, upon the U.S. government, is considered unwarranted.''

Securing our visa process is the reason why legislation I have introduced that requires the new Department to conduct a national security study of the use of foreign nationals in handling and processing visas has been included in this bill.

As was shown in Qatar this summer, foreign nationals handling visas are entrusted with a great responsibility and we must make sure that does not compromise our security. For instance, in July it was discovered that several foreign employees at the U.S. Embassy in Qatar may have been involved in a bribery scheme that allowed 71 Middle Eastern men, some with possible ties to al-Qaida, to obtain U.S. visas.

To strengthen security, my provision requires the Department of Homeland Security to review the specific role that foreign nationals play in handling visas and determine the security impact this has at each overseas mission and make recommendations as to the role foreign national should have with regard to visas.

On this same note, I am also pleased that another provision of mine to stop ''visa shopping'', the practice of a foreign national traveling to different U.S. Embassies in order to find one that will grant a visa, has also been included in this bill.

Now, current State Department regulations calling on consular officers to enter a visa denial into the lookout list database so it can be accessed by other Embassies will be codified in law. Seeing that a foreign national has traveled to another Embassy and been denied will make the decision of a consular officer on whether to grant a visa that much simpler.

Ensuring that the new Department has its own capabilities to analyze intelligence is critical to the functioning of the Directorate of Information Analysis and Infrastructure Protection. The Directorate will be responsible for accessing, receiving, and analyzing information such as intelligence, law enforcement and other information from agencies from Federal, State and local governments to detect and identify threats to homeland security. The legislation also will ensure that threat analysis, vulnerability assessments, and risk assessments is the responsibility of one Directorate.

Also, the bill contains specific language authorizing the Secretary to provide a staff of analysts with ''appropriate expertise and experience'' to assist the Directorate in reviewing and analyzing intelligence as well as making recommendations for improvements. Moreover, the legislation contains specific language I advocated authorizing the Department to hire its own analysts.

It is vital that clear language be included to ensure that the new Department has its own people and does not rely solely on detailees from other agencies. The bill also permits the new Department to have personnel detailed for analytical duties from the intelligence community. It is clear that in the beginning, intelligence analysts will have to be detailees from other agencies until additional people can be fully trained. However, this must not be a permanent situation. That is why I worked with Senator GRAMM to ensure the new Department has its own intelligence analysts.

Finally, one of the most challenging hurdles to overcome in passing this legislation was a provision of law that has been in statute for almost a quarter-century. This provision referred to as the President's ''national security exclusion authority'' allows the President to exclude agencies, or smaller subdivisions within agencies, from collective bargaining agreements if he determines that the agency or subdivision as a primary function intelligence, counterintelligence, investigative or national security work.

During this debate, attempts to rescind the President's authority which

has been in place since President Kennedy first allowed Federal employees to unionize in 1962 and put into statute by President Carter in 1978 stalled the consideration of the entire bill. I am pleased, however, that both sides were ultimately able to come together to find a workable solution that allows the President to maintain the national security exclusion authority that every President has had since President Kennedy.

Once again, the President was right to create a new Department of Homeland Security and I applaud the efforts of Governor Ridge to formulate this proposal and present it to Congress. We need to come to grips with the reality that a repeat attack could happen at any time and, accordingly, not only work to prevent it but also be prepared to respond. The new Department of Homeland Security will bring us closer to bringing all of our Nation's resources to bear in securing our homeland.

This defining time, as the President has stressed, requires constant vigilance as our permanent condition. Because in our war against terrorism, to quote Churchill, ''Now is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.'' We have now begun a ''new normalcy'' and we can never again let down our guard. We owe taking this historic step to the American people and to future generations of Americans to ensure an enduring level of security.

Mrs. BOXER. Madam President, there is not a person in this Chamber who questions the importance of homeland security or the need to improve the Federal Government's ability to protect our people from terrorism. We all saw what happened on September 11th of last year: There was not enough anticipation or coordination, and not enough accountability. We can and must do better.

What happened last September 11th was a tragedy on a monumental scale. It is a date that we will always remember. It is an anniversary that we will always somberly commemorate.

But, as I have said before, we must learn from the tragedy of September 11th and ensure that our Nation is never again subjected to such horror. The events of that dark day should spur us to take the necessary steps to establish the instruments and institutions that will provide real protection for the American people. The lessons of September 11th will mean little if we are unable to craft a concrete response to terrorism that demonstrates our unwavering resolve to those who would do us harm.

Since shortly after September 11, I have argued that we needed a Cabinet-level Department to address these concerns. That is why, I have decided to vote for the legislation now before the Senate.

We are faced with the choice of either this bill or no bill. And I believe that we must move the process forward, and send the all-important message to the people we represent that we are serious about protecting them that we are serious about having better cooperation, coordination, and preparation in the fight against terrorism.

That is not to say that I do not have reservations. This bill should have been written differently. I supported an amendment proposed by Senator BYRD that would have made the new department less bureaucratic and would have provided more accountability, not less. It also would have ensured that Congress played a greater role as the department got up and running. Unfortunately, the Byrd amendment was defeated.

I was also shocked to see that several special interest riders were added to this bill at the last minute, in the dark of night. I am especially troubled by the new provision that holds harmless any company that makes mercury-based preservatives for vaccines. One example is Thimerosal, which, evidence shows, may be responsible for causing autism in children.

What in the world does such a provision have to do with homeland security? I believe this provision will create insecurity in our homeland by sending a message to thousands and thousands of families that their children's health takes a distant second place to the interests of large corporations. This bill should be about homeland security, not family insecurity.

With one call from the White House, these special interest additions to the bill could have been eliminated. But that did not happen, and the Daschle amendment to strip them from the bill, which I strongly supported, was defeated. As a result, this bill has been perverted from its original meaning and intent. I expect to work with my colleagues next year to reverse these special interest riders.

I am troubled by this bill's treatment of the new department's workers. It gives the President virtually unfettered authority to strip even the most minimal worker protections affecting everything from job classification, pay rates, rules for labor management relations, and the process for firing and demoting employees. These provisions were unnecessary and unfair.

Finally, I am concerned about the effect this legislation will have on my State of California on matters that have nothing to do with homeland security. Many existing Federal agencies will be moved lock, stock and barrel into this new department, with little regard to the services that those agencies provide to the American people and to the people of California. The Department of Homeland Security is largely about protection and enforcement. When vital services for the people of this country such as FEMA disaster assistance and the Coast Guard's search and rescue role are thrown into an agency whose mission and purpose is primarily enforcement, I fear that these much-needed services will suffer.

However, despite these reservations, I will vote for this bill. We must move forward on protecting the American people from another possible terrorist attack. And creating a new Cabinet-level Department of Homeland Security, which I have supported for the past year, is an important step in that direction.

Through my committee assignments and by enlisting the support of my colleagues, I will keep a sharp eye on the new Department of Homeland Security and work to make sure we take the additional steps necessary to truly protect the security of the American people.

Mr. GRASSLEY. Mr. President, I rise in support of the homeland security bill. I believe that today we are taking definitive action to put the Government in a better position to prevent and respond to acts of terrorism. The creation of a Department to oversee homeland security has been a tremendous undertaking for the White House and Congress. It has forced all of us to face multiple challenges, including overcoming the various agencies' desire for self-preservation and the long-standing turf battles we are all too familiar with. Regardless of these difficulties, we have no choice but to strengthen our national security. A Department of Homeland Security is our best answer, and I have tried to do all that I could to enhance the effectiveness of the New Department.

This new Department will have to improve and coordinate our intelligence analysis and sharing functions, as well as our law enforcement efforts. Our Nation needs to do everything possible to make sure the attacks of a year ago never happen on American soil again. The creation of the Department will help coordinate our homeland security efforts and better protect the United States from terrorist attack.

The new Department will also identify and destroy barriers to effective communication and cooperation between the many entities involved in America's national security. It will identify our security and intelligence shortcomings and resolve them appropriately. It should also guarantee that the various infrastructure protection agencies moving to it have a smooth and seamless transition, and that whistle protections are given to each and every employee, without exception.

I was glad to have an opportunity to work with the sponsors of the bill to secure adequate whistleblower rights for Department employees. Because rights are worthless unless you have a process by which those rights can be addressed, I worked with the sponsors to ensure that whistleblowers have procedural remedies. The bill's whistleblower protection language grants the Department's employees the same Whistleblower Protection Act rights that are currently enjoyed by almost all other Federal employees.

Another big part of (the homeland security bill includes provision to restructure the Immigration and Naturalization Service. The new Department will be instrumental in securing our border, but we will have to steadily implement changes to improve the agency's service and enforcement functions. Improvements to this agency are long overdue and cannot be ignored after this bill passes. Just because we have streamlined their management, the INS's performance will be scrutinized in the years to come. The INS will be accountable to the American people, and I look forward to seeing some changes in the way they do their business.

I am pleased that I was able to work on an immigration reform measure that will strengthen the Secretary's visa issuance powers. This provision authorizes the DHS Secretary to put DHS agents at consular posts or requires a finding that DHS agents aren't needed, and it gives the DHS Secretary influence in the State Department personnel matters relating to visa issuance. It also requires annual reports to the Congress on security issues at each consular post. These changes will help us avoid dangerous programs like visa express that let terrorists in without any real screening.

I am also pleased that the homeland security bill we are considering today incorporates a number of our recommendations to ensure that the international trade functions of the Customs Service are not subsumed by the need for strong law enforcement under the Department of Homeland Security. In order to achieve this, we included a number of procedural protections. However, even with these safeguards, I am somewhat concerned that an attitude could prevail over time in which the trade function of the Customs Service become nothing more than a tool for the enforcement functions. I do not think this is an insignificant concern. Today, Customs operates under the umbrella of the Treasury Department, whose core mission it is to serve as a steward of the economy. Moving the 200 year old agency to Homeland Security could fundamentally alter the traditional mission and culture of the U.S. Customs Service. As the ranking member of the Finance Committee, I plan to exercise my oversight function diligently to make sure that this does not happen.

Another provision that I worked hard to secure, along with Senator HERB KOHL of Wisconsin, is the transfer of ATF agents to the Justice Department. The firearms and explosives experts will work alongside the FBI and the DEA at Justice Department. The firearms and explosives expert will work alongside the FBI and the DEA at Justice, and the revenue-collection experts and auditors will stay at the Treasury Department. This move will help coordinate criminal and antiterrorism investigatives at the DOJ, but will keep the ATF's revenue-collection duties at Treasury where they belong. So I thank the leadership for making sure these important changes were made.

I also applaud the inclusion of language that I advocated requiring the new Secretary to appoint a senior official to be responsible for ensuring the adequacy of resources of drug interdiction. The smuggling, transportation, and financing organizations that facilitate illegal drug trafficking can just as easily smuggle terrorists or terror weapons into the United States. Many of the agencies being moved into the new Department were previously focused on the fight against narcotics. By coordinating counternarcotics policy and operations, this new official will ensure that our efforts to respond to future acts of terrorism will not come at the price of relaxing our efforts against the dehumanizing and painful effects of drug use on society and families.

I was also pleased to work with Senators LOTT and BENNETT on FOIA provisions that encourage the private sector to alert government officials about risks to our critical national infrastructures. While public disclosure laws such as FOIA are central to the policy of preserving openness in government, they sometimes serve to inhibit our ability to receive vitally important national security-related information from information from businesses that fear unwarranted loss of public confidence and use by competitors, criminals, and terrorists. This new language will strike the dedicate balance between ''sunshine'' in government and the responsibility that we have to collect and share sensitive information about infrastructure vulnerabilities in an atmosphere of trust and confidence.

The ultimate goal here before us is to help our intelligence and law enforcement communities at being the best they can be at protecting our nation and the American people. But we can't build a new house with broken blocks. If we don't fix the problems at the various agencies that will make up the new Department, we won't see real homeland security. A lot of work has been done, and I believe we are on the right track. I believe this plan is indeed the answer for effective homeland security, now and for the future. Let's move forward from here and get it done.

HOMELAND SECURITY

Mr. CONRAD. Madam President, I will vote for the bill before us today, but I do so with some serious reservations.

First, and most importantly, I do not want the American public to conclude that by passing this one bill we do not need to do anything else in order to protect our homeland. While housing such agencies as FEMA, the Customs Department, and the Border Patrol under one roof will be advantageous, especially in the long run, little in this bill goes the heart of what went wrong leading up to September 11. Simply put, our country has been plagued, and we continue to be plagued, by a myriad of intelligence shortcomings. We have not done an effective job of gathering intelligence on al Qaeda cells residing right now in our country, and, perhaps even more importantly, our intelligence agencies have not been effectively sharing intelligence with each other. We hear story upon story about a lack of analysts with language skills, outdated computer systems, and turf battles.

And now we hear, for the first time, that the administration is considering the need to create a new domestic intelligence agency. We hear that our Nation's top national security officials met for 2 hours this past Veterans Day to discuss this issue. Clearly, we need a plan to deal with domestic terrorism surveillance and to implement systems, procedures, and oversight to make sure that our intelligence agencies are talking to each other. Unfortunately, the current bill is largely silent on these issues.

Second, I have serious concerns that the administration will be undertaking the most massive government reorganization in over 50 years while we are in the middle of our war against terrorism. Osama Bin Laden is still at large, and just last week he threatened new attacks. Indeed, the administration recently has warned us about ''spectacular'' attacks against our country. We must take great care that this massive reorganization does not compromise any of our ongoing efforts in our campaign to protect our homeland.

Finally, I cannot stand silent about the egregious, superfluous, special-interest giveaways put into this bill at the very last minute by the administration acting in concert with Republican leaders in the House and Senate, everything from shutting the courtroom doors to families injured by pharmaceutical companies to allowing offshore tax haven companies to compete for homeland security contracts.

So while I support the bill before us today, it is certainly not a perfect bill. Even more importantly, our work has just begun. The administration now needs to ensure that in creating this massive new Department it does so in a way that does not compromise the vital and ongoing work of the agencies involved. It is also imperative that we fix the central problem with our Nation's homeland security defenses, that of the lapses in our Nation's intelligence gathering and sharing efforts, and that we do so now. I wish we would have dealt with this more gaping security hole first, but all we can do now is to redouble our efforts in this most vital pursuit.

Mrs. MURRAY. Madam President, the Senate today took an important step to combat domestic terrorism and improve safety at home. The Department of Homeland Security will help protect our communities by coordinating prevention and response efforts throughout the country.

The legislation also maintains the integrity of the Coast Guard, so that the important function of search and rescue, drug interdiction, and environmental protection will not be degraded.

Throughout his tenure, I have found Governor Tom Ridge to be a responsive member of this Administration, and I look forward to continuing to work with him in a constructive manner.

While much of this legislation is important and necessary, I am concerned about several of the provisions.

First, are the special interest gifts to the pharmaceutical and manufacturing industries that House Republican leaders slipped into the bill last week.

Second, are the new surveillance powers granted to the Federal Government, and the potential impact on Americans' civil liberties. The Administration has assured Congress and the American people that the new authority will be used judiciously, and the Administration now must act responsibly and prudently.

Third, I believe that men and women who serve their country in uniform are entitled to the same civil service protections as other federal workers, and I am disappointed that because of this bill, some workers will lost important rights.

I intend to work with the new Department to protect Washington State's interests and will continue to monitor the implementation of this bill.

Mr. INHOFE. Madam President, our world has changed dramatically since the tragic events of September 11, and by passing this bill, we are taking a momentous step forward in providing for the security of Americans at home. But I am concerned we might be missing an integral component to this secure system. We have outlined parameters for information security, privacy and authentication. But, how can we truly ensure someone is who he/she says they are before we give them these high-tech credentials? We have gone to great lengths to ensure the security of these counterfeit-proof credentials, but we need to also account for the validity of the information used to establish identity in the first place. What happens if we give someone a secure document with a biometric under a false name?

The events of September 11 were orchestrated by a group of foreign individuals who used false information to receive legitimate U.S. identification documents like visas, passports, driver's licenses, and illegally entered this country. Identity fraud is no longer just a crime perpetrated by a common criminal to steal a credit card. Identity theft is now a tool employed by terrorist organizations to infiltrate America and harm our citizens. Terrorists have been able to take advantage of our ineffective and antiquated systems and assume false identities.

In this bill, we establish an Under Secretary for Border and Transportation Security with the charge of preventing terrorists from entering this country. We need to make sure he or she has the tools necessary to authenticate a person's identity. Authentication of non-U.S. citizens entering the United States must be a top priority. We have bipartisan support for such an effort and we must establish a system that ensures the identity of foreign individuals upon initial entrance into this country.

For years, identity authentication systems have been used in the U.S. to prevent fraud in the consumer banking industry. Following the terrorist attacks on September 11, these systems have been adapted for national security purposes. These systems access a wide number of identifiers in domestic public records and use scoring and modeling methods to determine whether a particular person is who they say they are. These systems must be expanded to include publicly available information on individuals from foreign countries.

The President has said, ''This nation, in world war and in Cold War, has never permitted the brutal and lawless to set history's course. Now, as before, we will secure our nation, protect our freedom, and help others to find freedom of their own.'' Let me be clear. There are people who deserve to enter this country and there are people who don't deserve to enter any country. We must have the ability to verify an individual is who they say they are the first time they apply for a visa. As we move forward, we must establish an identity authentication system that targets the 26 nations designated by the State Department as state sponsors of terrorism.

Mr. REED. Madam President, I rise to discuss the legislation before the Senate to create a Department of Homeland Security. I have said throughout the debate on this legislation that I support the creation of a homeland security department, and despite my strong reservations about many of the specific provisions in the bill, I intend to support final passage today. The Senate has expressed its will through the amendment process, and while I have been disappointed with the outcome of many of the votes, the bill before us has the potential to improve our government's ability to combat terrorism against our people. Insuring domestic tranquility and providing for the common defense are among the most sacred Constitutional duties our constituents sent us here to fulfill, and on that basis alone this bill, while far from perfect, deserves to move forward.

I will discuss many of the positive aspects of this legislation shortly, but first I want to outline some of my concerns with the bill. First, I am deeply disappointed that the House Republican leadership inserted into this must-pass legislation to protect our homeland a host of special interest giveways. The bill creates new liability protection for pharmaceutical companies by wiping out pending litigation; guts the Wellstone amendment that prohibited contracting with corporate expatriates; reverses the aviation security bill by providing special immunity to the companies that provided passenger and baggage screening in airports—companies that may have violated numerous security regulations on September 11; allows the Department to hold secret advisory committee meetings with hand picked industry advisors, even on non-sensitive matters, waiving the Federal Advisory Committee Act; and provides immunity from liability for manufacturers of products or technologies that cause harm to Americans.

I also have concerns about provisions in this bill that would undermine the basic rights of federal employees to belong to unions and to bargain collectively with management over working conditions.

Forty years ago, President Kennedy issued Executive Order 10988 granting federal employees the right to organize and bargain collectively. President Nixon expanded employees' rights in 1969, and these rights were subsequently codified in the 1978 Civil Service Reform Act. These fundamental rights have never interfered with the provision of government services, including homeland security, and in fact I would argue they have strengthened our government by helping us to recruit and retain highly qualified employees who might otherwise look elsewhere for work. Union members are among our nation's most patriotic, dedicated and selfless public servants. When the World Trade Center was burning on September 11, the unionized firemen, police officers, and emergency medical personnel in New York did not stop and ask for a collective bargaining session. They went up the stairs, into the fire, and gave their lives so that others might be saved.

Of the 170,000 federal employees who would likely be moved to the new Department of Homeland Security, at least 40,000 belong to unions and possess collective bargaining rights, including employees of the Customs Service, Border Partrol, and other important agencies. Our goal, as was proposed in the bill drafted by Senator LIEBERMAN and reported by the Senate Governmental Affairs Committee, was to ensure that no federal employee who currently has the right to join a union would lose that right under the homeland security reorganization. Agencies where employees currently do not have collective bargaining rights, such as the Transportation Security Administration and the Secret Service, would not have been affected.

To maintain the existing rights of union members transferred into the new Department, the Governmental Affairs Committee bill included a bipartisan provision that would update this formula. Under that bill, management could deprive transferred employees of their collective bargaining rights if

their work is ''materially changed'' after the transfer; their ''primary job duty'' is ''intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism''; and their rights would ''clearly'' have a substantial adverse effect on national security.'' This provision was carefully crafted on a bipartisan basis to give the new Secretary of Homeland Security the flexibility he or she needs while preserving the rights of tens of thousands of employees who have possessed collective bargaining rights for decades and will be performing exactly the same work under a different letterhead.

Unfortunately, the House drafted bill before us today does away with these protections. Under this bill, the President may waive existing union rights if he determines they would have a substantial adverse impact on the Department's ability to protect homeland security. He must send a written explanation to the House and Senate at least 10 days in advance, but no Congressional approval is required. Furthermore, the bill allows the Administration to waive existing civil service protections over union objections. Although he would be required to notify Congress and engage in a 30-day mediation administered by the Federal Mediation and Conciliation Service, if mediation is not successful the President could waive civil service provisions notwithstanding union objections and act without Congressional approval.

I am also concerned about the provisions related to the Vaccine Injury Compensation Program, VICP. The VICP is a no-fault alternative to the tort system for resolving claims resulting from naturally occurring, adverse reactions to mandated childhood vaccines.

Over the years, the VICP has proven to be a successful component of our National Immunization Program. It has protected vaccine manufacturers, who play a critical role in the protection of public health against unlimited liability while also providing injured parties with an expeditious and relatively less contentious process by which to seek compensation.

However, the provisions contained in this homeland security bill consist of one page of a 26-page bill introduced by Senator FRIST earlier this year, S. 2053, the Improved Vaccine Affordability and Availability Act. While it has been argued that these provisions are needed to protect vaccine manufacturers, the fact is that manufacturers are already protected under VICP.

Senator FRIST's bill contains a number of provisions related to increasing vaccine rates among adolescents and adults, bringing greater stability to the vaccine market through the creation of a rigorous stockpile of routine childhood vaccines and reforms to the Vaccine Injury Compensation Program. Letters of support that have been cited on the Senate floor, from the Advisory Committee on Childhood Vaccines and the American Academy of Pediatrics, expressed support for these provisions, but only in the context of the comprehensive legislation set forth by Senator FRIST, not on their own. The three sections that have been inserted simply have no place in a homeland security bill. These sections lack the thoughtful and comprehensive approach that is required to address the myriad challenges facing our childhood immunization program.

Finally, I am concerned with the immigration provisions in this legislation. There is general agreement on the proposal to transfer all functions of the Immigration and Naturalization Service into the new Department. However, rather than establishing a single, accountable director for immigration policy, the bill calls for enforcement functions to be carried out by the new Bureau of Border Security within the Border and Transportation Security Directorate, while immigration service functions will be in a separate Bureau of Citizenship and Immigration Services that reports directly to the Deputy Secretary. While the bill does call for coordination among policymakers at each of the bureaus, they will ultimately establish their own immigration policy and interpretation of laws. I urge the Administration to ensure that policy coordination among the enforcement and services bureaus is comprehensive and consistent, so that the result for the nation's immigration system is real reform and not a new period of disarray.

Nothwithstanding all of the concerns I have summarized, I believe that this legislation and the new department it creates have the potential to make the American people safer. The legislation will consolidate more than two dozen disparate federal agencies, offices, and programs into a focused and accountable Department of Homeland Security. The bill will bring together into a single Border and Transportation Security Directorate our Customs Service, the border quarantine inspectors of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, the new Transportation Security Administration, and the Federal Law Enforcement Training Center. Within this directorate, the bill also creates an Office of Domestic Preparedness to oversee our preparedness for terrorist attacks and to provide equipment, exercises, and training to states. The Coast Guard will also be in the new department, reporting directly to the Secretary of Homeland Security.

The Directorate for Information Analysis and Infrastructure Protection will enable the Department to ''connect the dots'' by organizing analyzing, and integrating data it collects at ports and points of entry with intelligence data from other parts of the government. The bill also provides the Department with access to unevaluated intelligence. It establishes separate Assistant Secretaries for information analysis and infrastructure protection, and has language making it clear that the Directorate's intelligence mandate is broader than infrastructure protection and including deterring, preempting, and responding to terrorist attacks.

The Directorate for Science and Technology will conduct and promote long-term homeland security research and spearhead rapid technology development and deployment. It will bring together scientific capabilities now spread throughout the federal government to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats.

In addition, the bill establishes a directorate of Emergency Preparedness and Response, with the Federal Emergency Management Agency, FEMA at its core, which will help to ensure the effectiveness of emergency response to terrorist attacks,major disasters and other emergencies by bringing under the Department's directorate several federal programs in addition to FEMA: the Domestic Emergency Support Teams of the Department of Justice, and the Strategic National Stockpile and the National Disaster Medical System of the Department of Health and Human Services. The Department will also have the authority to coordinate the response efforts of the Nuclear Incident Response Team, made up of elements of the Environmental Protection Agency and the Department of Energy. One of most important responsibilities of this directorate will be to establish comprehensive programs for developing interoperative communications technology, and to ensure that emergency response providers acquire such technology.

These are all laudable and important goals, but because we have been blocked from passing the appropriations bills that would provide the resources the Department needs to perform its mission, our work is far from complete. Providing these resources will be our task on homeland security in the months ahead, and I hope my colleagues and the President give this task the same attention and effort they gave to creating a Department of Homeland Security.

Madam President, because I believe the people of Rhode Island and Americans everywhere want to see the creation of a Homeland Security Department that will improve our ability to prevent and respond to terrorist attacks, I intend to support this legislation despite my concerns about many of the specific provisions included in the House draft of the bill before us today.

Mr. BUNNING. Madam President, I am pleased the Senate is able to pass legislation to establish the Department of Homeland Security before Congress adjourns the 107th Congress sine die. After the terror attacks on September 11, 2001 it has been the mission of President Bush and many in Congress to create this new Department, and it

is particularly pleasing to get this done now rather than waiting until Congress starts up the 108th Congress in January of 2003. And I know as well the American people are supportive of getting this legislation passed now rather than later.

Those who oppose this legislation before us may have some legitimate and principled concerns as to why they do not support this bill. By all means, the bill is not entirely perfect and I think most members of Congress would attest to that. But neither were the original bills to create any other federal department or agency perfect on the first try. That is why we have committee hearings on these issues, and I am sure we will pass supplemental and technical bills over the years to legislatively mold the new Department of Homeland Security so that it is stronger and more efficient.

But we needed to get this bill rolling now. Every day is vital as we fight this new war on terrorism. Delaying the creation of this new department another three or four months could set America back in her defenses. Every day that goes by without work being done to create and organize this new department simply puts us back further and further. We just can't afford to let that happen. This is serious business.

Although this bill may not be perfect and some may disagree with a few of its provisions, it is not so controversial that the bill deserves nor needs to be killed outright. We can come back and revisit those extraneous provisions some of my colleagues have been talking about. But we need to get the ball rolling. Agencies need to be realigned. We need to get rid of some of the duplicity amongst some of these agencies. Communication and information channels need to be streamlined. There is a lot of work to be done and every day counts.

Earlier in this debate I came to the floor and spoke about the need for President Bush and future presidents to be able to have the authority and flexibility to hire and transfer employees, and even be able to terminate some employees, within the new Department of Homeland Security to ensure its mission can be undertaken. For weeks we had a real disagreement on this issue. Some wanted to ensure that workers were protected and preserved in their employment regardless of their performance or real need.

Fortunately, in the end we have a piece of legislation that frees the hands of the president by giving him the necessary management and personnel flexibilities to integrate these new agencies into a more effective whole. While providing this flexibility, we still preserve the fundamental worker protections from unfair practices such as discrimination, political coercion, and whistle-blower reprisal. This flexibility and authority will better serve our president, the homeland and Americans.

New provisions are also added to this bill to help protect our borders. We do this by moving the Coast Guard, Customs Service, Immigration and Naturalization Service, and border inspectors at Animal Plant Health Inspection Services all under the new Department of Homeland Security. This action is long overdue and a reminder to us that the first step in defending America is to secure her borders.

As well, this bill helps to ensure that our communities and first responders are prepared to address threats. This bill does this by moving FEMA and the Secret Service under the new Department of Homeland Security. By moving FEMA, we are clarifying who's in charge, and response teams will be able to communicate clearly and work with one another. We will also benefit by the Department of Homeland Security being able to depend on the Secret Service's protective functions and security expertise.

Some have voiced concerns that we are limiting and not protecting the freedoms and privacy of Americans in this bill. I would say to my colleagues that at the core, the real reason for this bill is to ensure just the opposite, to provide security and protect our freedoms. We have in this bill specific legal protections to ensure that our freedom is not undermined. This bill prohibits the federal government from having the authority to nationalize drivers' licenses and other ID cards.

Also, the bill establishes a privacy officer. This is the first such officer established by law in a cabinet department. Working as a close advisor to the Secretary of the Department of Homeland Security, this privacy officer will ensure technology research and new regulations respect the civil liberties Americans enjoy.

There are many other vital provisions in this bill which are needed to better protect our freedom and the homeland. It is a good and solid bill. It may not be perfect, but rarely are there any perfect pieces of legislation we pass here in the Senate. I am sure we will revisit this legislation and issue again, in committee hearings as well as considering technical and supplemental homeland legislation on the Senate floor.

But it is imperative we pass this legislation now. We have worked hard on this bill, too hard to just let it die in the 107th Congress. We need to get it to President Bush's desk before we adjourn sine die. The sooner we get it to him, the better it is for the protection of the homeland and Americans.

Ms. CANTWELL. Madam President, I rise to express my support for the creation of a Cabinet level Department of Homeland Security that better enables our border security agencies to coordinate and work together. I believe that if properly implemented such a Department will better protect our country from the threat of terrorism.

The tragedy of September 11 demonstrated that our homeland security apparatus is dangerously disorganized, and that our vulnerabilities were real; we learned that we need organizational clarity and accountability to face the crucial challenge of improving homeland security.

On balance, the new Department of Homeland Security will reduce our vulnerability to the terrorist threat and minimize the damage and help recover from any attacks that do occur. However, we need to recognize that this is only a first step. The challenge of homeland security will require more than bureaucratic reorganization, we need to ensure that our efforts are bolstered with a real commitment to the attention and funding necessary to implement some of the goals of this legislation.

Although I will ultimately support the homeland security bill, I do so with the recognition that no legislation is perfect. This legislation is, indeed, not perfect and it will demand continued attention and oversight by Congress to ensure that it lives up to its aspirations in ensuring our homeland security, while not betraying our principles of governance and freedom.

One area that I have particular concerns is in regards to our continued efforts to address the issue of information and information sharing within the careful balance of security goals and civil liberty protections.

I am particularly concerned with provisions of the bill that fail to explicitly address the broader concerns of privacy for American citizens and that reduce our access to public information through the FOIA process. I am particularly frustrated because both of these troubling provisions, provisions to enhance sharing of information about suspected terrorist activity with local law enforcement, and provisions to limit access to sensitive information available under the Freedom of Information Act, were negotiated and careful compromises were arrived at in the earlier version of the Gramm-Miller Senate substitute and in Senator SCHUMER's bill, S. 1615, the Federal-Local Information Sharing Partnership Act.

The timely sharing of investigative information between various enforcement and intelligence agencies can provide necessary improvements in our nation's security. Unfortunately, the version that is contained in this legislation provides absolutely no limitations on how this information can be used or disseminated. This is particularly troubling because we have already expanded the type and amount of personal information available in federal databases. To greatly expand access to personal information without providing any protections on its use is a dangerous erosion of our valued right to privacy and has the potential to eviscerate the protections that the Constitution guarantees Americans against unfettered government intrusion into privacy. I support greater access to information, and I believe that

it is primarily through appropriate use of information technology that we are likely to make real improvements in our domestic security, but greater access to personal information cannot come without offsetting protections against its misuse.

The very broad language, inserted for the first time by the House, offers no procedural mechanisms to assure the government adheres to protections of privacy or civil liberties. Information sharing without citizen recourse or correction, without adequate procedural safeguards, has the potential to undermine the privacy of every citizen. The Senate has already acted on this issue and language exists that can better provide access to local law enforcement while also providing real protections to our citizens. This legislation has already passed the Judiciary Committee and I am committed to working with Senator SCHUMER to passing this legislation next year.

In addition, this bill previously contained carefully crafted language that protected sensitive information from discovery through the Freedom of Information act. The Freedom of Information act is a valuable tool in assuring open and accountable government and I believe that any effort to alter it must be carefully considered. This careful consideration produced the language in the original bill, a compromise crafted by Senators BENNETT, LEVIN and LEAHY. As the editorial board of the Olympian wrote today ''The public is already leery of government and understands that public records are one means of keeping elected and appointed officials in check'' Unfortunately, this bill contains a very broad exemption which has the potential to protect much information from public scrutiny. We must be cautious in taking steps that reduce open access to government and I am concerned about the broad nature of this language.

I am also very disappointed by how the Immigration and Naturalization Service is reorganized within the Homeland Security Agency. By completely separating the service and enforcement functions of the INS, I believe that we will only be compounding the problems that already plague this moribund agency. Coordination between the service and enforcement arms of the INS is required to make the agency more efficient and to ensure that its dual missions of enforcing the law against those here illegally and facilitating residence and citizenship for those here legally achieve the same level of support.

Last, a major stumbling block in passing this legislation has been the concern with the rights of many talented employees already employed by agencies who will be moving into the Homeland Defense Department. I do not believe this legislation provides adequate safeguards for these employees and I believe that the Congress will need to perform a great deal of oversight to make certain that abuses do not occur in this arena.

As I said before, no legislation is perfect, and our job in Congress is not over with the passage of this bill. We need to remain dedicated and focused in our task of ensuring that the implementation of this bill is accomplished effectively and consistent with the principles and rights that have made this country great.

Mr. REID. Mr. President, I want to discuss the bill before us dealing with the creation of a department of Homeland Security.

I applaud Senator LIEBERMAN for developing this idea of a new department to protect our Nation against the horrible specter of terrorist attacks on our cities and citizens.

The people of Nevada look to the Federal Government to make sure that our State and our Nation are secure.

We all agree that our Federal Government can, and should, do much better at preventing attacks, defending against attacks, and mitigating the consequences of attacks.

In Nevada, we have already begun to help. The Nevada Test Site has established itself as one of the premier centers for emergency responder training. Under the new Department, this facility will only flourish. The new Department will also help develop the burgeoning counterterrorism programs at Nevada's major research institutions, including the University of Nevada-Las Vegas and the University of Nevada-Reno. The people of Nevada have a proud history of providing the nation with the necessary skills, hard work and vision to protect our Nation. I know Nevada will do the same for the war on terrorism.

A new department of Homeland Security will be a good start, but this new Department is by no means the finish line in the effort to defense our nation.

More important, this new Department must not be a distraction from the job of protecting our Homeland. If it turns our that the consolidated departments, agencies and bureaus are spending more time looking for their new desks instead of hunting down Osama Bin Laden, I will be the first one to work on legislation to fix it.

We must not believe that establishing this Department ends the need for vigilant oversight, and we must not give in to the false security that a new Department could provide. Protecting our Nation from the horrors of terrorist attacks involves more than changing the name, moving offices and shuffling desks around.

Protecting our Nation requires strengthening our intelligence gathering and analysis—it means improving the communication between many Federal departments and agencies—it means providing the funding we need for research and technology investments—it means tapping the resources of the American entrepreneur and the soul of the American worker.

The proposed Department will address many of these concerns, but not all of them.

I am voting to support this legislation, because the President claims that it will be more than just a name change. I will be watching very closely to make sure that it is.

There are several areas that I plan to keep a close eye on.

First, this new Department, though it has some new intelligence sharing responsibilities, will not fix the problems at either the Federal Bureau of Investigation or the Central Intelligence Agency or the lack of coordination and cooperation between the two. Those agencies were left out of the Department of Homeland Security, even though they share tremendous responsibility for the Administration's failure to properly interpret the intelligence warnings before September 11.

Second, this bill gives tremendous authority to the executive branch of the Government. With that authority comes tremendous responsibility. In particular, this new strong authority presents a tremendous potential for abuse and misuse. I am disappointed that such an important piece of legislation would be used to weaken important provisions of our law. This bill makes unnecessary attacks on the ability of the American people to access Federal documents, and on the protections afforded the people who work for the Federal Government.

The labor provisions of this bill still fall far short of what I'd like to see. I still believe that it is entirely possible to reorganize our homeland defense efforts and dramatically improve the state of our Nation's security without stripping dedicated and loyal workers of basic protections in their jobs. All across the country, there are union members holding jobs that require flexible deployment, immediate mobilization, quick response, and judicious use of sensitive information. Police and firefighters have union protections, and their ability to bargain collectively actually improves our ability to fight crime and fires. The union protections make the jobs attractive enough for talented individuals to want to stay in the positions for long periods of time. We as a society gain because we are able to retain skilled people to work on our behalf.

Senator LIEBERMAN's bill was able to preserve a fair balance in this respect. His legislation retained most labor rights, but in cases where national security might otherwise be compromised, the President would have the flexibility to do whatever was necessary to protect the country.

This bill, on the other hand, will drive many talented individuals to look for employment elsewhere, in positions that afford at least a minimal level of job security and due process. I fear that over time we will see a deterioration in the caliber of employees that join this department, and I expect to revisit the labor provisions before many years have passed.

I am also deeply troubled by the efforts to allow this department to operate in secrecy. We have seen the unfortunate impacts of secrecy in the development of a national energy policy by the administration. This bill would continue this dangerous trend on the part of the administration. The administration appears to be more concerned with protecting the corporations' bottom-line than defending the citizens right-to-know.

I also have strong concerns about many of the provisions included in this bill that do not relate directly to the creation of the department of security.

A tax loophole has allowed dozens of U.S. corporations to move their headquarters, on paper only, to tax haven countries to avoid paying their fair share of U.S. taxes. Several months ago, Paul Wellstone and I offered an amendment to bar the Department of Homeland Security from awarding government contracts to these corporate tax runaways. The Senate adopted that amendment unanimously, but this bill guts that agreement. It is a sad reality that these corporate expatriations are technically legal under current law. But legal or not, there is no reason why the U.S. government should reward tax runaways with lucrative government contracts.

Paul and I felt that if these corporations want Federal contracts so badly, they should come home. Just come back to the United States, and they'd be eligible to bid on homeland security contracts. And if they didn't want to do that, then they should go lobby the Bermuda government for contracts there. It should have been a priority of this legislation to guarantee that the Department of Homeland Security conduct its business with corporations who do their share to bear the burdens of protecting this country. This legislation is more concerned with window-dressing on this issue.

Although I agree that the agency primarily responsible for the security and safeguarding of nuclear material, the Nuclear Regulatory Commission, should not be in the new Department, the bill does not address the important issues of chemical and nuclear power plant security. Protecting our energy infrastructure involves challenges related to the appropriate sharing of responsibility between the private companies who own and operate these facilities and the Federal Government. Our existing laws do not considered fully the implications a terrorist attack would have on our ability to prevent and respond to terrorist attacks on these facilities.

These concerns are real. In fact, the President raised the specter of a terrorist attack on one of our nation's nuclear power plants in his State of the Union address. And just a few days ago we were warned again that these facilities are potential targets. The Department of Homeland Security should work quickly with other federal agencies to improve their security, until the Congress is able to enact appropriate legislation to protect them.

Many of my colleagues have eloquently described the outrageous special interest provisions that were included in this bill, so I won't repeat many of those points. I do want to say that I am disappointed that the administration chose to include these provisions. They knew that this bill would pass, because it is so important to our country. They knew they could try to sneak these outrageous provisions in. This is not the way to increase the security of our country following the horrendous attacks of September 11.

There are several provisions I am particularly pleased will be enacted into law. These provisions deal primarily with the aviation industry in the aftermath of September 11.

I am pleased that a provision to allow the Transportation Security Administration flexibility to extend the baggage claim deadline for airports was included in the legislation. This is extremely important to Las Vegas McCurran and Reno/Tahoe International Airports in Nevada. Las Vegas is the second leading airport in the nation for origination and destination passengers. Only Los Angeles International airport handles more. In fact, Las Vegas handles more luggage than most of the nation's larger airports. Allowing TSA to work with selected airports to implement the 100 percent baggage screening requirement over a reasonable time period will in the long run be the most secure course for the traveling public.

This legislation also includes language extending the time frame and expanding the scope of War Risk Insurance made available to commercial airlines under the FAA's War Risk Insurance program. This was a top priority for the airline industry, described by leading industry officials as the single most important and cost effective action Congress could take at a time when commercial airlines are facing enormous financial challenges. The provision in the bill should help stabilize the insurance crisis resulting from the terrorist attacks of September 11th. The War Risk Insurance provision of the bill mandates extension of coverage through August 31st, with an option to extend War Risk coverage through December 31, 2003. It also calls for expansion of the scope of War Risk Insurance made available to airlines, adding coverage for passengers and crew and loss of aircraft to the coverage for third party liability currently made available by the FAA.

Finally, the bill reinstates a short term limitation of third party liability in cases of terrorist acts involving commercial aircraft. Last year's airline stabilization bill capped third party liability at $100 million where the Secretary of Transportation certifies that an air carrier was a victim of an act of terrorism. This short term limitation of liability expired in March, however, and has now been reinstated through the end of 2003.

Today I am supporting the creation of the Department of Homeland security. Establishing a new department is an important way to ensure we have a coordinated Federal response to potential terrorist attacks.

This legislation may have flaws, but the principle is correct. So today I am choosing to support the legislation, but I will keep a close eye on its implementation. If there are changes that need to be made, I will work hard to fix the flaws.

Mrs. CLINTON. Madam President, in the months following September 11, a new reality took hold in every corner of our country. We saw the National Guard standing guard at our airports and in front of Government buildings. Bioterrorism and border security were discussed every day. The skies over New York and Washington, DC were patrolled by our military. And every American believed that these new measures made our Nation stronger and protected us against terrorist attacks.

But time has passed and that vigilance has faded. Not by our police officers, firefighters, or emergency response personnel. Not by the brave men and women who are serving in Afghanistan. Not by the workers along our borders and in our ports. But by the Federal Government. We have slipped into an almost piecemeal approach to Homeland Security and that has to change, starting today.

''Are we safer today than we were on the morning of September 11, 2001?'' The answer is only marginally, because somewhere along the line, we lost our way.

Those individuals who are sacrificing and working to do their best and secure our country want to do more. But each day, despite some of our efforts, we do less and less for them. We issue warnings about new threats. We expect people and cities and towns to react accordingly, but we do not provide enough funding, support, or guidance for them to do their jobs. We need to redefine our focus on Homeland Security, and one way to do that is to reorganize the way our Government works.

The votes we cast today for the creation of a new Homeland Security Department are just that-votes for the creation of a department. Our Nation and particularly the people I represent in New York, learned the hard way on September 11, 2001—the status quo is unacceptable.

My hope is that approval of this bill sets in motion a necessary reorganization process that will ultimately result in improved coordination, information sharing, and a stronger and safer America. We need to send a clear message that our Government is doing more than simply talking about strengthening our homeland security; that we are once again focused on concrete steps that will defeat the terrorists and protect our people.

But we must be clear about what we are voting on today—this bill has much

to do with structural reorganization and very little to do with enacting real steps that will protect our Nation against terrorist attacks. There are many things in this bill that should not be; and there are many things that should be in this bill that are not.

I am concerned that the American people will think that simply because we have passed this bill that our Nation is safer. They need to know that this measure does not increase patrols along our northern borders.

It does not give our firefighters, police officers, and emergency personnel the resources, training, and equipment they need to protect our frontlines at home. It does not increase security measures at our ports, along our railroads, and public transportation systems. It does not increase our capabilities of detecting biological, chemical, and nuclear weapons. What this bill does is it falls short on many counts, especially when it comes to real measures that would improve our security.

We had the opportunity to do this right. We had the opportunity to do more than create a department, but we missed it. The Senate's original bill included critical measures that would make our country safer today than it was yesterday. But in the end, this Congress failed to put safety first and special interests last.

There is a lot in this bill that secures the future for the special interests and very little that secures our country. Those who are using this legislation—this legislation that's about the security of our Nation—as a vehicle for the special interests have done this country a great disservice.

That is why Congress must not, cannot, stop here. Our job is far from over. We must continue to fight to make sure that every substantive part of the old bill that increased our security gets passed in the next Congress.

Let's start with the obvious-supporting our first responders. They are a critical part of our Homeland Security. Our firefighters, police officers, and emergency personnel need direct funding, training, and additional equipment to keep our Nation safe.

When it comes to Homeland Security, we need to listen to the experts—our mayors, police commissioners, fire chiefs, and our public health workers.

They continue to ask for direct funding, and that is why I proposed legislation that would provide direct funding to local communities, the Homeland Security Block Grant Act.

Since we began the war on terrorism, we have done everything to ensure that our men and women in the military have the resources, equipment and training they need to fight the war on terrorism, and that's how it should be. But we are not doing the same at home. It is unconscionable to me that a Homeland Security Bill such as this one would not include support for our Nation's frontline defenders.

At the end of October, Senators Hart and Rudman released the Terrorism Panel's report that clearly states that we are not doing enough to support our first responders and keep our country safe. They expressed grave concern that 650,000 local and state police officers still operate without adequate US Intelligence information to combat terrorists. We haven't done enough to help local and State officials detect and respond to a biological attack. The report expressed concern that our firefighters and local law enforcement agencies still do not have the proper equipment to respond to a chemical and biological attack. Their radios are outdated and do not allow them to communicate in an emergency.

What kind of tribute is this to the heroes who lost their lives in last September? What would the firefighters, police officers, and emergency response workers who did not think twice about rushing to Ground Zero to save lives say about the lack of progress that's been made?

Additionally, the SAFER Act, a provision that allows our country to hire 25,000 firefighters over the next couple of years has been eliminated from this bill. This is the time for us to do more for our first responders, not less. They are the most important link in our Homeland defense, and to shortchange them in these difficult times is incredibly shortsighted.

We must also act to better secure our Nation's nuclear power infrastructure. While the Homeland Security Bill will create a new department, it does not adequately address the very real threat of terrorists' capabilities and desire to destroy our nuclear power plants. Our efforts to protect our infrastructure is moving much too slow. Last year, Senators JEFFORDS, REID, and I introduced the Nuclear Security Act. This summer, we succeeded in moving the Act through Committee.

It is a shame that the Homeland Security Bill does not address nuclear security and it should. These protections should be included in this discussion, and the new Congress must work together to pass the Nuclear Security Act promptly.

We must also better protect ourselves against the very real threat of terrorists detonating a dirty bomb in our country. It is imperative that we better secure our domestic radioactive materials. Every year, highly active sources used in industrial, medical and research applications are lost or stolen in America. This is why I introduced the Dirty Bomb Act to strengthen these security measures and enhance our security.

And, while we work in the Congress to pass security measures like these, we will have to also work to get rid of provisions that do not belong here.

As I described on the Senate floor and in a press conference last week, this bill includes unrelated vaccine liability provisions. Protecting manufacturers from liability can be appropriate as part of a comprehensive vaccine bill that addresses a balanced range of important goals, including strengthening vaccine supply and addressing families' interest in compensation. But plucking out industry liability protections and addressing only that side of the issue clearly prioritizes manufacturers over families, and puts politics ahead of homeland security.

The provisions protect one particular manufacturer by dismissing existing lawsuits brought by parents of autistic children who believe there may be some connection between the mercury-based preservative and their child's illness. There may or may not be a connection, and the tort system may or may not be the right solution.

However, enacting only provisions that help manufacturers, while ignoring families concerns for compensation, and children's needs for a strong vaccine supply not only fail to protect homeland security, they fail to adequately protect children from preventable disease. All they do is protect vaccine manufacturers against lawsuits and undermine our bipartisan efforts to assure that every child is vaccinated safely.

While I believe the Congress should debate issues of tort reform and reasonable arguments have been made, I am also concerned that some of the tort provisions included in this legislation have nothing to do with homeland security and have not been debated by the Senate. One provision is the ''Support Anti-Terrorism by Fostering Effective Technologies Act of 2002,'' ironically named the ''SAFETY Act.''

This measure lowers standards by giving manufacturers immunity from liability for the products they make that our first responders will use. How will this help America build a stronger homeland defense? It doesn't—it just makes it easier for manufacturers to get away with indefensible actions.

There is a provision in this bill that upsets the balance between the public's right to know and the Government's responsibility to protect certain information so that it can better secure our country.

The House-passed bill contains significant loopholes that would provide protections for certain information by limiting access, prohibiting its use in court, and even making it a crime to make such information available. It appears that the bill may even allow companies to decide for themselves what information should be afforded such protections. This means certain protections could potentially be extended to information that doesn't even have anything to do with security, thereby shielding potentially damaging information from the public and the courts.

While private entities should be encouraged to provide critical infrastructure information to the Government in order to help assess and address vulnerabilities to future terrorist attacks, it should not come at the expense of the public's right to know.

I am also troubled by the so-called compromise over the civil service and

labor provisions in the new bill. The bill gives the President the authority to waive civil service protections in six key areas including rules for labor-management relations and appeals to the Merit Systems Protection Board.

I am concerned that this will hinder the ability of the new department to recruit and retain civil service employees who have expertise in the agencies that will be shifted to the new Department. This shortchanges the workers and shortchanges all Americans who believe we should have the most qualified individuals working in this new department.

The bill will also allow the Administration to strip workers of their collective bargaining rights through a waiver authority. I must say that we have every reason to believe that this Administration will take advantage of this authority. It has already taken away these rights from secretaries at the U.S. Attorney's offices. And I fully expect that it will use this authority, if it is granted, to strip away the rights from the more than 50,000 workers who will make up the newly formed Department of Homeland Security.

As a Senator from New York, I have a particular interest in this new department and have some specific concerns on behalf of my State. When it comes to protecting New York and New York City, I do not believe that this bill goes far enough and I will work to fix these provisions so that they do. The bill ensures a special coordinator of homeland security in the Capitol Region, DC, Maryland and Virginia, but does not establish a similar coordinator for New York City's metropolitan region.

Intelligence reports indicate that like Washington, DC, New York City is a high-risk area, still a target for terrorists and a symbol of our Nation. Even as we recover, we are still vulnerable, and the New York region needs its own coordinator.

In the aftermath of September 11, FEMA was able to respond to an unprecedented kind of disaster, precisely because it was a highly functioning, well-run agency. All of us in New York are indebted to Director Allbaugh and his staff for their good work. I am concerned that transferring FEMA into the new department could force a highly competent independent agency into a new bureaucracy that will have challenging integration issues and thus diminish the effectiveness of FEMA's ability to respond to crises of all kinds.

I also oppose moving Plum Island from the Department of Agriculture into the new Department. Also, I fear that this move could be a precursor to raising the biosafety level at the Plum Island facility. This would allow research on life-threatening exotic animal diseases and these harmful materials could be transmitted through the air. This would pose too many risks to those in my State who live near the facility, and I will strongly oppose any efforts to raise the biosafety level at Plum Island.

As I have said throughout the last fourteen months, we need this new department to better coordinate and share information. There is no question we must change the way things work in Washington so that we adapt to the post 9/11 world. There are many problems with this bill, some of which I have outlined here. These problems will need to be addressed in the months and years ahead.

Today, the Senate will also vote on a continuing resolution to fund the Government at last year's funding levels from now through January 11th. While it is imperative we keep the Government running, it is shameful, not to mention ironic, that we will depart without ensuring that we fund homeland security. It is not enough to create a new Department without investing in the necessary funding to protect against bioterrorism, increase our port inspections, secure our Nation's nuclear weapons plants, invest in technology so that our first responders can communicate in a disaster.

At best, we are sending mixed messages to the American people about our priorities; even more troubling is that these actions reflect what actually are the Government's present priorities.

But at the end of the day, we must move forward with this bill. Hopefully, it will spur us to focus once again with the same commitment and vigilance we had in those weeks and months after that tragic day in September. The threats continue to come in. Attacks occurred in Bali, Yemen, and in Kuwait. A new tape reveals that Osama Bin Laden is most likely alive. And al-Qaida is plotting all the while.

We do not have the time or the luxury to remain in this status quo. This bill is the smallest step forward we can take, but it is a step forward nonetheless and that is why I support it.

On its own, it will not make us safer but it pulls us out of this piecemeal approach to Homeland Security and directs our Government to pursue one fundamental goal—to make sure that we do everything in our power to make America stronger and safer so that no other American life is taken by the hands of a murderous few.

Mr. HOLLINGS. Madam President, I am voting against the legislation before the Senate to institute a new Department of Homeland Security. The President says we need a Department to prevent another September 11, but all this legislation does is produce an elephantine bureaucracy. It does nothing to fund the people on the front lines, who really could fight terrorism; instead funds will be spent in Washington by bureaucrats for bureaucrats.

The proposed department excludes the very entities that failed on September 11, but includes all the ones that did not. On September 11 the CIA dropped the ball on intelligence it possessed. So did the FBI. Yet they aren't included. But the Coast Guard did not mess up on September 11th, nor did FEMA, nor did the Agriculture Department's Animal and Plant Health Inspection Service yet they are all included.

This is a game of musical chairs. It shuffles and reorganizes 170,000 employees, at 22 different agencies, involving more than 100 bureaus or branches. Yet roughly 110,000 of the personnel scheduled to be moved are already together. Airport, seaport, rail security, and the Coast Guard are already part of the Transportation Department.

The legislation is loaded with items purporting to be helpful to our national security, but which may have little effect or would even hinder security. It rolls back the deadline for all airports to check every passenger's luggage, not just the few dozen that may need some additional time. It is crazy to call for the urgency of a new Homeland Security Department, and then say to our highest profile targets, ''take your time.''

It lets pilots carry guns in cockpits, but doesn't require impenetrable cockpit doors, which the Senate agreed was critically needed. What more proof do we need then on Sunday, when the locked door on an El Al airplane helped prevent the hijacker from flying into skyscrapers in Tel Aviv?

The bill is full of payoffs and surprises the House leadership included at midnight, right before they left town. Suddenly, we are helping Eli Lilly—why? Suddenly, we are helping American companies that went to Bermuda to avoid taxes. Suddenly, we are absolving private aviation screening companies from liabilities related to their September 11 failures. What does any of that have to do with homeland security?

This legislation is supposed to create an independent commission to determine what went wrong on September 11. Incredibly, the very provisions Congress inserted to establish this Commission, freeing the investigation from political hand wringing in the Select Committee on Intelligence, were dropped by House leaders after the elections. The so-called independent commission is now anything but independent.

And in nearly 500 pages, the legislation fails to contain a very important item that would be immediately helpful. No where is the National Security Council re-organized. September 11 was an intelligence failure. It was not due to lack of information. As soon as the terrorists struck we knew who they were. Immediately, we rounded up suspects here and moved into Afghanistan. Instead, the problem was a failure on the part of the National Security Council to coordinate, analyze, and deliver the intelligence to the President.

The President should be able to get well-analyzed reports of domestic threats on a timely basis. But how can he when his own National Security Council does not even include the Attorney General or the Director of the FBI? If Congress wants to re-organize, we should re-organize the Council to

include law enforcement and to make certain intelligence is shared with Customs, INS, the Coast Guard, and the others who need to know. Equally important, intelligence should be shared with and received from state and local officials, but it's not here in this bill.

Right to the point: this Senator has not waited for a behemoth bill to take action on homeland security. In the Commerce Committee, we moved several concrete measures to improve our transportation security, insofar as air and sea ports, and trains and buses that criss-cross the country.

When Americans fly this holiday, they will see huge improvements in the way security is provided. Congress just passed our legislation to close the gaps that exist at ports along America's coasts, for the first time creating a national system for securing our maritime borders.

Is there more this Senator wants this Congress to do for those on the frontlines of homeland security? Absolutely. We should provide for the security of Amtrak's 23 million passengers. We should improve security on buses and freight rail. We should finish the job at our airports and at our seaports. We should prepare our hospitals and other first responders to react to an act of bioterrorism.

But how can we when we are going to throw billions to shuffle bureaucrats from one side of Washington to the other. Designing a new logo is not going to help secure our homeland. Nor is renting office space, or buying more desks, and everything else like that. We will be paying more for nonsense redecorating than arming those on the front lines.

We have our priorities messed up. A new Department of Homeland Security is unnecessary. And the worse case is for the Department to be set up and our country lulled into thinking we are all safe and secure. A September 11 could still easily happen again.

Mr. FEINGOLD. Madam President, I regret that I am unable to support the Department of Homeland Security bill. While this reorganization may make sense, it should not have come at the expense of unnecessarily undermining our privacy rights or weakening protections against unwarranted government intrusion into the lives of ordinary Americans.

We need to be better able to review and identify critical information, take more rapid steps to address terrorist threats and, when necessary, share information quickly with local law enforcement. I had hoped that the proposed creation of a new Department of Homeland Security would have focused on those priorities.

Protecting the American people is the number one responsibility of our government. As a result of the tragic events of September 11, we all recognized that a major review of our government was needed. As we have debated the need for, and the details of, the new Department of Homeland Security, I have been guided by two principles: Will this reorganization make all of us safer? And will it preserve our liberties as Americans? Unfortunately, while there is much that is good in this bill, there are a number of critical areas where the bill simply goes too far, or falls short.

After careful review, I must conclude that this bill is not well thought out. The American people would benefit from the Congress paying closer attention to the details of this new version of the bill. This proposal threatens to erode the fundamental civil liberties and privacy of all Americans. It does not ensure that the new Department will be able to effectively communicate and share information with agencies like the FBI. It is weighed down with special interest provisions that have nothing to do with the creation of the new department. It does not give our first responders all of the tools and information necessary to protect our communities. It lacks adequate civil rights oversight, and it needlessly undermines the employment rights of the dedicated workers in this new Department who will be protecting all Americans. At times, the proposal reads like a dusted off copy of an earlier administration wish list, much of which has nothing to do with our fight against terrorism.

We need not unnecessarily sacrifice treasured civil liberties and privacy in order to be secure. I fear that the bill we are voting on today will authorize the federal government to maintain extensive files on each and every American without limitations. The data mining provisions in the bill encourage retired Rear Admiral John Poindexter's massive government effort to create a computer file on the private life of every American. The Total Information Awareness system now under development needs active congressional oversight, particularly in these early days of the program. Rather than giving further authorization to this kind of effort in this bill, we should be demanding that the administration immediately suspend the Total Information Awareness initiative until Congress has conducted a thorough review and refrain from implementing this program in the new Department.

In addition, the present proposal, in a section about cyber-security, actually creates a sense of insecurity for all of us. The Federal Government would have the right to obtain the contents of our private computers without adequate judicial oversight. This bill weakens important safeguards on government access to our e-mails and information about what we do on the Internet without the need for a court order. The Department should be focused on protecting us from our enemies, not on snooping on innocent activity.

While the bill does make some progress toward enhancing communication among many agencies that are charged with protecting Americans, it falls short in ensuring that the essential work of agencies like the FBI will be adequately shared with and utilized by the new department. Overall, the proposal fails to enable the new department to be a full participant in the intelligence community.

While our public safety must be our highest priority, we should not turn a blind eye to the bottom line. And we should not aggravate our budget problems by adding expensive special interest provisions that have nothing to do with this new department.

Special interest provisions in the bill would cap liability for drug companies for vaccine additives, give the Secretary of the new department broad authority to designate certain technologies as so-called ''qualified anti-terrorism technologies,'' thus entitling the seller of that technology to broad liability protection no matter how negligent the seller, and apparently earmark the university-based homeland security research center for Texas A&M.

All of us know that local law enforcement, fire fighters, and other first responders are on the front lines in the fight against terrorism. The Department of Homeland Security needs to ensure that Federal, State and local law enforcement agencies, fire fighters, and other first responders are able to work together to adapt and respond to the evolving challenges of terrorism. Unfortunately, the new department is not organized in a manner that provides the maximum possible help to those on our front lines. A Department of Homeland Security must ensure that it provides our local first responders with the necessary information, tools, and resources that are required to adapt and respond to the evolving challenges facing our First Responders.

I am disappointed that my bill, the First Responder Support Act, introduced with the Senator from Maine, Ms. COLLINS, is not part of the present proposal. It had been included in the Lieberman bill, but was stripped out of the bill last week without any warning by the House leadership. The First Responder Support Act will help first responders get the information and training they need from the Department of Homeland Security, and that measure will be a top priority for me in the next Congress.

I am also concerned with the proposal's disdain for the public's right to open government. The bill would undermine the protections of the Freedom of Information Act and exempt the proposed department's advisory committees from the open meetings requirements of the Federal Advisory Committee Act. Current law already provides adequate protection for sensitive information. The broad language of this bill is far too sweeping.

Finally, I believe that while this bill includes some civil rights oversight, it offers weaker protections than are found in other federal agencies. Steps should have been taken to strengthen

the Civil Rights Office in the new department by requiring that the head of that office be subject to confirmation by the Senate and therefore accountable to the Congress and the American people. The bill should have designated an official in the office of the Inspector General to fully investigate allegations of civil rights violations. This bill also should have included stronger protections for the Americans who will be working in this new Department and protecting our Nation. Congress owes these Americans the same employment rights that other public servants enjoy.

We must not forget that we are having this debate because of what happened on September 11. We need to learn from September 11 and ensure that we do not fall victim to a similar tragedy in the future. I believe that we could have given the American people a Department of Homeland Security that would ensure their safety and security, and protect their civil liberties. Unfortunately, this bill has too many provisions that unnecessarily jeopardize our basic freedoms, and I cannot support it.

Mrs. LINCOLN. Madam President, I rise tonight to strongly support the creation of a Department of Homeland Security. By consolidating the agencies responsible for protecting our borders and infrastructure, we can make significant progress in ensuring the security of the American people, and this body would be remiss if we were to fail in passing this critical legislation before we adjourn.

Just this week we've learned that Osama bin Laden is still alive and still posing a threat to American interests at home and abroad. Recent activity and communications by his al-Qaida terrorist network, which we have seen reported in the media, suggest that the threat is as serious today as it was 14 months ago. These are glaring reminders that the War on Terrorism is far from finished and that we must be vigilant both at home and abroad to protect and defend this Nation.

I also want to reassure all Arkansans that the creation of this Department is not the only step in the protection of this Nation. Homeland security must be an ongoing process as we respond to new threats and the inevitable needs to correct deficiencies in this legislation—including modifications to this department over time. I intend to continue to seek any and all ways that we can increase the security of our homeland.

As I said in remarks on the Senate floor last week, I would like to state for the record my disappointment with some provisions that were added by the House of Representatives in the final hours without any opportunity for debate.

Three provisions in particular give me pause: waivers that the administration will be able to use to grant Federal contracts to companies that reincorporate offshore to avoid paying U.S. taxes; provisions that would broaden limits on lawsuits against vaccine makers to manufacturers of other vaccine components, covering still-pending litigation; and highly specific criteria that would be used to designate universities as part of a homeland security research system. A few of other provisions added by the House have merit, but they deserve an open debate. For example, I believe that we need to limit the liability of companies that make ''qualified anti-terrorism technology'' against claims arising from acts of terrorism, but this issue deserves more debate. We also ought to limit lawsuits against companies that manufacture aviation security equipment. It's unfortunate that these provisions, which may be perfectly worthy legislative remedies, have been slipped in to the bill without full consideration by Congress. I certainly hope each of these provisions will be revisited and fully debated next year.

Again, I'm deeply disappointed by some special interest provisions that were added to the homeland security bill. However, I believe that the necessary creation of a Department of Homeland Security outweighs the special interest provisions added to this legislation and I am proud to aid in its creation. I'm casting my vote in order to serve the higher good of protecting the American people from present and future terrorist threats.

Mr. LEVIN. Madam President, I am a strong supporter of creating a new department for homeland security, and I was glad to be able to cosponsor the bipartisan legislation that passed out of the Governmental Affairs Committee in July of this year. But this legislation, now, falls so short of the promise of that committee-passed bill, that I am compelled to vote no. The legislation the Senate will pass tonight has numerous unrelated and inappropriate special interest provisions, omits numerous related and appropriate homeland security provisions, and fails to address probably the most central question to our security the coordination and sharing of information between the CIA and the FBI.

The homeland security bill that we are debating today is a dramatic departure from the bipartisan legislation that passed out of the Governmental Affairs Committee.

The new bill now has numerous provisions that no one had seen until the Thompson amendment was presented to the Senate late last week, and too many of the provisions have less to do with homeland security and more to do with the access of special interests.

One of these provisions provides liability protection for pharmaceutical companies that make a mercury-based vaccine preservative that may cause autism in children.

Another provision guts the Wellstone amendment, which would prohibit Federal agencies from contracting with corporations that have moved offshore to avoid paying their fair share of U.S. taxes—taxes that are used for important security agencies such as the FBI, Coast Guard, Customs Service, the INS, and the Border Patrol.

Another provision provides an earmark to Texas A&M University for research.

At the same time the Thompson amendment added weakening and special interest provisions like these, it deleted important provisions that would enhance our homeland security—including a grant program for additional firefighters, a program to improve the security and safety for the Nation's railroads, and a program to improve information flow amongst key Federal and State agencies with responsibility for homeland security. The bill completely removes key areas that we had come to bipartisan agreement on at the committee level such as important language relative to foreign intelligence analysis and the Freedom of Information Act, FOIA.

Finally, it hands the President a blank check with regard to so-called reforms of the civil service.

The over-reaching by the Republicans to include special interest provisions and to exclude strong bipartisan provisions is nothing less than shocking. The exclusion of strong bipartisan provisions addressing key issues with respect to homeland security is nothing less than dangerous to our security.

Let's back up and look how we got to where we are today. Senator LIEBERMAN initiated legislation to create a new Department of Homeland Security last year shortly after the September 11 terrorist attacks. We had hearings on the proposal and the first committee markup, and at that time, President Bush opposed the creation of a new Department. As a result, the vote to report the bill we reported from Governmental Affairs was along party lines, with all of the Democrats, including myself, voting for it and the Republicans voting against it.

In the spring, President Bush changed his mind and put forth his own proposal for a new department. We in the Governmental Affairs Committee then worked on a compromise committee amendment, merging most of what the President wanted with the committee-passed bill. We reported that to the floor at the end of July. A great deal of time went into crafting that bill. Chairman LIEBERMAN held 18 hearings on various issues dealing with homeland security. We had a two day mark-up; we considered dozens of amendments; and we passed the bill out of the Governmental Affairs Committee by a 12–5 vote. We ultimately came up with what I believe was a good bill.

However, the bill before us today takes some major step backwards.

For one, this bill muddles the issue of responsibility for foreign intelligence analysis at precisely the time we should be clarifying it. The intelligence issues we face are some of the most important issues in this reorganization. Many of us on the Intelligence Committee have been taking a

hard look at possible intelligence failures before 9/11. Whether or not these failures, if they hadn't occurred, could have avoided 9/11 could be the subject of endless speculation, and that is not the point. The point is, we need to do a better job of coordinating our intelligence. We need to give those who do coordinate our intelligence the resources that they need, and we need to better define their roles and responsibilities. The Governmental Affairs Committee passed bill contains language I offered with respect to the new Department's role in gathering and analyzing intelligence on possible terrorist attacks in the United States. My language clarified the intelligence gathering functions and assigned responsibility. The language in the Thompson amendment leaves the intelligence community without clearly defined roles and creates the possibility for unnecessary and costly duplication of efforts. We cannot afford that kind of situation post 9/11.

Let me explain. Right now we have an office at the CIA called the Counter Terrorist Center or CTC, where all information, regardless of source, about international terrorism is sent and analyzed. Whether it is obtained overseas or in the U.S., the CTC is the central place for counter terrorism intelligence.

The CTC, which has 250 analysts, receives 10,000 incoming intelligence reports a month about international terrorism from the State Department, Customs, local law enforcement, FBI, INS, and a range of other sources. Representatives from the FBI, Department of Defense, Department of State, Department of Justice and other agencies that are involved in collecting and receiving information about international terrorism, work at the CTC with CIA analysts. One of the questions we faced in the Governmental Affairs Committee was how the responsibilities of the new Department in terms of intelligence gathering and analysis related to the ongoing role of the CTC.

My language in the Governmental Affairs passed bill kept the principal responsibility for analyzing information about international terrorism at the CTC. Under my language, the CTC would receive all foreign intelligence, regardless of source, and would be primarily responsible for its analysis. As defined by the National Security Act, 50 U.S.C. 401(a), ''foreign intelligence'' is ''information relating to the capabilities, intentions or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.'' My language makes it clear that the principal responsibility for collecting and analyzing information about international terrorism would be at the CTC.

Under the Committee-passed bill the new Department of Homeland Security would have a directorate of intelligence that would be responsible for the receipt and analysis of all information relating to acts of terrorism in the United States including the foreign intelligence analyses from the CTC, as well as information and analyses relating to terrorist activities of U.S. persons or organizations. The new directorate would be responsible for linking all that information and analyses to an assessment of vulnerabilities to acts of terrorism on U.S. soil.

Under the Governmental Affairs Committee bill, the new Department would, therefore, not only be responsible for the domestic terrorism intelligence analyses, but it would fuse foreign intelligence analyses with the domestic intelligence analyses and obtain an assessment of vulnerabilities to terrorism existing in the U.S. In other words, the new Department would, as many have used the phrase, ''connect the dots''—intelligence analyses, foreign and domestic, and U.S. vulnerabilities.

By maintaining the role of the CTC in international intelligence and adding the role of the new Department in the overall analytical responsibility with respect to terrorism in the United States, we would avoid duplication and redundancy.

The Thompson amendment includes language that would appear to duplicate the CTC at the new Department, and I cannot support that.

Duplicating the responsibility of analysis of foreign intelligence would only waste valuable and limited resources and undermine our objective of getting the best counter terrorism intelligence we can get. According to the Congressional Research Service, the number of experienced and trained analysts ''tends to be in short supply.'' We just don't have the resources or the people to duplicate analyses of foreign intelligence. It is important not to duplicate the CTC's capability, but to strengthen it and keep the primary responsibility for the analysis of information about international terrorism, from wherever obtained, in one place.

Another reason that I am voting against this bill is because the Bennett-Levin-Leahy compromise with respect to the Freedom of Information Act, a compromise that the administration supported at the Governmental Affairs Committee mark-up, is not in this bill.

One of the primary functions of the new Department will be to safeguard the Nation's infrastructure, much of which is run by private companies. The Department will need to work in partnership with private companies to ensure that our critical infrastructure is secure. To do so, the homeland security legislation asks companies to voluntarily provide the new Department with information about their own vulnerabilities, the hope being that one company's problems or solutions to its problems will help other companies with similar problems.

Some companies expressed concern that current law did not adequately protect the confidential business information that they may be asked to provide to the new Department from public disclosure under the Freedom of Information Act. They argued that without a specific statutory exemption they would be less likely to voluntarily submit information to the new Department about critical infrastructure vulnerabilities.

We crafted a compromise to put into statute important protections established in case law. The resulting compromise would protect from public disclosure any record furnished voluntarily and submitted to the new Department that:

First, pertains to the vulnerability of and threats to critical infrastructure, such as attacks, response and recovery efforts;

Second, the provider would not customarily make available to the public;

Third, are designated and certified by the provider as confidential and not customarily made available to the public.

The Bennett-Levin-Leahy compromise made clear that records that an agency obtains independently of the Department are not subject to the protections I just enumerated. Thus, if the records currently are subject to disclosure by another agency, they would remain available under FOIA even if a private company submits the same information to the new Department. The language also allowed the provider of voluntarily submitted information to change a designation and certification and to make the record subject to disclosure under FOIA. The language required that the new Department develop procedures for the receipt, designation, marking, certification, care and storage of voluntarily provided information as well as the protection and maintenance of the confidentiality of the voluntarily provided records.

The Bennett-Levin-Leahy compromise is not included in the Thompson amendment. Instead, the bill cuts back on FOIA access by the public by expanding the type of information that the new department can keep from the public. The language in this bill could result in the issuance of rules by the new Department based on information not included in the rule making record. It could prevent the Federal Government from using critical infrastructure information in a civil suit seeking to protect public safety. Finally, the language in the Thompson amendment could result in a criminal penalty against a whistle blower who leaks the kind of information presented to the new Department on critical infrastructure.

The principles of open government and the public's right-to-know are cornerstones upon which our country was built. With this bill, we are sacrificing them in the name of protecting them. The Bennett-Levin-Leahy compromise would have balanced the need between openness and security to protect these principles.

I will also be voting against this bill because of the civil service provisions

that President Bush is calling ''flexibility'' but that I consider an unnecessary blank check. There are really two issues here, one concerns collective bargaining, and the other concerns the civil service in general.

Under existing law, the President can issue an executive order excluding any agency or subdivision of an agency from collective bargaining if it is involved in a matter of ''national security.'' For example, in January of this year, the President issued an executive order which took collective bargaining rights away from hundreds of Department of Justice employees, many of them clerical workers involved in civil issues under the label of ''national security.''

But even without the national security exception, under current law, in an emergency, the new Department could waive collective bargaining rights, because under 5 U.S.C. 7106, ''nothing, in the chapter establishing collective bargaining rights, shall affect the authority of any management official of any agency . . . to take whatever actions may be necessary to carry out the agency mission during emergencies.'' In addition, current law prohibits federal employees from striking under any circumstances.

The Thompson bill would allow the President to waive collective bargaining rights, whether or not there is an emergency, as long as he gives 10 days notice and sends a written explanation to Congress. This provision does not provide a standard under which the President's authority is to be exercised. So in the most extreme example, under this provision, the President could remove the collective bargaining rights of every single employee who was transferred into the new Department. That is unacceptable. What we tried to do in the Governmental Affairs Committee bill was to allow workers with collective bargaining rights transferred into the new Department to maintain those rights if their job descriptions did not change. Given the President's authority to act in an emergency under current law, I believe that protected our national security without unnecessarily trampling on rights of employees.

The Thompson amendment also allows the Secretary of the new Department to alter civil service rules. If the Secretary does so, then the employee unions would have 30 days to review the changes and make recommendations to the Secretary. If the Secretary doesn't agree with those suggestions, he or she could declare an impasse and send the dispute to federal mediators. After another 30 days, the Secretary could go ahead with the changes, regardless of what the mediator suggests. The President argues that this process gives the unions a say in any changes, but the reality is that the unions have no real substantive remedy to the Secretary's proposed changes. No matter how much the employees and unions oppose the new rules, how much they fight against them, in the end, the Secretary has unilateral power to issue the rules under the Thompson amendment.

I supported creating a Department of Homeland Security from the beginning—like many of my Democratic colleagues well before the President came on board. It's disheartening that the President and the Republican leadership couldn't accept the bipartisan bill reported by the Governmental Affairs Committee and work with that to develop a bill without the major flaws described above. It's also distressing indeed that the President and the Republican leadership chose to use the Homeland Security Department legislation as a vehicle for unrelated special interest legislation while leaving behind a number of very important security-related provisions.

I would have been happy to stay here to work out the differences in this legislation and develop the strongest legislation possible. But with this vote, now, that is an impossibility. So, I hope in the next Congress to work with my colleagues who share my views on some of these provisions to make some needed changes to this legislation.

Let me add one more thing about how far astray we have gone with this legislation. While the President has been holding out on passage of this legislation in order to get the authority to waive collective bargaining rights for employees at the new Department, the key agencies in the Federal Government that are at the front lines of protecting our homeland have gone underfunded in this fiscal year. According to the House Appropriations Committee Staff: while we have authorized $38 billion for homeland defense, we have actually appropriated only $640 million to the new Department and other agencies; while we have authorized an additional 200 immigration inspectors and 200 immigration investigators, to date we have appropriated no money for these positions; and while we have authorized $520 million for hospital emergency rooms, we have only appropriated $135 million. The Republican leadership in the House has failed to send us the appropriations bills for fiscal year 2003 that would increase funding for the Customs Service, the Border Patrol, the Coast Guard, the FBI, the CIA—all of the agencies we need to have additional resources to stave off or adequately respond to a terrorist attack. That is the unfortunate final chapter to this story. By not taking up the appropriations bills for next year, we are delaying the delivery of desperately needed dollars to the very agencies charged with protecting us from terrorist attacks. The misdirection of priorities involved is harrowing.

Mr. KOHL. Madam President, today the Senate will finally pass a homeland security bill. This debate began in the Senate with Senator Lieberman's efforts in the Government Affairs Committee last Spring, and it ends today with the Senate left with no choice but to pass the House of Representative's version of the bill. This is an imperfect bill, and it has come to this point through an imperfect process. The desire to create a domestic agency capable of protecting Americans from terrorism is bipartisan—even universal. Unfortunately, the creation of the bill to do that has been partisan and destructively political.

Few of us have had a chance to consider this new proposal carefully. And what we have found has not been encouraging. The House version of the homeland security bill includes too many special interest provisions slipped in at the last minute. The Daschle-McCain amendment, which I supported, would have eliminated the most egregious of these, but the Senate narrowly rejected it. It is shameful that some used this vital Government reorganization legislation to pay back unrelated political debts.

I also must go on record strongly in opposition to the bill's provisions on Federal employees and their rights to organize a union and exercise their rights as members of a union. The President's authority to manage the Federal workforce has never been an issue before now. No one claimed that if the President had more flexibility over the Federal workforce that the September 11 attacks would have been avoided or that new work rules would have made it easier for the CIA and FBI to exchange information. Again, these unprecedented restrictions on workers' rights were inserted in must-pass legislation. Again, it is shameful that this vehicle was used to pursue a political agenda.

The House bill, however, at its core does take some needed steps to make us all safer. The United States must better focus its counter-terrorism efforts if we are to avoid future attacks. Too many agencies and organizations inside the Government share responsibility for responding to terrorism domestically. The old saying has been quoted on the floor many times during this debate, but is worth doing it one more time: ''When every one is in charge—no one is in charge.'' By making one Cabinet level agency in charge of Homeland Security we will have only one person in charge. The bureaucracy underneath the Secretary will have only one unifying priority. The advantages of that change cannot be overestimated.

However difficult the crafting of the homeland security legislation has been, it was the easy part. Now we face the difficult and monumental task of actually putting the parts together into a whole greater than its sum. The offices that make up the Department of Homeland Security cannot forget the other important missions they perform. Organizations like the Coast Guard and the Animal and Plant Health Inspection Service have valuable missions outside of their homeland security function that cannot be overlooked.

The Congress's work on homeland security should not stop here. As the transfer of offices begins, there will no doubt be changes necessary. Congressional oversight is more important now than ever. With this bill Congress has decided that the Executive Branch needs to take homeland security more seriously. But Congress needs to take it seriously, too. That means giving up our short-term political games in order to work together—Republican and Democrat, White House and Congress—to build a bipartisan, functioning agency that will deliver all Americans the security they deserve.

Mr. KERRY. Madam President, since September 11, 2001, many in Congress have been assiduously working to create a Department of Homeland Security, and I am pleased that today we are finally completing our work. After the terrorist attacks on New York and Washington it became clear that to thwart future attacks on the United States the Federal Government would have to do a better job gathering and coordinating intelligence. Since September 11 I, along with several colleagues, have believed that a reorganization of the Federal Government is critical to improving the security of this country. Though the President and many Congressional Republicans initially opposed this major reorganization, there is now consensus on the need to create a new department.

It is imperative that we move quickly and urgently to reorganize the Federal Government. Vulnerabilities exist in our homeland security infrastructure and we should not squander a single day addressing them. An independent task force, chaired by former Senators Gary Hart and Warren Rudman, recently advised that ''America remains dangerously unprepared to prevent and respond to a catastrophic attack on U.S. soil.'' There is also new evidence that Osama bin Laden is alive and recently recorded an audio tape. We must act now to create this agency and to ensure that the United States Government is doing everything in its power to better protect its borders, coasts, cities, and towns.

The Transportation Security Agency continues to play a vital role in our domestic security policy under this legislation. At no time in our Nation's history has increased security for our transportation infrastructure been as critical, and I am confident that as part of this new department the TSA will perform up to task and help ease the fears many Americans have concerning the safety of our airports, trains, and ports.

The legislation also address the impending baggage screening deadline. Although the Congress mandated a December 31, 2002 deadline for screening all baggage at airports, deploying and installing the necessary devices for the over 400 airports has proved to be a monumental challenge and it is clear that many airports are unable to meet this requirement. I am pleased that this legislation includes a common sense provision to extend the deadline for the major airports and strictly monitor their progress in screening baggage. The extension through December 31, 2003 will also give the TSA more time to properly train and deploy the 22,000 federal baggage screeners necessary to staff the devices and oversee the screening process. Rushing this process in anticipation of the deadline would have seriously compromised the effectiveness of the enhanced security measures.

Also included in this legislation is a provision that will allow financially strapped airlines to purchase ''war risk'' insurance from the Government at a reasonable cost, alleviating some of the costs the industry has incurred after September 11. This provision is critically important, as many airlines have been forced to spend upwards of $100 million to insure their planes against war and the continued threat of terrorism. Tens of thousands of aviation workers have lost their jobs because of the financial crisis in the industry. It is my hope that Government issued insurance will help expedite the recovery of this important sector of our economy.

As Chairman of the Oceans, Atmosphere and Fisheries Subcommittee, which has jurisdiction over the Coast Guard, I want to make a few comments about the Coast Guard provisions in the legislation. The Coast Guard is comprised of approximately 36,000 military personnel, roughly the size of the New York City Police Department. Recently passed legislation will expand the Coast Guard to 45,500 military personnel by the end of this fiscal year. Expansion is important to homeland security when you consider that the Coast Guard must patrol and protect more than 1,000 harbor channels, and 25,000 miles of inland, intra coastal, and coastal waterways that serve more than 300 ports. The Coast Guard is also responsible for a number of non-homeland security missions such as search and rescue, maintaining aids to navigation, marine safety, marine environmental protection and fisheries law enforcement.

I am pleased that this legislation does not split up the Coast Guard. The Coast Guard is a multi-mission agency with personnel and assets that are capable of performing a variety of missions with little or no notice. The legislation preserves this flexibility by keeping the Coast Guard in tact. In addition the bill ensures that the Coast Guard receives the proper attention it deserves in the new Department by requiring the commandant of the Coast Guard to report directly to the new Secretary. The commandant has this authority within the Department of Transportation, clearly he should have the same authority in the Department of Homeland Security.

Since September 11, the Coast Guard has had to divert resources from its non-homeland security missions in order to beef up homeland security. I asked the General Accounting Office to document the change in Coast Guard missions since September 11 and to make recommendations on how best for the Coast Guard to operate under the ''new normalcy'' post September 11. The GAO just released its report and they note that many of the Coast Guard's core missions, including enforcement of fisheries and other environmental laws, are still not back to pre-September 11 levels. The GAO recommends that the Coast Guard develop a long-range strategic plan for achieving all of their missions, as well as a means to easily monitor progress in achieving these goals.

Many of us are concerned, that the traditional non-homeland security missions of the Coast Guard will suffer once the agency is transferred. In response to these concerns this bill contains safeguards that will ensure that non-homeland security missions will get done. I look forward to working with the Coast Guard to ensure these missions are getting done. Search and rescue, oil spill response and fisheries law enforcement are important and we cannot afford to ignore or under fund these missions.

This bill also includes a study on accelerating the Integrated Deepwater System, a long overdue modernization of Coast Guard ships and aircraft that operate off-shore in the deepwater environment. The Coast Guard is operating World War II-era cutters in the deepwater environment to perform environmental protection, national defense, and law enforcement missions. Coast Guard aircraft, which are operated in a maintenance intensive salt water environment, are reaching the end of their useful lives as well. Besides high operating costs, these assets are technologically and operationally obsolete. The Integrated Deepwater System will not only reduce operational and maintenance costs, but will significantly improve upon current command and control capabilities in the deepwater environment. I support this study. I look forward to reviewing the results of this study next year and if acceleration makes sense, supporting that well.

While I support much of what this legislation does and while I believe we should quickly move forward to create the Department, I have serious concerns with particular provisions of the bill. First, I am extremely disappointed that this legislation provides the administration with the authority to rewrite civil service laws without guaranteeing that Federal workers will receive fair treatment without regard to political affiliation, equal pay for equal work, and protection for whistleblowers. The hallmark of civil service is protection from political influence through laws designed to ensure the independent hiring, promotion, and firing of employees based exclusively on merit. And by allowing the administration to rewrite the civil service laws

without guaranteeing these protections and without meaningful labor union participation, we are putting these important protections at risk.

I am also troubled by a provision in this legislation that gives the President essentially unfettered discretion to forbid Department of Homeland Security employees to belong to unions if he determines that is necessary not only for the interest of national security but also to protect the Department's ability to protect homeland security. I do not object to working to reform how government operates, to make it easier to manage and more effective. But what has been proposed in this legislation is not an improvement in the system, it just takes rights away from workers.

One of the most troubling provisions in this legislation deals with protecting critical infrastructure information that is voluntarily submitted to the Department, a worthy goal and one that I strongly support. After all, companies will be unwilling to turn over information about possible vulnerabilities if doing so would make them subject to public disclosure or regulatory actions. To encourage companies to provide this valuable information to the Department, the legislation would exempt the information from public disclosure under the Freedom of Information Act. The reason for my concern, is that the definition of information is so broad that it could include any information that a company turns over to Department of Homeland Security. What this means is that information that is currently available to the public would be barred from release if it is labeled by the company as critical infrastructure. One can easily imagine a company turning over incriminating documents to the Government so that it would not be accessible by anyone else. I am discouraged by inclusion of this provision, because earlier in this debate we developed a compromise that more narrowly defined what information could be exempt from FOIA, one that protected critical infrastructure information without opening up a loophole for companies to avoid Government regulation and public disclosure.

I am concerned by how the Immigration and Naturalization Service will be treated in the new Department under this legislation. For years the INS has been badly in need of reform and it seemed that creating the Department of Homeland Security would provide an opportunity to make improvements in enforcement and provide better visa and processing services. Under the Lieberman proposal to create the Department of Homeland Security, there was an Under Secretary for Immigration Affairs who would act as a central authority to ensure a uniform immigration policy and provide effective coordination between the service and enforcement functions. The Republican legislation unfortunately does not include an elevated immigration function headed by one under secretary, and instead buries the immigration enforcement function within the ''Border and Transportation Security'' division and places the immigration services function with the Deputy Secretary of Homeland Security.

There is no easy split between border enforcement and services. For example, countering schemes for wrongful entry is not just a border challenge, it requires close coordination among all units within immigration responsibilities. Both functions rely on shared information and intelligence. I am afraid, that with two people interpreting immigration law and policy there are likely to be conflicting interpretations, a situation that could exacerbate the current coordination and communications problems that exist within INS.

I am extremely concerned that this legislation includes liability protections inserted by the House for manufacturers of anti-terrorism technology and childhood vaccines. The new provisions allow the Secretary to designate equipment and technology used by the Department as official ''anti-terrorism technology.'' In the event of a terrorist attack this designation will prevent injured parties from seeking compensation against manufacturers of such technology, even if a manufacturer exercised gross negligence in marketing its product. The same is true for manufacturers of childhood vaccines who will be exempt from liability if a child dies or sustains injury as a result of negligence stemming from the inclusion of a ''component or ingredient'' in any vaccine listed under the Vaccine Injury Table. This provision is absolutely unconscionable. We should not give manufacturers an incentive to experiment with questionable formulas or risky ingredients for vaccines which are intended to immunize children from disease. Likewise, we should not give manufacturers of anti-terrorism technologies any incentive to sell a product they know to be below par.

Another provision added by the House would remove Senate-approved legislation to bar Government contracts with corporations that have moved their headquarters offshore to avoid U.S. taxes. The Republicans say that this provision will unnecessarily interfere with our national security. Well, I believe that it also affects our national security when corporate use of tax havens and loopholes is at an all-time high. Various estimates show that this sort of tax evasion is costing the government tens of billions of dollars a year which means that tax burdens must be higher on law-abiding citizens and small businesses that pay by the rules. To remove this sound provision at the last minute is not only bad policy, it also insults the memory of Senator Wellstone, who worked so hard to ensure that this provision was passed.

Despite my concerns with particular provisions in this legislation, I do support the creation of the Department of Homeland Security and believe it is an important element in our efforts to protect the American people from terrorism.

Mr. CRAPO. Madam President, providing for homeland security and securing our Nation against the threat of terrorism must continue to be our foremost challenge. However, many of my Senate colleagues and I recognize the budgetary strains caused by the mounting expenditures of our limited resources—and the potential future costs—of responding to the multiple and varied threats of terrorism. Our State, county, and local agencies are struggling to fund the prevention and mitigation of every imaginable attack on our citizens and our critical infrastructure. Further, providing multi-million dollar allocations at the Federal level to prevent or mitigate all perceived threats to homeland security, or to respond to each terrorism incident, could in itself bankrupt our national economy.

The best management decisions at all levels of Government and industry on allocating scarce resources to the war on terrorism need an effective analytical approach to help understand the risks and to help improve the strategic and operational decisions to address those risks. Most current approaches to analyzing the ''terrorist threat'' are limited to addressing the vulnerability of—or what will happen to—critical infrastructure if it is attacked. These ''vulnerability analyses'' generally produce long lists of security-related deficiencies and equally long checklists of expensive things to do to correct the deficiencies, but they do not help communities appropriately allocate scarce resources, people, time, and money, in the context of an organization's strategic-level goals and objectives. A more robust approach is needed to support decision-making, one that can enable Government officials and private company executives to characterize the risks of rare, high-consequence events; to identify those that pose the greatest threats; and to best evaluate mitigation alternatives.

Mr. GRAHAM. Would Senator CRAPO yield a minute of his time?

Mr. CRAPO. Yes.

Mr. GRAHAM. Recognizing the need for better decision support, the leaders of Miami-Dade County established late last year a team comprised of representatives from the departments of police, fire, emergency management, general services, computer and communications services, seaport, aviation, and administration. They were tasked to work in concert with a consultant and a national laboratory to develop a process for defining, identifying, and evaluating physical and cyberterrorism threats and vulnerabilities; developing a consistent basis for making meaningful comparisons among risks to county assets so that the most important risks can be addressed first; using the structure of the process to develop strategies and associated tactics for mitigating threats and vulnerabilities; and

prioritizing mitigation activities so that the biggest gains for the resources spent are implemented first, resulting in the fastest possible reduction in risk for the limited resources available, including not only dollar resources, but the key resources of people and time. The initial work of the team, a pilot project, has been successfully completed, and it has generated considerable interest both in Florida and in Washington.

Mr. DURBIN. Would Senator GRAHAM yield a minute of his time?

Mr. GRAHAM. Yes.

Mr. DURBIN. Argonne National Laboratory, The DecisionWorks, Inc., Idaho National Engineering and Environmental Laboratory, and Miami-Dade County would like to build upon the results of the pilot project to fully develop and to implement a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources to the War on Terrorism. The development of this risk-based prioritization process would be based on the methodology and results of the successful pilot project, and the capability developed in the original pilot would be further enhanced by the physical security, cybersecurity, critical infrastructure, homeland security, decision analysis, and systems engineering expertise resident in the project team.

Specifically, the purpose of the proposed risk-based prioritization program for Homeland Security would be to develop and deliver a process for helping decision-makers in both the public and private sectors to assess the likelihood of a successful terrorist attack on critical infrastructure and other assets; to understand the safety, economic, and other consequences of a successful attack; to formulate and evaluate alternatives for reducing or mitigating the risk of a successful attack; and to select a portfolio of alternatives that prioritizes the allocation of scarce resources to meet the threat of terrorism. Using risk-based prioritization to manage non-traditional risks like terrorism would have four important benefits. It would provide an objective, defensible method for deciding how to allocate resources, people, time, and money, across all risks and organizational units. It would align resource allocations with an organization's strategic objectives and its willingness and capacity to accept risk. It would provide a way to evaluate the costs and benefits associated with various alternatives for mitigating risk, from physically removing the source of risk to actively retaining the risk internally. It would improve the quality and relevance of information available to managers at all levels of the organization.

Mr. CRAPO. Would Senator DURBIN yield a minute of his time?

Mr. DURBIN. Yes.

Mr. CRAPO. The original amendment that Senator LIEBERMAN submitted to the underlying bill, H.R. 5005, to establish the Department of Homeland Security, contained a section that would have established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology. Recognizing the successes of this Miami-Dade County pilot project and the tremendous contribution that a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources to the War on Terrorism, Senator DURBIN and I offered an amendment that would have enhanced and strengthened this risk assessment function. This amendment would have required the Department of Homeland Security to establish a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security response. It also would have authorized $15 million in appropriations for Fiscal Year 2003, and such sums as necessary in subsequent years, for the development of the risk-based prioritization process. Unfortunately, the current version of the Homeland Security Act before the Senate does not contain our amendment.

Mr. DURBIN. Would Senator CRAPO yield a minute of his time?

Mr. CRAPO. Yes.

Mr. DURBIN. Although our amendment was not included, clearly the risk-based prioritization process we have described has significantly benefitted the local community in which it has been tested. Would Senator THOMPSON concur that a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security response should be given serious attention by the new Department of Homeland Security?

Mr. THOMPSON. Would Senator DURBIN yield a minute of his time?

Mr. DURBIN. Yes.

Mr. THOMPSON. As ranking member on the Senate Governmental Affairs Committee, I appreciate your bringing this project to the committee's attention. I am confident that the Department of Homeland Security will give it fair consideration when reviewing grant applications in the coming years.

Mr. CRAPO. Senator DURBIN, Senator GRAHAM, and I thank the Senator for his consideration and support.

Mr. HATCH. Madam President, it has long been obvious that homeland security was the most critical issue facing our nation today. I am pleased and proud to speak today on the compromise that this body has struck to approve of this measure through landmark legislation. We are finally in a position to give the President the tools he needs to fight the war against terrorism with every resource that this great nation can muster. Our country will be safer because of the enormous hard work and patriotism shared by members on both sides of the aisle.

The final bipartisan compromise is something that we can all be proud of. It incorporates a crucial compromise on labor rights. I always have believed that the President must be given the ability to hire and retain the very best people to do the work of keeping our country safe. While the final version of the bill gives the President sufficient flexibility to effectively manage the employees in the new Department of Homeland Security, it also provides sufficient procedures to protect the rights of workers. This strikes, in my view, an appropriate balance.

I also am pleased to note that the bill maximizes the new Department's ability to take advantage of the tremendous resources and expertise of America's private sector. It is perfectly clear that America's businesses will play a vital role in enhancing our nation's security. Private businesses, after all, own and operate most of our infrastructure, and provide most of the cutting edge technologies that will support our nation's defense efforts. The bill helps the private sector help our nation by crafting some reasonable protections from frivolous tort litigation, and such a measure will ultimately save lives.

This legislation incorporates my proposal to stiffen the criminal penalties for cyberterrorism and to provide law enforcement agencies with new tools to use in emergency situations involving immediate threats to our national security interests. The cyberterrorism section of the bill also provides statutory authorization for the Office of Science and Technology located within the National Institute of Justice of the Department of Justice. The bill strikes language, contained in earlier versions, that would have provided OST to be ''independent of the National Institute of Justice.'' Accordingly, I understand subtitle D to place operational authority over OST—as authorized by the bill—in the NIJ Director in the same manner and to the same extent that the NIJ Director currently exercises over OST—as it currently exists—and that the NIJ Director's authority over grants, cooperative agreements, and contracts for science and technology research and development, and the publications that disseminate the results of that research and development remain unchanged by this bill. Furthermore, I wish to make clear that I do not understand the administrative language in the bill that provides that certain publications decisions ''shall rest solely'' with the Director of the Office to affect the bill's overarching—and controlling—provision that expressly places the new Office ''under the general authority of the Assistant Attorney General.''

The bill likewise incorporates a drastic reorganization of the Immigration and Naturalization Service, abolishing the INS as it currently exists and separating the enforcement and service responsibilities within the new Department. This new structure recognizes

the importance of both functions, allows for coordination, and confers appropriate funding and management to both enforcement and services. This top-to-bottom reorganization of INS is something that numerous members of the Judiciary Committee have worked tirelessly with me to do and to do right. The Homeland Security Bill also includes a valuable provision that will significantly reduce the availability of explosives to certain prohibited persons, including terrorists and felons. Senator KOHL and I have worked hard on this provision, which will improve law enforcement's ability to track explosives purchases and help prevent the criminal use and accidental misuse of explosives materials.

I want to conclude by taking a moment to discuss the ban on the TIPS program that was inserted in the final version of the Homeland Security Bill. Let me make clear that none of us wants an Orwellian version of Big Brother watching over us at all times. I made my own concerns on this issue very clear to Attorney General Ashcroft during an oversight hearing a few months ago, as did other members of the Judiciary Committee. I was concerned, for example, that the Department would keep a historical database of such information, but the Attorney General assured the Committee that this would not occur. Since then, I have been gratified to learn that the Attorney General has taken our concerns to heart, implementing fundamental changes to the program that are designed to protect our privacies in a balanced manner. In fact, the Department of Justice now has committed to not include within the TIPS program any workers, such as postal or utility workers, whose work puts them in contact with homes and private property.

I think all of us can agree that some type of voluntary reporting program that permits but does not require concerned citizens to report information is appropriate. This is, of course, exactly what drives the highly successful results obtained by the popular TV program, ''America's Most Wanted.'' In fact, John Walsh, the host of that program, has publicly endorsed the concept of a TIPS program. Moreover, I fully support the Amber Alert Program, which was created in 1996 after a 9-year-old girl, Amber Hagerman, was kidnapped and murdered in Texas. This program is a voluntary partnership between law-enforcement and broadcasters to create a voluntary reporting program in child-abduction cases. The Amber Alert system recently led to the rescue of two teenage girls who were abducted in California; an anonymous tip from a motorist who responded to the program ultimately led to the girls' safe return. I am so convinced of this program's effectiveness that I recently co-sponsored legislation to create a national Amber Alert system.

In sum, we need to structure the TIPS program in a way that is responsible and effective. We do not want big government to enlist millions of Americans to snoop into the daily affairs of ordinary citizens. But, just as importantly, we need to provide an avenue for citizens to voluntarily alert law enforcement when they see things that cause them concern. It very well may be the case that the next 9/11 is averted because an accountant out walking his dog sees something unusual in his neighborhood park. We need to let that person know who he can call to report that information. As the Chairman-designate of the Judiciary Committee, I think that we will need to consider what type of voluntary reporting system would be acceptable to meet the real concerns posed by terrorist activity when we return for the 108th Congress.

We have debated this measure for many days now. I am delighted that we have finally—and successfully—come to the end of the road. By passing this legislation, we are taking a big step forward in helping to defend our nation from terrorism. I support the final compromise version of the Homeland Security Bill and hope that all of my colleagues will do the same.

Mr. GRASSLEY. Madam President, I rise today to support the Homeland Security Act of 2002, but must register my disappointment with the scope of this bill's ban on granting Federal contracts to corporate inverters.

In October of this year, Senator BAUCUS and I introduced the Reclaiming Expatriated Contracts and Profits, RECAP, Act to address the issue of inverting corporations that are awarded contracts by the Federal Government. Inverting corporations set up a folder in a foreign filing cabinet or a mail box overseas and call that their new foreign ''headquarters.'' This allows companies to escape millions of dollars of federal taxes every year. In April of this year, Senator BAUCUS and I introduced the Reversing the Expatriation of Profits Offshore, REPO, Act to shut down these phony corporate inversions. Today, our REPO bill has still not been enacted by the Senate.

You would think that the ''greed-grab'' of corporate inversions would satisfy most companies, but unfortunately it is not enough. After these corporations invert and save millions in taxes, they then come back into the United States to obtain juicy contracts with the Federal Government. They create phony foreign headquarters to escape taxes and then use other peoples' taxes to turn a profit.

Chairman BAUCUS and I offered our bipartisan RECAP bill as a complement to our earlier REPO bill on corporate inversions. For future corporate inversions, our RECAP bill will bar the inverting company from receiving Federal contracts. For the inversions that have already gotten out before the REPO bill can be enacted, our RECAP bill will make them send back their ill-gotten tax savings by forcing them to lower their bids in order to obtain Government contracts.

Unfortunately, the Government contracting ban in the Homeland Security Act of 2002 only applies prospectively to a narrow band of inversions where 80 percent of the shareholders are the same before and after the inversion. The homeland security ban bill does not address the broader range inversion transactions involving less than 80 percent of the shareholders. It also does not touch inverters that have gotten out under the wire. This omission allows companies which have already inverted to avoid millions in U.S. taxes while easily reducing their taxable profits from Federal contracts by creating phony deductions through their inversion structures. This failure to address inverted companies gives them an unfair cost advantage over competing Federal contractors that choose to stay and pay in the U.S.A.

So let me be clear. The Government contracting ban in the homeland security bill is merely a down payment on this issue, and it isn't good enough for me. The Homeland Security ban isn't half a loaf—it's barely two slices of bread. So to everyone developing or contemplating one of these inversion deals, you proceed at your own peril. We will continue to pursue corporate expatriation abuse, and the abusers who seek fat Government contracts while skirting their U.S. tax obligations. I will continue this issue in the 108th Congress and beyond. I look forward to enlisting the support of my colleagues with the Committee on Governmental Affairs as we march forward to shut down this abuse in all its forms.

Mr. BIDEN. Madam President, like many important decisions in the Senate, we are today faced with something of a Hobson's choice. I agree that the consolidation of agencies currently responsible for securing the homeland will, if done right, result in greater security for the Nation and I support establishing a Department of Homeland Security. But, in my view, it would be better for us if we were implementing this massive government reorganization more gradually. We are shifting close to 200,000 workers under the new homeland security umbrella in this bill, and it would make more sense to do so in stages. Here we are trying to do too much at once and, if history is any guide, we will be back at this department many, many times in the years to come with amendments designed to fix what we enacted in haste this year.

What we are left with is the choice of doing nothing, or taking the next best option of passing this bill and launching a new Federal agency. After careful thought, I come to the conclusion that passing this flawed bill is better than doing nothing. Consider our current structure. Today, homeland security responsibilities are spread among over 100 different government agencies. The structure of the Treasury Department provides a good example of the problem. That agency houses the U.S. Customs Service, an agency tasked with

monitoring the shipping containers that come into our country. Keeping the Customs Service in the agency concerned primarily with fiscal matters makes little sense when Customs' primary mission should know be safeguarding those imports. Or consider the Coast Guard, an agency in charge of patrolling our borders. The Coast Guard currently reports to the Secretary of Transportation. The Immigration and Naturalization Service is tasked with enforcing our immigration laws and securing our borders, yet its director reports to the Nation's chief law enforcement officer, the Attorney General. These examples are just the beginning. The need for reorganization is clear.

Modern management principles teach that the agencies and functions of government should be grouped together based on their major purposes and missions, and the bill before us accomplishes that goal. Once it is fully implemented, the Department of Homeland Security will be the one Federal agency with the responsibility of securing our borders, safeguarding our transportation systems, and defending our critical infrastructures. One agency will be charged with synthesizing and analyzing intelligence related to homeland security. One agency will be responsible for equipping and training the police officers, firefighters, and emergency medical technicians who are often the first to respond to a terrorist incident.

These are constructive organizational changes, ones that I am hopeful will help us better defend the country against attack. But should we be rushing their implementation without thoughtful consideration? During debate on this measure I voted in favor of an amendment offered by Senator BYRD that would have required the Congress and the Administration to work together to develop a staged implementation of the new homeland security agency, an implementation far more deliberate than the one we consider today. I am sorry Senator BYRD's amendment was not adopted.

Without Senator BYRD's approach, I fear we are doing things in reverse and I predict we will have to revisit this new Department's structure several times before we get it right. The government reorganization most similar to the one we consider today provides a guide. In 1947, we enacted the National Security Act and created the Department of Defense, the Central Intelligence Agency and the National Security Council. That approach still had to be revisited several more times, in 1949, 1953, 1958, and 1986, to perfect the structure.

Given the choice we now face, between the current state of homeland security disorganization and this bill's approach, I am forced to vote in favor of the bill. I do so with the understanding that vigorous congressional oversight of the new agency will be critical to insure it is not only accomplishing its primary mission of protecting our Nation but also to guarantee that the vast new authorities we give to the President here are not abused.

I will be watching to see if the administration abuses its authority over workers in this new Department. We must be wary of the potential politicization of our workforce. The employees of the new Department must be highly dedicated professionals, free from political pressure. We must be certain that the most expert and experienced employees are free to speak their minds and to act quickly and aggressively to defend our national security. They must not be looking over their shoulders, concerned about the ins and outs of Washington politics. They must be safe from the kinds of influence that could cause them to slant their analysis or trim their opinions to fit what is popular. I will be watchful that the employees of the new Department are free from the threat of political retaliation, and secure in their jobs so that they can perform their important tasks to the highest professional standards.

I support the creation of a Department of Homeland Security, and I will vote in favor of this bill today. The increased coordination and communication that may result from the new governing structures created in this bill could, if properly implemented, provide the Nation with vastly improved security. But because of the speed with which we considered this proposal, the rapid, sweeping reorganization it immediately envisions, and the prospect for abuse in several of its provisions, I fear this bill will need to be revisited several times and its implementation will need to be closely monitored by Congress if we hope to get it right. I will be closely watching the new agency's creation, and I hope each of my colleagues does the same.

Mr. DASCHLE. Madam President, we are finally about to vote on a bill to create a new Homeland Security Department. Many Senators worked long and hard to get us to this point. But one man was indispensable. He is the chairman of the Senate Government Affairs Committee, JOE LIEBERMAN. Under his leadership, the Government Affairs Committee held its first hearing on homeland security 10 days after September 11. It was at that hearing that former Senators Warren Rudman and Gary Hart, the co-chairs of a bipartisan blue-ribbon commission, shared their recommendation that the Government should create a permanent, cabinet-level Department to protect the American people from terrorism. Three weeks later, on the one-month anniversary of September 11, Senator LIEBERMAN announced his plan to create such a department. He had the vision to see what needed to be done and the patience and flexibility to work through disagreements and come up with workable, bipartisan alternatives. He also had the courage to stand his ground for months while the President threatened to veto any Homeland Security bill. I also want to thank Democrats on the Governmental Affairs Committee for standing with Chairman LIEBERMAN.

There are some who would like to rewrite the history of this effort. They want the American people to believe that Democratic opposition is the reason it has taken this long for Congress to pass a Homeland Security bill. That is simply not so. Creating a Homeland Security Department was a Democratic idea to begin with. It was disturbing to see that truth twisted in the recent campaigns. There are some who are threatening publicly to try to exploit homeland security again for partisan political advantage in the Louisiana Senate race next month. For the sake of our Nation, I hope they do not. Our war is with terrorism, not each other.

In the months since Senator LIEBERMAN introduced his bill, we have heard countless chilling reasons why a Homeland Security Department is needed. We have heard about dots that were not connected, intelligence reports that weren't shared and urgent warnings that were not heeded. I will vote for this bill because I believe a Homeland Security Department is right and necessary. I have thought so for more than a year. But we need to be honest with the American people about what this means.

I am very concerned about what I fear are false hopes and false assurances being given by some of those who came late to this cause.

Many of the same people who claimed just a few months ago that creating a Department of Homeland Security would detract from the war on terrorism now seem to want the American people to believe that creating this Department will solve the war on terrorism. They seem to want people to believe that, once we pass this bill, there is nothing else that needs to be done—no other changes that need to be made—to prevent another September 11. This is worse than wishful thinking. It is dangerous thinking. And it is not true.

Reorganizing parts of our Government in order to better connect the dots is only part of the solution. A much greater and far more comprehensive effort is still needed to protect America from terrorism. That effort will be difficult, it will be complicated, it will be costly. To pretend otherwise is a disservice to the American people.

Our public health system is still dangerously under-prepared for the possibility of future biological or chemical attacks. Our borders are still not secure as they need to be. Neither are our seaports; we still search only 2 percent of the roughly 6 million containers that are unloaded every year at America's ports. The U.S. has 150,000 miles of train track plus rail yards, bridges, tunnels, and switches that are all still vulnerable to terrorist attacks. This bill does not provide the resources to

secure them. Our food supply—domestic and imported—remains highly vulnerable to biological attacks. This bill does not change that fact.

A study last year by the Army Surgeon General warned that a terrorist attack on a toxic chemical plant in a densely populated area could kill 2.4 million people. There are more than 120 such plants in America. Even after we pass this bill, those plants will remain vulnerable to terrorist attacks. The Department of Energy estimates that there are 603 tons of weapons-grade material inside the former Soviet republics—enough to build 41,000 nuclear weapons. So far, only about a third of this material has been properly secured. This bill alone won't keep that deadly material out of the hands of terrorists who want to use it to build ''dirty bombs.'' Last year, the President's budget cut the programs that safeguard weapons of mass destruction. Fortunately, the Senate reversed that decision. It is urgent that we continue to work with Russia and with other nations to shut down the nuclear black market. In addition, we know that there were intelligence failures leading up to September 11. Yet, unlike the bill introduced by Senator LIEBERMAN and passed by the Governmental Affairs Committee, this bill leaves most critical intelligence functions outside of the Homeland Security Department. We need to do a much better job of coordinating intelligence efforts regarding terrorism—or critical pieces of information will continue to fall between cracks.

Nearly as troubling as what was left out of this bill is what was added to it at the eleventh hour. The American people should know that this is not the same Homeland Security bill that Congress was debating before the election. It was re-written in secret after the election. It has been stripped of a number of bipartisan, workable solutions that had been worked out on difficult problems. It has also been used as a Trojan horse for special interest giveaways that have little or nothing to do with making America safer from terrorism.

We offered an amendment to strip out seven of these last-minute changes—changes that have not been debated publicly. But the White House lobbied hard to keep them, and the White House won. As a result, this Homeland Security bill now rewards US companies that use Carribean tax havens to avoid paying their fair share of taxes by allowing those companies to compete for Government contracts with the Department of Homeland Security. It says to those companies: Even if you refuse to help pay for the war on terrorism, you can still profit from it. What does that say about this administration's commitment to corporate responsibility? You tell me. Better yet, tell the American people.

This bill now guts a critical part of the aviation security bill the Senate passed last year by a vote of 100 to nothing. It does so by providing special immunity for private companies that perform passenger and baggage screening at airports. It is likely to slow enactment of other new emergency transportation security rules that the Transportation Security Administration has said are essential to protect air and rail passengers, as well.

In the name of protecting Americans, this bill actually eliminates some legal protections for ordinary Americans. It grants legal immunity to countless private companies. All the Federal Government has to do is designate a company's product an ''anti-terrorism technology'' and the company can't be sued—even if it acts in ways that are grossly negligent. This bill also provides special legal protections to the maker of a mercury-based, vaccine additive that has been alleged to harm children. For parents who are involved in class-action lawsuits against the makers of that additive, this bill slams the courthouse door in their face.

This bill abandons the bipartisan effort to make workplace rules in the new Department more flexible without trampling worker protections and making workers more vulnerable to partisan political pressure. History has already shown that no one—no one—sacrificed more on September 11th than did public workers. I believe history will also show that using September 11 to justify taking away public employees' basic rights is a mistake. I regret deeply that it is part of this bill.

This bill also undermines the Federal Freedom of Information Act and community right-to-know laws. It says that any information a company offers voluntarily to the Homeland Security Department—or any information a company gives to another government entity, which is then turned over to the Homeland Security Department—is classified. And it makes releasing such information a criminal offense. You don't have to worry about shredding damaging documents anymore. If a company wants to hide information from the public, all it has to do is give the information to the Federal Government and releasing it becomes a criminal offense. This is not necessary. The Freedom of Information Act already allows exceptions for national security reasons. We will not make America safer by denying people critical information or throwing conscientious whistle-blowers in prison.

Finally, this bill authorizes the creation of a university-based homeland security research center. That sounds like a good idea. But this bill is now written in such a way that only one university in all of America is eligible to compete for the research center: Texas A&M.

We shouldn't have to be here, working on this bill, on November 19. It has been nearly 14 months since Senator LIEBERMAN first proposed creating a Department of Homeland Security. The Senate could have passed a strong Homeland Security bill, and President Bush could have signed it into law, long before the election. Democrats tried five times to break the Republican filibuster on homeland security. The reason we couldn't break the filibuster is because Republican leaders wanted to use homeland security as an election issue. They wanted to be able to blame Democrats for the impasse they created, and question the patriotism of good and decent people. As I said, for the sake of the American people and their security, I hope we have seen the last of those tactics.

I will vote for this bill because there is no doubt that we need to create a Department of Homeland Security. But we must be honest with the American people. Passing this bill does not solve the problem of terrorism on American soil. Creating a new Department of Homeland Security is only one part of the solution. A much greater and far more comprehensive effort is still needed to prevent future terrorist attacks. That effort will be difficult, it will be complicated, it will be costly. We should not pretend otherwise.

Last year, after September 11, this Senate put aside partisan differences and acted quickly to protect America from terrorism. It is deeply regrettable that much of that unity seems to have been lost, or sacrificed for partisan advantage, in the closing months of this Congress. We are capable of better. The American people deserved better. And I hope that in the next Congress, we will give them better.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. Madam President, it is a happy twist of fate that the Senator from Pennsylvania is on the floor as I rise to support final passage of this legislation, which would create the unified and accountable Department of Homeland Security that the American people urgently need to protect them.

It is a happy twist of fate because the legislative journey that brings us to the eve of adoption of this critically important legislation began on October 11, 2001, more than a year ago, but clearly a month after September 11, 2001, when I was privileged, along with Senator SPECTER, to introduce the first legislation that would authorize the creation of this Department. I thank him for joining me on that occasion and for working with us right through the road we have traveled, which has been long and taken twists and turns we never could have foreseen. We have even run into a few potholes along the way.

The important point is we are about to reach the destination, and we are going to reach it together—in a broad, bipartisan statement of support for this critically necessary new Department.

Giving credit where it is due, the journey actually began before October 11 and September 11, more than 18 months ago, when the visionary Commission on National Security in the

21st Century, led by our former colleagues Gary Hart and Warren Rudman, warned us of our vulnerabilities to terrorism with a painful prescience, and urged the creation of exactly the kind of new consolidated federal department to fight terrorism that we are about to adopt.

As I say, we have reached our destination, and that, I believe, is testament to the power of the basic idea underlying this legislation. It is also a reflection that our history changed on September 11, our vulnerabilities were exploited by our terrorist enemies, and we can never let that happen again. Those vulnerabilities remain, notwithstanding the improvements that have been made over the last year.

We recognize that protecting ourselves from terrorism will take an unprecedented commitment of people and resources. Building this Department will involve no shortage of problems, as any massive undertaking of this kind would—but we, after this initial act of creation, must be ready to improve, to support, and ultimately to protect the American people with this Department. We have no choice.

Obviously, as I have said earlier today and at other times in the debate on the bill, the measure before us is not perfect. No legislation ever is. There are parts of the legislation before us that I think are not only unrelated to homeland security and unnecessary, but unwise and unfair. Of course, we made an attempt to eliminate those provisions with the motion to strike that came very close to passing earlier today. But this is the legislative process here on Earth, not a perfect process such as that which might exist in a heavenly location. We do not always get what we want here.

Hopefully, though, through compromise, steadfastness, and hard work, the American people will get what they need. And that, I think, is what is happening with the adoption of this bill, which will occur in just a few hours.

We must remember also—to say what is clear—that this bill will be written in the law books. It is not written in stone. If we need to make changes down the road, we can and we will.

Nonetheless, all of those caveats, conditions, and concerns about certain elements of the legislation notwithstanding, we are about to be part of an historic accomplishment. It is the largest reorganization of the Federal Government since 1947, probably the most complex Federal reorganization in history, but that is what our present circumstances require to sustain our security.

When we pass this bill, we in Congress must then not turn away but turn our attention toward overseeing the Department, with a clear vision and commitment. We must provide the necessary resources, which we still have not done, not just to this Department but to all of those throughout America, the Federal, county, State, and local governments who will partner with us to protect the security of the American people.

Early next year, we will have to confirm the Department's leaders and begin to review its strategies and objectives. I look forward to playing an active oversight role under the new leadership of the new chairman of the Governmental Affairs Committee, Senator COLLINS of Maine, and in the Senate at large. Part of that oversight role must be taking great care to make sure this administration and future administrations use the authorities this bill gives them in a constructive and constitutional manner.

The important thing to say is we are ending this journey mostly together, certainly with a strong bipartisan vote. Though we have made the twists and turns and had the obstacles along the way I have referred to, the fact is, once we end this part of the journey, we begin the next phase. On that phase, I hope and believe nonpartisanship will be the rule, not the exception. I hope and believe that we will oversee and support the historic new effort to achieve homeland security in our new circumstances with as little partisanship as has been demonstrated by those of us who have been privileged to work as members of the Senate Armed Services Committee, where there are disagreements, but rarely are they partisan.

That, I hope and believe, will characterize our work in support of the new Department of Homeland Security.

I want to speak to some of the conditions this legislation will correct. As I said earlier, we have made some progress over the past 14 months in trying to close the vulnerabilities September 11 revealed. The Office of Homeland Security has been created. The FBI and CIA have begun the process of reform. FEMA has focused more resources on countering terrorism. Smallpox vaccines are stockpiled around the country. We have begun efforts to link Federal law enforcement authorities to State and local police and to give community first responders some of the guidance, if not yet the resources, they so critically need. But the fact is we remain fundamentally and unacceptably disorganized, and that is why we need to restructure in exactly the way this legislation will require.

Today, there are a lot of people and agencies in the government whose responsibilities include homeland security. Their duties often overlap. Everyone is in charge of their own domain and, therefore, no one is in charge of the overall homeland security effort.

A year ago, we came to understand tragically, painfully, that the status quo was untenable. We knew we had these gaps in preparedness, but in the aftermath of September 11, there was no agreement on how to move forward. Our Governmental Affairs Committee held 18 hearings, and over time we grew more convinced our weaknesses were so profound they cried out for fundamental reorganization.

We saw border patrol agencies that seemed unable to communicate with each other, let alone to stop dangerous goods and people from entering the United States of America.

We saw intelligence agencies, despite strong signals about a potential terrorist attack of the type we sustained on September 11, failing to put those pieces together.

We saw first responders around the country spread thinner than ever.

And we saw deviously creative terrorists acquiring and applying technology to advance their own ends—but an American government that had not yet sought to marshal the most innovative people, our people, in the history of the world to meet this life-or-death challenge.

We did not like what we saw.

So we worked hard to better organize it, to make it more efficient, to make it more focused, to create a bill that would empower a Secretary with budget authority to get the agencies involved in homeland security to work together. That is what led to our introduction of the bill with Senator SPECTER and others, including Senator CLELAND, and ultimately to report the bill out of the Governmental Affairs Committee in May.

I don't think we can count the ups and downs since then. The finished product we are prepared to vote on today is, notwithstanding the concerns I have expressed, a great leap forward for the security of the American people. It is a great achievement to have reached agreement on a governmental reorganization of this magnitude.

This is, after all, a very turf-conscious town, one in which we often speak volumes about the need for change, but just as often, probably more often, fail to deliver change. This bill will deliver change.

Former Senators Hart and Rudman, who ably led that commission I referred to, this year were asked again to head an independent task force created by the Council on Foreign Relations. The final report of the task force, released October 24, 2002, was entitled titled ''America Still Unprepared—America Still in Danger.'' I read from the conclusion.

> Quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the 21st century, security and liberty are inseparable. The absence of adequate security elevates the risk that laws will be passed immediately in the wake of surprise terrorist attacks that will be reactive, not deliberative. Predictably, the consequence will be to compound the initial harm incurred by a tragic event with measures that overreach in terms of imposing costly new security mandates and the assumption of new government authorities that may erode our freedoms. Accordingly, aggressively pursuing America's homeland security imperatives immediately may well be the most important thing we can do to sustain our cherished freedoms for future generations.

That is exactly what we will do when we adopt this legislation in a few hours.

And pursuing America's homeland security imperatives is not only critically important for future generations of Americans; let us also realize that, as we adopt and create this new Department, we set a powerful example for the nations of the world. Terrorists threaten innocent lives everywhere. When we demonstrate that we are willing and able to earn both security and more freedom, we will show free nations that they can preserve their way of life without living in fear of terror. And, equally important, we will demonstrate to those nations remaining in the world whose people are not free that they can embrace freedom and tolerance and democracy without compromising their safety.

There are few more important signals we can send by our example to the nations of the world.

In 1919, Henry Cabot Lodge said famously: ''If the United States fails, the best hopes of mankind fail with it.''

I add today, when the United States succeeds, the best hopes of mankind succeed with it. When we succeed in protecting our homeland security and preserving our freedom, we will show the way to nations throughout the world.

This evening we say to the people of America: have confidence, your government is organizing itself to protect your security. We need not accept another September 11 type terrorist attack as inevitable. It is not.

We are the strongest nation in the world. If we marshal our strength as this new Department can, no future terrorist attack such as September 11 will ever occur again.

Finally, I give credit and thanks to the Members of the Senate Governmental Affairs Committee, and to the majority staff for their passion, precision, and persistence. They were tireless, working day and night, through recesses, weekends, and holidays, and they have every right to be proud of this product of their labor: a new Department that will better protect the American people for generations. The names of the staff members, from both the Committee and from my personal staff, are:

Holly Idelson, Mike Alexander, Larry Novey, Susan Propper, Kevin Landy, Josh Greenman, Bill Bonvillian, Michelle McMurry, Kiersten Todt Coon, Joyce Rechtschaffen, Laurie Rubenstein, Leslie Phillips, Fred Downey, Adrian Erckenbrack, Yul Kwon, Thomas Holloman, Donny Williams, Janet Burrell, Darla Cassell, Wendy Wang, Megan Finlayson, and Adam Sedgewick.

I thank them all for their commitment.

I would also like to thank the numerous staff for other members who have been so helpful throughout the process. On the Governmental Affairs Committee, so many staff played an important role in this bill. On Senator DURBIN's Staff, Marianne Upton and Sue Hardesty. On Senator AKAKA's staff, Rick Kessler, Nanci Langley, Sherri Stephan and Jennifer Tyree. On Senator LEVIN's staff, Laura Stuber. On Senator CLELAND's staff, Donni Turner. On Senator CARNAHAN's staff, Sandy Fried. On Senator CARPER's staff, John Kilvington. On Senator DAYTON's staff, Bob Hall. Senator DASCHLE's staff also has contributed greatly to the enactment of this legislation; I'd like to thank in particular Andrea LaRue.

From the Office of Legislative Counsel, I'd like to thank Tony Coe and Matthew McGhie for their assistance and guidance.

I thank Senator THOMPSON, who is leaving the Senate soon—tonight, presumably—for the pleasure of his company on this journey, and the contributions he made to the historical accomplishment this legislation represents.

I yield the floor.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from West Virginia has 60 minutes.

Mr. BYRD. Mr. President, I understand the Senator from Kansas, Mr. BROWNBACK, wishes some time.

Mr. BROWNBACK. Mr. President, if the Senator would yield, yes, I would like 5 minutes, if that is possible, to speak on the homeland security bill.

Mr. BYRD. The Senator gets his time from whom?

Mr. BROWNBACK. From Senator THOMPSON. I believe he has some time remaining.

The PRESIDING OFFICER. The Senator from Tennessee has 7 minutes remaining.

Mr. BROWNBACK. I seek 5 of those 7 minutes.

Mr. BYRD. I promised to yield 5 minutes of my time to Mr. JEFFORDS, after which I would yield for whatever time the Senator from Kansas desires, after which, then, I will speak.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, Mark Twain once said. ''Always do right—this will gratify some people and astonish the rest.'' I rise today to explain why I believe voting against this bill is the right thing to do.

Of the may reasons to vote against the bill, I will focus on three—the bill's treatment of the Federal Emergency Management Agency, the bill's treatment of the Freedom of Information Act, and the process used to create this new Department.

With the passage of this Homeland Security legislation, we will destroy the Federal Emergency Management Agency, losing years of progress toward a well-coordinated Federal response to disasters.

As it now exists, FEMA is a lean, flexible agency receiving bipartisan praise as one of the most effective agencies in government. But it hasn't always been that way.

Throughout the 1980s, FEMA's focus on Cold War civil defense preparedness left the Agency ill-prepared to respond to natural disasters.

The Congressional chorus of critics decried the Agency's misguided focus and reached a crescendo after bungled responses to Hurricane Hugo in 1989 and Hurricane Andrew in 1992.

One of FEMA's leading Congressional critics, then-Representative Tom Ridge said in 1988, ''I was convinced that somewhere along the way, the Federal Emergency Management Agency had lost its sense of mission.''

Over the last decade, refocusing the agency's mission and priorities on natural disasters has left the agency well-equipped to respond to all types of disasters. FEMA's stellar response to September 11th provided this.

I cannot understand why, after years of frustration and failure, we would jeopardize the Federal government's effective response to natural disasters by dissolving FEMA into this monolithic Homeland Security Department.

I fear that FEMA will no longer be able to adequately respond to hurricanes, fires, floods, and earthquakes, begging the question, who will?

Also of great concern to me are the new Freedom of Information Act exemptions contained in the latest substitute.

Unfortunately, the current Homeland Security proposal chokes the public's access to information under the Freedom of Information Act. I ask, are we headed toward an Orwellian society with an all-knowing, secretive big brother reigning over an unknowing public?

The bill defines information so broadly that almost anything disclosed by a company to the Department of Homeland Security could be considered secret and kept from the public. Although I believe the current law contains an adequate national security exemption, in the spirit of compromise I supported the carefully crafted bipartisan Senate language contained in both the Lieberman substitute and the Gramm-Miller substitute. The current bill ignores this compromise.

The process by which we received this substitute seems eerily similar to the way the White House sprung its original proposal on Congress some time ago. Late last week we received a bill that had magically grown from 35 pages to an unwieldy 484 pages. There was no compromise in arriving at the current substitute, only a mandate to pass the substitute or be branded as weak on homeland security or, worse yet, unpatriotic.

Still more troubling, the current bill places little emphasis on correcting what went wrong on September 11, or addressing future threats. Correcting intelligence failures should be our prime concern. Instead, this bill recklessly reshuffles the bureaucratic deck.

Furthermore, as my colleague Senator CORZINE stated earlier this week, this bill does not address other vitally important issues such as security at facilities that store or use dangerous chemicals. Without provisions to address yet another gaping hole in our

Nation's security, why are we now being more deliberate in our approach?

In closing, I feel it is irresponsible to divert precious limited resources from our fight against terrorism to create a dysfunctional new bureaucracy that will only serve to give the American people a false—false sense of security. I will vote against this bill because it does nothing to address the massive intelligence failure that led up to the September 11 attacks, it dismantles the highly effectively Federal Emergency Management Agency, and creates dangerous new exemptions to the Freedom of Information Act that threaten the fundamental democratic principle of a well-informed citizenry.

I am sorry for having to take this position, but I believe so deeply in what I have said that I must do it.

I am pleased to have been able to express myself, and I thank the Senator from West Virginia, my faithful friend.

Mr. REID. Will the Senator from West Virginia allow me to direct a statement, through the Chair, to the Senator.

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

Mr. REID. I am sorry, the Senator from Kansas.

Mr. BROWNBACK. I am happy to yield to the Senator from Nevada.

Mr. REID. I want to say, because the opportunity may not be right at a subsequent time, how much I appreciate the days the Senator from West Virginia has spent on the floor on this issue. Because of my having responsibility to help move legislation along here, sometimes I was concerned it was taking so much time. But in hindsight, this legislation we are going to soon pass—it will pass sometime tonight—is better legislation. And while it may not be—484 pages may not be better, the knowledge of the American people of this legislation is so much better than if we had passed this as people wanted on September 11.

So I want to commend and applaud the Senator from West Virginia for educating the Senate and the American public about what is in this bill and what is not in this bill. As I said, this legislation will pass. But as a result of what the Senator has done over these many months about this legislation, everyone is going to be looking at what is taking place in this new agency that would not have taken place but for the persistence of the Senator from West Virginia. The American public owe you a tremendous debt of gratitude for your knowledge about legislation and, most of all, for understanding what the Constitution is all about and the role, in that Constitution, of the legislative branch of Government.

Mr. BYRD. Mr. President, if I may just respond: First of all, I thank the distinguished Senator, who is the majority whip in this body. I deeply appreciate what he has said. I appreciate very much what he has said.

May I say, in turn, that the American people don't owe me anything. But I will say this, that the American people are listening. And with respect to the resolution dealing with a war with Iraq, the American people were listening. The American people heard what we said. As a result of speeches—I made two or three speeches in that instance—as a result of those two or three speeches that I made, my office received 21,000 telephone calls, and my office received over 50,000 e-mails.

That is an indication that there is somebody out there listening, somebody cares, somebody is paying attention. That is gratifying to me. So somebody heard. And I don't pay all that much attention to the polls. I don't think they ask the right questions. What are the right questions? I don't know what the right questions are. But those polls reflect responses to questions. And whether they are the right questions or the questions that ought to be asked, I cannot say.

But I can say the American people do listen. And somebody has to fulfill the duty Woodrow Wilson was speaking about when he said the informing function of the legislative branch is as important, if not more so, than the legislative function.

I thank the Senator. I am well paid.

When Plato was about to pass away from this earthly sphere, he said:

> I thank the Gods that I was born a man.

He said:

> I thank the Gods that I was born a Greek.

And he said:

> I am grateful to the Gods for the fact that I live—I live in the same era in which Sophocles lived.

So, I am thankful to God, and to my angel mother and my father, and to the people of West Virginia, for the fact that I have had this great privilege to work in this body, now, for 44 years and I have been able to contribute. God gives me my faculties almost as they were 50 years ago, except for my feet. I was always told the first place will be your feet; your feet and legs will give way. I am finding that to be pretty true. But I thank heaven that I was able to be here, to say what I have been able to say about the resolution dealing with Iraq and the homeland security legislation.

I think we have performed a service. I said what I thought. I am on no man's payroll. I am on the people's payroll. And I wear no man's collar but my own. That may be kind of a small collar.

But, anyhow, I do what I think. I could leave here any moment and get just as big a check as I get as being a Senator because I have paid in the system, now, 50 years this coming January 3.

I am doing what I want to do. I don't have to do this. I probably ought to be home with my wife. We will be married, in another 6 months, 66 years, if the Good Lord lets me live.

But I do think the Senator from Nevada, has made a tremendous contribution himself. He has listened to what we had to say, to what PAUL SARBANES and I and the distinguished Senator from Vermont, Mr. JEFFORDS, and others have said. We have warned about this measure. We have not been in agreement with the administration in connection with this homeland security agency. We think we have legislated too fast. We think we have been in too big a hurry. We think we have paid too much attention to the polls, and that we ought to have taken more time in this body.

It is said to be the greatest deliberative body in the history of the world. It hasn't been very deliberative in this case. But I am glad that, although the intent was to pass this bill in a hurry—I was told down at White House, I say to the distinguished Senator from Maryland, Mr. SARBANES—I went down there at the invitation of the President. I am not invited very often down there. But on this occasion the President invited me down. He said:

> I have got to go to St. Louis. I can only be here a few minutes.

So we had a picture taken. All the cameras came in and took pictures. Then he sat down and said: I have this package here. I thank the congressional leaders for their input into this package.

I scratched my head. What input is he talking about? I knew the congressional leaders had not had one ounce of input into it—not one.

This thing was patched together down in the bowels of the White House by four eminent public servants—not quite perhaps up to the caliber of Thomas Jefferson and Benjamin Franklin. Who else was on that committee that wrote the Declaration of Independence? Robert Livingston. And who else? There was John Adams, and one more: Roger Sherman. So they weren't quite up to that caliber.

But this bill was the egg that was hatched down at the White House. I can just picture them walking around there with their shadows on the walls of the subterranean caverns, walking around with lanterns or candles. And they hatched this great idea down there all of a sudden to get ahead of this Mack truck that was coming down upon them fast in the appropriations bills which provided that the Director of Homeland Security would have to be confirmed by the Senate. The purpose of that was, as Senator STEVENS and I intended, Mr. Director, when the Senate confirms you, you will come before the Senate Appropriations Committee.

So much for that.

The thing that is being missed probably most in this deliberation is the fact that the Appropriations Committee and the Senate and the Congress have appropriated moneys for homeland security that will make the country far more safe than will this piece of legislation. It is going to take a year or 2 years for this legislation to be implemented and to get this thing going. In the meantime, the people who are now out there on the borders, who are protecting the nuclear facilities of

the country, the food lines, and the clean water are the same people who will be here a year or two from now when this agency is supposed to be full blown.

But the President has a year in which to send up his plan as to how this organization is to be implemented. Imagine that—a year. He has a year. In the meantime, I am afraid that the people who are out there now at midday and midnight working to secure the safety of the American people will be distracted. They are going to be worrying about where their offices are going to be; What is going to be the label over my office? Where will my typewriter be? Where is the telephone going to be? What is going to be the vision and the objective of this new agency?

These people are going to be distracted. I am afraid that is what gives the terrorist a good opportunity to work havoc in some way.

I thank the distinguished Senator from Nevada for his kind words. I also thank the distinguished Senator from Vermont who summed up in a few words, in 5 minutes, what I could say in 30 minutes, the very good reasons that we should oppose this bill. I admire him for that. I admire him for his courage, his pluck, and for his good sense. He has made my speech for me. I can just sit down. I thank the Senator from Vermont.

I thank the distinguished Senator from Kansas for his unlimited patience and for his consideration and always for his good humor.

I yield while he speaks.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 5 minutes.

Mr. BROWNBACK. Thank you, Mr. President. I thank the distinguished Senator from West Virginia for allowing me to take time previously allocated on the floor to speak.

I want to make a couple of comments about homeland security, and in particular about the INS.

I have been privileged to serve for the last couple of years as ranking member on the Immigration Subcommittee of the Judiciary Committee. Immigration is a subject on which we have focused.

We passed two major pieces of legislation already in this Congress dealing with immigration issues—trying to strengthen our borders and trying to give the enforcement agencies some better information, and also better information for the INS and the State Department about terrorists abroad before they get here. There are two good pieces of legislation that we passed.

What we are attempting to do in this bill is to restructure the INS. The reason I want to talk about the INS is that it is a troubled agency, by anybody's definition—whether you are pro-immigration or anti-immigration. I hear everybody complaining about the INS. It just does not function well from any perspective that you look at. It may be an impossible task. Some people may look at it as just impossible. We have too many people seeking entry into the country each year. The number varies. There are over 250 million entries into the country each year by people who are legally seeking entry into the country. And 1 person may come in and out 10 times. That is 10 entries. But still, you are talking about a large number of entries by people, who are not U.S. citizens, into this country each year, making this a difficult job. It is a troubled agency. It is not functioning well. We need to change it. A lot of that is put in the bill.

I am pleased about some of the ideas that I and several others put forward that are incorporated into the INS restructuring that is in the homeland security bill. There is a clear distinction between the enforcement and services functions at the INS. We recognize the importance of keeping immigration enforcement and services in the same department. Some people wanted to split them. I think that would work poorly. I think you need to have the same functions together. They are there. There are clear distinctions between the enforcement and services functions, which clearly need to be delineated, but they need to work together. Those are two positive features of this reorganization.

I must be frank as well. I think there is some failing that we want corrected in the INS restructuring portion of this homeland security bill. I am concerned that the new Department be true and coordinated well—both in the enforcement and services functions. It looks to me as if some of the restructuring may not have good lines of clear distinction in organization and functioning in the enforcement services functions the way it is set up.

I am concerned about the services component of the Department of Homeland Security being effectively coordinated with the enforcement. I am troubled about how this is set up. I have communicated those concerns to Governor Ridge, and I am hopeful that those concerns are going to be taken seriously.

I think we need strong leadership at the head of the immigration services office. It has to be a strong leader. That is a function of who is picked—not a function of how it is structured. But if we weaken that services component of it, and if we don't have somebody who has knowledge, stature, and ability to communicate this going forward, I think we are going to be left with a continuing troubled agency.

I think the leadership has to have the ear of the Secretary of the new Department. Part of my concern is this is built to the side—not built into the positive agency—to the side of the Secretary. If you do not have a strong voice there, if they do not have the ear of the Secretary, I think we are going to have some real problems in this immigration portion.

We want strong and effective immigration enforcement. We don't want the invaluable services of citizenship, family, and business petitions, asylum, and the many public service components of immigration to be forgotten. We don't want that. We want a strong enforcement, and we want to provide homeland security. But we also are a nation of immigrants. We need to take people who are legally here and build this society.

We want strong security. We should never compromise our values or lose sight of the immigration benefits to our culture or to our economy. It is critical that we monitor the development of this new Department to ensure the immigration services component receive the attention and resources it deserves.

I have shared these concerns with Governor Ridge. I am comforted by the fact that he is aware of those facts.

One of the other aspects I want to make note of is the issue of the immigration courts. I want to quickly commend this legislation for keeping the Executive Office for Immigration Review within the Department of Justice. It didn't move over homeland security. I think permitting the Attorney General to retain control of the immigration court system is going to be positive.

I think those are some problems we need to revisit. We should do so in the future.

It is time we pass the homeland security legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, we have come to the end of a long, long road. For nearly 5 months, this Chamber has engaged in discussions about homeland security. But for nearly as long a time as that, this Congress has not engaged in seeing to it that there is actual funding to make our people any safer from the threat of another horrific terrorist attack. It has been over 4 months—over 4 months—since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God created all of creation. He created the universe. He created the Earth. He created man in 7 days, in the Book of Genesis. The greatest scientific treatise that has ever been written can be found in that first chapter of Genesis. Go to it. Those of you who are scientists, look over that one, the first chapter of Genesis. Do you have any problem with the chronological order in which the creation was made possible, as set forth in that chapter? No. The scientists won't have any objection to that chronological order, not any. I have four physicists in my own family, and they agree with that, that chronological order.

So 6 days, and God rested on the Sabbath.

How long has it taken for us to pass a regular appropriations bill? The last regular appropriations bill came out of the House 4 months ago. It has been over 4 months since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God would not have gotten very far in the creation of this universe, would He, if it had taken Him that long at that pace?

We have talked a lot about homeland security. We have plenty of talk. We just open our mouths, and it just rolls out—rolls out. So talk is cheap.

But we have done very little. We have not given the cities and municipalities, the police, the firemen, the hospital workers, the first responders who are on the front line, we have not given these people one red cent—I will say, one copper cent—not one, to help them keep us safer from the madmen within our midst—in 4 months. Now, get that.

Nothing was said about that during the campaign. The President went all over this country—from the Pacific to the Atlantic, to the Canadian border, to the Gulf of Mexico—talking about this great bill here, this magnificent product of human genius in the bowels of the White House. Not one word was said about these appropriations that have been passed by the Senate and the House that have been on the President's desk—$5.1 billion, in one instance, made available to the President for homeland security. All that was needed was the President to flourish the pen, attach his signature, and designate that money as an emergency. The Congress has already done it. He said no.

So homeland security has gone wanting. That money has been there—$2.5 billion for homeland security. That is two and a half dollars for every minute since Jesus Christ was born, two and a half dollars for every minute.

So it has been a little over a year and 2 months now since America was jolted from its tranquility by the noise, the smoke, the flames of two exploding commercial airlines as they smashed into the Twin Towers in New York City. Yet in these intervening months—except for the initial help that we provided to New York and to Washington to aid in closing the hemorrhaging wounds of economic disruption and human devastation caused by the terrorist attacks—not enough has changed here at home.

It is true that we have chased bin Laden across the landscape of Afghanistan. We have spent over $20 billion chasing him around in Afghanistan. And now we don't actually know where he has been chased to. We have chased bin Laden across the landscape of Afghanistan and probably cleansed that nation of the training camps for terrorists, for now.

We have made some progress, I am sure, in some disruption of the al-Qaida network worldwide, but no one in this Chamber, and no one in this city, can look the American people in the eye and say to them: ''Today you are much safer here at home than you were 14 months ago.'' I can't do it.

This Government continues to send out first one alert and then another. Practically the whole litany of top people in this administration has been out there at one time or another saying: Something may happen here tomorrow. Something may happen here within the next week. So the Nation has been put on alert after alert. So I ask the question: Are you better off than you were a year ago?

Because of reckless disregard for the reality of the threat to our domestic security, this administration and many in this Congress have taken part in an irresponsible exercise in political chicanery.

The White House has pressured its Republican colleagues in the Congress—and some of the Democrats as well—to reject billions of dollars in money which could have added to the tangible safety of the American people.

This White House has stopped—stopped—this year's normal funding process in its tracks. I have never seen such action before. This White House has stopped this year's normal funding process in its tracks. This year—since 1976, when the beginning of the fiscal year was changed from July 1 to October 1—only two appropriations bills have passed the Congress and been sent to the White House—only two. That is the most dismal record since 1976; the most dismal record, only two bills. What a lousy record.

But this Senate Appropriations Committee reported out all 13 appropriations bills to the Senate no later than July—the best record in years. And yet only two bills have been signed by the President. Why? Because this administration, down there in the White House—we all know who is in the White House—has told the Republican leadership in the other body: Don't let any more appropriations bills pass.

This White House has stopped this year's normal funding process in its tracks and even turned back funds for homeland security in emergency spending bills that could have shored up existing mechanisms to prevent or respond to another devastating blow by fanatics who hate the United States.

They do not hate the United States because of its freedoms. The President says they hate us because of our freedoms. I do not believe that. I think they hate us because of our arrogance.

They have done this plain disservice to the people. They have done this plain disservice to the people in order to gain some perceived political advantage in a congressional election year, and in order to be able to say that they were holding down spending.

So they kept 11 of the appropriations bills from coming down to the White House. But you watch this administration after the turn of the new year. You will never see such fast operating on appropriations bills as we will see then. We have done our work on these bills. But for the most part they have not been sent to the White House because the administration said: We don't want them.

The administration told the Republican leadership in the other body: We don't want them. Hold them up.

But once this new leadership takes over in January, you watch how quickly they will say: Now send those bills on down. We want to show the American people how fast we can appropriate money, how fast we can move appropriations bills—when all the while the ''we'' they are thinking about is the ''we'' that has held up those appropriations bills and not let them come to the White House.

In order to avoid criticism of the too meager dollars for homeland security, this White House suddenly did an about-face and embraced the concept of a Department of Homeland Security. Don't send us your appropriations for homeland security. Send that bill up there because that is a great political hat trick. Send us the bill on homeland security. Make the people think they are going to have more security in their schools and their homes and their businesses and on their farms.

So the people are being offered a bureaucratic behemoth complete with fancy top-heavy directorates, officious new titles, and noble sounding missions instead of real tools to help protect them from death and destruction. How utterly irresponsible. How utterly callous. How cavalier.

With this debate about homeland security, politics in Washington has reached the apogee of utter cynicism and the perigee of candor. No one is telling our people the plain, unvarnished truth. It is simply this: This Department is a bureaucratic behemoth cooked up by political advisors to the President to satisfy several inside Washington agendas.

One, it is intended to protect the President from criticism and fault should another attack occur.

Two, it is intended to eliminate large numbers of dedicated, trained, experienced, loyal, patriotic Federal workers so that lucrative contracts for their services may be awarded to favored private entities. Watch. Watch and see.

Three, it would be used to channel Federal research moneys and grants to big corporate contributors without the usual Federal procurement standards that ensure fair competition and best value for the tax dollar.

Four, it will foster easier spying and information gathering on ordinary citizens which may be used in ways which could have nothing whatsoever to do with homeland security. And now with this new bill, with the blue ribbon that will be tied around it, the fancy trimmings that will be around that bill when it goes down to the White House and then to be invited—how wonderful, how glorious that will be, to be invited. I haven't been down there in so long. It is called the Rose Garden—into that Rose Garden, just to be there in the presence of the chief executive, the Commander in Chief, when he signs this bill into law, this new bill which showed up only last week on the doorstep of the Senate, how wonderful that will be, how utterly wonderful that will be.

Insult has been added to injury by provisions that further exploit the already shamefully exploited issue of homeland security with pork for certain States and certain businesses. My, my, my, how low we have sunk.

Senators seem to be unaware or unconcerned about the transfer of power that will take place under this bill. Some of the Senators who have walked down to that table and who have voted aye on this bill and who voted no on amendments that have been offered to improve it, they will have room, they will have time to remember. They will have time to remember how they were stampeded into voting without asking questions.

The most glaring example can be found in title XV of the bill which requires the President to submit a reorganization plan to the Congress which would outline how he plans to transfer to the new Department 28 agencies and offices authorized by the Congress. The authority granted to the President under this title is very broad. The President can reorganize, streamline, or consolidate the 28 agencies and offices being transferred.

The President can determine which functions of the agencies being transferred will be moved to the new Department and which will be left behind. The President can determine how the functions transferred to the new Department will be delegated among the officers within the new Department. The President can set any effective date he wants for transferring these agencies within a 12-month transition period. The President can change his plan at any time before the plan takes effect.

The only requirement placed on the President is that heavy charter, that great burdensome charge; namely, that he inform the Congress of his plans before those plans take effect. My, what a heavy burden. The Congress does not have the opportunity to approve or disapprove of the President's plan. We have no mechanism by which to object to the President's plan. The Congress is locked out by our own doing, forced to watch from the sidelines as the administration implements this new Department.

What a great Senate this is, in this hour of God. The Senate, I have to say, has let the people down. The Senate has grown timid. It has lost its nerve. I cannot for the life of me understand why the Congress would cut itself out of the loop like that. Congress is authorizing the President to reorganize, consolidate, or streamline any one of the 28 agencies and offices being moved to the new Department and to delegate functions among the officers however he wishes. And the only requirement placed on the President, as I say, is that he humble himself enough just to let the Congress know what he plans to do.

After we pass this bill, the Congress will have abdicated its role in the implementation of the new Department. We might as well just dive under the bed and say: Here goes nothing.

I find this to be unacceptable and unwise. Other Senators should agree.

Last September I offered an amendment that would have allowed the Congress to stay involved and to help provide for a more orderly, efficient, effective transition of agencies to this new Department. The Congress would have had a mechanism in place to guard against abuses of this authority that we are granting to the President, if my amendment had been adopted.

The distinguished Senator from Minnesota, presently sitting in the chair, voted for my amendment. But the Senate rejected my amendment—incidentally, the Senator who sits in the chair had, I will say, a kinsman who signed the Constitution of the United States. How many signers were there? Thirty-nine. He was one of the signers; his name was Jonathan Dayton. How old was he? He was the youngest member of the convention, the youngest, younger than Charles Pinckney. I believe Charles Pinckney was the next youngest. Dayton was the youngest, 24 years old, I believe, 25 or 26—24, I believe—choosing instead to trust the administration to handle the implementation of the new Department without congressional input.

That decision, in my view, was a disservice to our States and the people who sent us here to look out for them. With passage of the new House bill, we have in effect washed our hands of any further ability to affect decisions regarding the way the Department is organized or the functions that it will perform.

The Nation will have this unfortunate creature, this behemoth bureaucratic bag of tricks, this huge Department of Homeland Security, and it will hulk across the landscape of this city, touting its noble mission, shining up its new seal, and eagerly gobbling up tax dollars for all manner of things, some of which will have very little to do with protecting or saving the lives of the American people.

Maybe in 5 years or so it will sort out its mission and shift around its desks enough to actually make some real contribution to the safety of our people. I sincerely hope so. But if the latest tape from bin Laden is to be believed, we won't have time for all of that.

If the latest threat assessment from the FBI can be believed, we will experience something catastrophic before that new Department even finishes firing all of the Federal workers it wants to get rid of.

What does it take to wake us up? What does it take to make the gamesmanship cease? When will we stop the political mud wrestling and begin to wrestle with the most potentially destructive force ever to challenge this Nation?

Let us hope that when the gavel bangs to close down this session of Congress, it will awaken us to all of the dreadful consequences of continued posturing and inaction.

I know that this administration, with its newfound majorities in both Houses of Congress, will quickly pass the remaining 2003 bills, which will provide at least some modicum of real security for our people as soon as Congress reconvenes in January of the new year. They will want to claim that they can get things done.

Although I deplore the motivation and the gamesmanship behind such tactics, I wish them well and pledge my help. It is long past time for us to finally do our best to prevent another deadly strike by those who hate us and wish us ill. Terrorism is no plaything. Political service is no game. Political office is no place for warring children.

The oath of office which we take is no empty pledge to be subjugated to the tactics of election year chicanery perpetrated on a good and trusting people.

Yesterday, a Federal appeals court upheld broad, new powers given to the Justice Department to investigate and prosecute people suspected of terrorism. The ruling of the special appeals court, which was created by Congress to oversee secret Government actions involving national security, will make it easier for the Justice Department to spy on U.S. citizens by circumventing traditional constitutional protections. This court decision gives the executive branch a green light to run roughshod over the civil liberties of innocent Americans in the name of national security.

The Justice Department argued that the expanded authority it is claiming is nothing more than what Congress authorized in last year's USA Patriot Act, in which Congress tore down the protective walls that had previously separated foreign intelligence and domestic law enforcement activities. A three-judge appeals panel agreed with the Justice Department, concluding that the new antiterrorism law did have the effect of weakening procedures that safeguard our civil liberties.

The Justice Department now wields dangerous, new power to conduct secret surveillance on American citizens for potential criminal prosecutions. This expanded power is a license for abuse, and Senators should be concerned about the consequences for our constitutional system.

But any of us who wants to point his finger at the administration for overreaching its authority should also place that blame squarely on himself or herself, because it was the actions of this Senate that set the wheels in motion.

As the Washington Post points out in an editorial entitled ''Chipping Away at Liberty'' from this morning's paper:

> The fault for the problem . . . lies not with the court, but with Congress, for the carelessness and haste with which it passed the USA Patriot Act in the wake of the September 11 attacks, and for its unwillingness to push back against Bush administration excesses.

The editorial goes on to explain that this new authority grants the Government one more sphere in which it gets

to unilaterally choose the rules under which it will pursue the war on terrorism. . . .Which parts of this system need to be reigned in is a profoundly difficult question, one that Congress seems depressingly uninterested in asking. This is a war, the administration has said, without a foreseeable end, so the legal regime that handles these cases may become a permanent feature of American justice. Such a regime should be enacted deliberately, after careful inquiry by legislators—an inquiry that has so far scarcely begun.

Mr. President, this Senate passed the USA Patriot Act in October of 2001 by a vote of 98 to 1. I voted for it. Ninety-eight Senators, including myself, this Senator from West Virginia, voted for the bill. Perhaps many of us now realize that we may indeed have acted too hastily to hand over this unchecked power to the executive branch.

During the debate on that bill, one Senator stood up and pleaded with us to take the time to consider the legislation more carefully before we unleashed such a dangerous and uncontrolled threat to our civil liberties. Senator FEINGOLD stood alone in the path of that Mack truck that was barreling through the Senate, warning that many of us would come to regret our decision to stand out of the way and cheer on the rumbling big rig.

I believe that Senator FEINGOLD was right to caution the Senate during that debate. I believe we did pass the Patriot Act too hastily. As the media continue to uncover more stories about the lengths to which this administration will go to shroud its actions in secrecy, I hope other Senators will also come to the conclusion that these issues deserve more attention from this Congress.

During this debate on homeland security, I have tried to convince the Senate to slow down and look closely at this legislation before giving the executive branch such a broad grant of virtually unchecked authority. I have tried to draw attention to some of the problems in this bill in the short time that we have had to examine it. I have tried to persuade Senators not to give into the political pressures that have loomed over our consideration of this bill before and after this year's election.

So I hope that Senators will heed the warnings and vote against this bill, although I do not really believe that will happen. I have seen the handwriting on the wall, and I know that this bill has the votes to pass. But I hope that those Senators who worry that we are acting too hastily will have the courage to vote against the bill.

There will be a lot of work to be done in the next Congress to clean up the mess we will make by enacting this homeland security legislation. Congress will have already cut itself out of the loop with regard to the implementation of this new Department. It will be incumbent upon individual Members of the Senate to attempt to shed light on the administration's actions whenever possible. It will be the responsibility of individual Members to fight to defend the constitutional powers of Congress and the constitutional protections of our personal privacy and civil liberties.

There will be a lot left to do in the name of homeland security during the next Congress. I hope each Senator will remember that when he or she votes on this bill, and I hope the Senators do not treat this vote as something to put behind them. When Senators cast their votes on final passage of this homeland security legislation, I hope that they will understand and think about what that vote will mean a year from now when their voters ask them: Where were you when the Senate approved this bill?

I urge those Senators who are troubled by this legislation, as I am, to vote with me against the bill. I know where I will be when the Senate votes to hand over this power, and my people will know that I did what I could to put the brakes on this process. I hope that other Senators will also send a message to the people they represent about where they stand by voting against the final passage of the homeland security bill.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. DURBIN). There are 12 minutes remaining.

Mr. BYRD. I reserve that time.

FAREWELL TO SENATOR FRED THOMPSON

Mr. President, with the closing of the 107th Congress, the Senate will be saying farewell to a very talented and successful and effective colleague, a Senator who in a relatively short period of time has made important contributions to this Chamber and to our country.

Senator FRED THOMPSON has accomplished so much that it is difficult to realize he has only been here since 1995. As a Senator, he has served on the Senate Finance Committee, the Senate Select Committee on Intelligence, and the National Security Working Group. In 1997, he became chairman of the Committee on Governmental Affairs where he conducted a number of important and controversial investigations.

As a national lawmaker, Senator FRED THOMPSON has played an important role in developing this Nation's trade policies, including pushing for an export control policy to protect our country's national security and proposing legislation to curb the proliferation of weapons of mass destruction. He has been an active and important advocate for campaign finance reform. He has authored legislation to protect Government computers from outside infiltration. He has been a major force for regulatory reform.

As chairman of the Governmental Affairs Committee, he helped lead the fight to reduce waste, fraud, and abuse in Government, and along with Senator FRIST, Senator THOMPSON secured funding to establish a School of Government at the University of Tennessee named in honor of University of Tennessee graduate and one of my favorite Senators of all time, Senator Howard Baker.

He is one of my favorite Senators of all time. He is a statesman. He is not just a politician. He is a statesman. If it had not been for Howard Baker, for his statesmanship, the Senate would never have approved the Panama Canal treaties. It would never have done it. It required a two-thirds vote, and all the polls showed the Senate was swimming upstream. The majority of the people were against those treaties. But Howard Baker stepped to the plate, at a political sacrifice to himself, and stood for those treaties.

I was majority leader of the Senate at that time. Howard Baker was the minority leader. I could not have gotten those treaties approved but for the strong support of Howard Baker. It was kind of the same way for Howard Baker as his father-in-law, Everett Dirksen. If Everett Dirksen had not stepped to the plate, the Senate would never have passed the 1964 Civil Rights Act. It was Everett Dirksen who joined with Mike Mansfield and that legislation was passed.

I should point out that Senator THOMPSON has not always been successful in his efforts. At times, his has been a lonely voice and a lonely vote against popular measures that went against his sense of federalism and his concern that the National Government was encroaching upon the rights of the States. Even when I opposed him on some of these issues, I admired the strength of his convictions.

I will miss him and his courage, and so will the people of Tennessee. In 1996, the people of Tennessee cast more votes for him than for any previous candidate for any office in the history of the State. Now how about that? That is pretty remarkable.

In addition to his many legislative accomplishments, perhaps the reason Senator THOMPSON seems to have been with us for a longer period of time than is reflected by his actual years as Senator is that he is so associated in the public mind with politics.

In 1973, when I was the majority whip in the Senate, FRED THOMPSON served as minority counsel on the Senate Select Committee on Presidential Campaign Activities, known as the Watergate Committee. He was a very effective staff person. I can remember his work.

Many people have also seen him on the silver screen portraying a CIA chief, an FBI Director, a White House Chief of Staff. I am not about to ask which of these roles best prepared him for his real-life role as a Senator.

This has truly been a remarkable career for the son of a used car salesman who worked his way through law school while raising a family. I applaud FRED THOMPSON, and I congratulate him. We will miss Senator THOMPSON.

I have watched him during this short time when he has been in the Senate. I

have admired him. I admire his bearing, his manner of talking, moving about the Senate and doing his work. He is not a show horse here in the Senate, but he has been a workhorse. I do not know of any enemies he has made in this Senate on either side of the aisle.

We will miss him. I understand he will be resuming an acting career. I can only say that the Senate's loss is Hollywood's gain. All of us look forward to seeing him as he resumes his earlier career as a fine actor. I do not watch TV much, and I have not been to a movie in the 50 years I have been in Congress. I have not been to a movie, not one. I have watched some good movies on television. Alistair Cooke, for example, used to have good movies. If I know FRED THOMPSON is going to play, I will make a point to go and see him.

RETIREMENT OF SENATOR PHIL GRAMM

Mr. President, seldom in all my years in the Senate have I encountered a Senator for whom my feelings and attitudes have covered such a wide spectrum as they have for Senator PHIL GRAMM. They have ranged from intense opposition, as they did in our battles over the Gramm-Rudman legislation, to close cooperation as we worked together during his 6 years on the Appropriations Committee.

Always prepared, always thoughtful, he was always ready to speak on any subject at the drop of a hat. PHIL GRAMM was always ready to talk and, oh, was he ready to talk. I quickly learned he can talk about anything, everything, and do so intelligently, and always with a good humor, in the best of good humor.

It was during our years together on the Appropriations Committee that I learned of his respect for the Senate and its role in our democratic Republic. He once referred to his work in the Senate as doing the Lord's work. He has often referred to it as doing the Lord's work. I liked that. I wish I had said that first.

He has also demonstrated an understanding that fundamental power of Congress is the power of the purse. For that, I applaud Senator GRAMM, and I thank him.

In addition to our work together on the Appropriations Committee, we have worked together on important national legislation, including the highway reauthorization bill, TEA–21. I saw that he has a remarkable talent for grassroots organizing.

I watched him here today as he moved around the Chamber. I knew what he was doing. He was talking with some of these Democratic Senators. I knew what he was talking with them about. Someone said: That Senator, you see Senator GRAMM, that Democratic Senator will vote against the amendment by Mr. DASCHLE and Mr. LIEBERMAN. I knew what he was doing, but I respected that.

During a difficult struggle on that highway bill, TEA–21, PHIL and I met with representatives from a number of organizations interested in highway construction. I believe my friend from New Mexico was in on some of those meetings.

Mr. DOMENICI. I was opposed.

Mr. BYRD. He was opposed. When the Senator from New Mexico is opposed, I pay even more attention to him. Anyhow, after each meeting, our friends would walk away with plans for spreading the good word in favor of our plan, charged up with a pep talk by PHIL GRAMM. He also has a talent, a great talent, for negotiating. Even when he wins a negotiation and you have lost everything, he can make you feel like you prevailed and he lost everything. Suddenly, on the way home you will pinch yourself and say, wait a minute, that is not quite the way it was.

So this is PHIL GRAMM, a biting, partisan bulldog one minute, and a gentle, cuddly puppy the next. At times, it is difficult to decide if you should jump back in fright or reach out and pet him.

He is one of those rare Members of Congress who has had a powerful impact not only upon this institution but on our country and its policies. Just last year, the National Review pointed out that no Member of Congress—not Jack Kemp, not Newt Gingrich, not Bob Dole—played a more decisive role in launching the Reagan agenda.

PHIL GRAMM is perhaps this country's most consistent and strongest promoter of smaller taxes and smaller government. The legislation he has authored, sponsored and promoted, from Gramm-Latta to Gramm-Rudman, to the Bush tax cuts, give the lie to Emerson's observation that a ''foolish consistency is the hobgoblin'' of little minds. It is also the hobgoblin of big minds.

PHIL GRAMM definitely has a big mind. I have learned so much from him. I certainly learned a lot about his ''mamma.'' Among other things, I learned she receives Social Security, that she carries a gun, and she knows how to use it. That is what PHIL says.

I certainly learned more than I ever wanted to know about Dicky Flatt, the hard-working print shop owner in Mexia, TX, and how the Government keeps taking away his money to spend on someone else.

I learned do not mess with PHIL GRAMM. He has an intellect second to none. He has a tenaciousness and he has a razor tongue second to none. But throughout it all, let me assure my colleagues that my disagreements have never lessened my respect and my admiration for the man and Senator. He was always straightforward and fair and always sincerely dedicated to the cause he was espousing or supporting, and that no doubt was because his positions on the most important issues facing our Nation were always deeply thought out and heartfelt convictions; not simply political calculations. That is why I came to respect his integrity, his wisdom, and his courage.

In his book, ''Profiles in Courage,'' Senator John F. Kennedy wrote:

> Surely in the United States of America, where brother once fought brother, we did not judge a man's bravery under fire by examining the banner under which he fought.

Senator GRAMM and I have fought under different banners, but we have always fought under and for the same flag. Whatever he did, whatever he said, whatever he promoted, it came from his deep, undeviating love of the United States of America. While he is always ready to tell you what is wrong with our country, he will never hesitate to tell you what is right with it. We will miss him.

There he is. I did not realize that while I was talking about the man, he was sitting here listening, but I can say to the Senate that on more than one occasion, Senator PHIL GRAMM has come to my office on difficult matters, in which I may have had some interest, as in mountaintop mining or the highway bill, whatever it was, and in many instances he has proposed a compromise which enabled us to get over a mountain, get over a hump, and get on with the business.

I appreciate the contributions he has made to legislation in this body. I do not know of any Senator who has been a more knowledgeable and able legislator. The Senator has exemplified reverence for the Constitution, respect for the Senate, and an unbounded love for his country.

While he will no longer be my colleague, PHIL GRAMM will always be my friend.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader.

Mr. DASCHLE. Mr. President, what is the order?

The PRESIDING OFFICER. The majority leader has 5 minutes. The minority retains 2 minutes of time.

Mr. DASCHLE. Mr. President, I will have more to say about our departing colleagues tomorrow, but let me share as well my admiration for our colleague Senator GRAMM. He is a hardened legislative adversary, but I have a great deal of respect for his ability and the manner with which he conducts himself on the floor. I have fond memories of the many years we have served together.

I recall so vividly our first days together riding a bus as freshmen Congressman in 1979. So we wish him well. As I said, I will have much more to say about him and about our colleagues tomorrow.

I wanted to come to the floor simply to express what I have said on several occasions. It is with some misgivings that I will cast my vote tonight in favor of the creation of this Department. I do so, fearful we have not done the kind of work on this legislation I wish we could have. I do so even though language has been inserted in the bill I think we are going to regret, but I do so recognizing we have to start rebuilding our infrastructure, reorganizing our Government, recognizing

more consequentially the threat that is now posed by terrorism within our borders as well as without. I intend to support this legislation with every expectation that this is the first in a long series of steps which must be taken to better prepare our country and our Government. I have no doubt we will be back next year addressing many of the shortcomings we will be incorporating in this legislation tonight.

This bill still needs work. This Department needs work. But as much work as it needs, not to have done anything in recognition of the tremendous challenges we face as a country is something I could not accept either. So I will support it, recognizing as well that it is critical for us to provide the funding—and there is no funding. In fact, if I have any regret about what we are doing tonight, it is that we are not passing the requisite resources needed to get started in an earnest and successful way. We are going to have to wait until next year. The more we wait, the harder it will be. The more we wait, the more complicated our mission. The more we wait, the more underfunded will be our effort in so many other ways.

I regret we are not willing to commit the resources that match the infrastructure we will be authorizing tonight.

Finally, let me say there are many people who deserve recognition and thanks. I acknowledge especially the leadership of Senator JOE LIEBERMAN, the chair of the Governmental Affairs Committee. He and others on the committee have done an outstanding job getting us to this point, whether or not you agree with all of the components of the bill. I congratulate Senator THOMPSON as the ranking member. They worked oftentimes together, and where they could not work together, they worked in a way that was not disagreeable.

I thank the whole Governmental Affairs Committee for the work they did in getting us to this point over the many months they have been involved.

Let me say I also thank Senator BYRD. He and I may come down on different sides tonight, but he has done the Senate and the country a real service. I have admired him for many reasons for many years. But his powerful advocacy of his position, the extraordinary effort he has made to enlighten us, to educate us, to sensitize us, and to ensure that we are fully aware of all of the concerns he has about the creation of this Department is something for which we all ought to express our deep indebtedness to him. I thank him for what he has done in adding to the debate, acknowledging as he has the inevitability of our consideration and ultimately the passage of this legislation tonight. There are many others, including Senator HARRY REID, our extraordinary deputy Democratic leader, all the work he has done to allow this opportunity to complete our work tonight.

As I said, we will be in session tomorrow and we will have much more to say about many of these issues, reflecting back, but I close simply by thanking our colleagues for the work they have done. I hope we can complete our work and pass this legislation tonight.

I also ask, following the first vote, all subsequent votes be limited to 10 minutes.

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

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding we have 2 minutes remaining.

The PRESIDING OFFICER. Two minutes.

Mr. GRAMM. I could hardly say what I feel in my heart in 2 minutes. Too often, as people leave the Senate, they talk about things they are unhappy about. I want people to know I am not discouraged; I am not disillusioned; I am not disappointed. I am proud and I am honored. I am proud to have had an opportunity to serve the greatest country in the history of the world. I am proud to have served with extraordinary men and women. I think we are so close to them and what they have done here that it is hard to put it all in perspective. But someday when I am sitting in a nursing home talking to my grandchildren, I think I will have that perspective right and there will be names such as Senator BYRD, Senator DOMENICI, and others that will flow from my lips as men I was honored to know and to love.

I thank the people of Texas for giving me an opportunity to serve. I conclude by reading a remark by, of all people, Aaron Burr. Senator BYRD is familiar with it. It is wonderful and I want to conclude by reading it. Aaron Burr was leaving the Senate, and he concluded with these remarks:

> . . . this house is a sanctuary and a citadel of law, of order, of liberty—and it is here—it is here—in this exalted—refuge, here, if anywhere will resistance be made to the storms of popular phrenzy and the silent arts of corruption:—And if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue of the Usurper, which God avert, its expiring agonies will be witnessed on this floor.

I am honored to have served here. I am honored to have served with those who will be sure, in their efforts, in their work, that the Constitution never expires.

I yield the floor.

The PRESIDING OFFICER. All time has expired. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. GRAMM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

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

The result was announced—yeas 90, nays 9, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—90

Allard	Dodd	Lugar
Allen	Domenici	McCain
Barkley	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murray
Biden	Enzi	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Fitzgerald	Nickles
Boxer	Frist	Reed
Breaux	Graham	Reid
Brownback	Gramm	Roberts
Bunning	Grassley	Rockefeller
Burns	Gregg	Santorum
Campbell	Hagel	Schumer
Cantwell	Harkin	Sessions
Carnahan	Hatch	Shelby
Carper	Helms	Smith (NH)
Chafee	Hutchinson	Smith (OR)
Cleland	Hutchison	Snowe
Clinton	Inhofe	Specter
Cochran	Johnson	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Lieberman	Voinovich
Dayton	Lincoln	Warner
DeWine	Lott	Wyden

NAYS—9

Akaka	Hollings	Kennedy
Byrd	Inouye	Levin
Feingold	Jeffords	Sarbanes

NOT VOTING—1

Murkowski

The bill (H.R. 5005), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 5005) entitled ''An Act to establish the Department of Homeland Security, and for other purposes.'', do pass with the following *amendment:*

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.

Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security

Sec. 221. Procedures for sharing information.
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

Sec. 231. Establishment of office; Director.
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Federally funded research and development centers.
Sec. 306. Miscellaneous provisions.
Sec. 307. Homeland Security Advanced Research Projects Agency.
Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
Sec. 312. Homeland Security Institute.
Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.

Subtitle B—United States Customs Service

Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 413. Preservation of customs funds.
Sec. 414. Separate budget request for customs.
Sec. 415. Definition.
Sec. 416. GAO report to Congress.
Sec. 417. Allocation of resources by the Secretary.
Sec. 418. Reports to Congress.
Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 422. Functions of Administrator of General Services.
Sec. 423. Functions of Transportation Security Administration.
Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
Sec. 425. Explosive detection systems.
Sec. 426. Transportation security.
Sec. 427. Coordination of information and information technology.
Sec. 428. Visa issuance.
Sec. 429. Information on visa denials required to be entered into electronic data system.
Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions

Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.
Sec. 442. Establishment of Bureau of Border Security.
Sec. 443. Professional responsibility and quality review.
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 452. Citizenship and Immigration Services Ombudsman.
Sec. 453. Professional responsibility and quality review.
Sec. 454. Employee discipline.
Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
Sec. 459. Report on improving immigration services.
Sec. 460. Report on responding to fluctuating needs.
Sec. 461. Application of Internet-based technologies.
Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions

Sec. 471. Abolishment of INS.
Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
Sec. 476. Separation of funding.
Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
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SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms ''American homeland'' and ''homeland'' means the United States.

(2) The term ''appropriate congressional committee'' means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term ''Department'' means the Department of Homeland Security.

(6) The term ''emergency response providers'' includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term ''executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term ''key resources'' means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term ''personnel'' means officers and employees.

(13) The term ''Secretary'' means the Secretary of Homeland Security.

(14) The term ''State'' means any State of the United 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 possession of the United States.

(15) The term ''terrorism'' means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term ''United States'', when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this Act shall be construed to modify the definition of ''United States'' for the purposes of the Immigration and Nationality Act or any other immigration or nationality law.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) A Director of the Bureau of Citizenship and Immigration Services.

(7) An Under Secretary for Management.

(8) Not more than 12 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the department.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Officer for Civil Rights and Civil Liberties.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public advisories related to threats to homeland security; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking ''and'' at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

''(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and''.

SEC. 202. ACCESS TO INFORMATION.

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

Subtitle B—Critical Infrastructure Information

SEC. 211. SHORT TITLE.

This subtitle may be cited as the ''Critical Infrastructure Information Act of 2002''.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term ''covered Federal agency'' means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term ''critical infrastructure information'' means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under section 213, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle C—Information Security

SEC. 221. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

SEC. 224. NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the ''Cyber Security Enhancement Act of 2002''.

(b) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.—

(1) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the

growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) STUDY AND REPORT ON COMPUTER CRIMES.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) EMERGENCY DISCLOSURE EXCEPTION.—

(1) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)(A), by inserting ''or'' at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

''(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.''.

(2) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting ''or 2511(2)(i)'' after ''2511(3)''.

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''or disseminates by electronic means'' after ''or other publication''; and

(2) by inserting ''knowing the content of the advertisement and'' before ''knowing or having reason to know''.

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting ''except as provided in paragraph (5),'' before ''a fine under this title'';

(3) in paragraph (4)(C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

''(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.''.

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting '', statutory authorization'' after ''subpoena''.

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting '', statutory authorization,'' after ''court order'' the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(C) an immediate threat to a national security interest; or

''(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;''.

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting '', or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State'' after ''commercial gain'';

(B) in paragraph (1)(A), by striking ''one year'' and inserting ''5 years'';

(C) in paragraph (1)(B), by striking ''two years'' and inserting ''10 years''; and

(D) by striking paragraph (2) and inserting the following:

''(2) in any other case—

''(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

''(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.''.

Subtitle D—Office of Science and Technology

SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the ''Office'').

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 232. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers

and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) COMPETITION REQUIRED.—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) INFORMATION FROM FEDERAL AGENCIES.—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) PUBLICATIONS.—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) TRANSFER OF FUNDS.—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) ANNUAL REPORT.—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this title, the term ''law enforcement technology'' includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) AUTHORITY TO TRANSFER FUNCTIONS.—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) TRANSFER OF PERSONNEL AND ASSETS.—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office.

(c) REPORT ON IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as ''Centers'') and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) PURPOSE OF CENTERS.—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) ANNUAL MEETING.—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting ''coordinate and'' before ''provide''.

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting '', including cost effectiveness where practical,'' before ''of projects''; and

(2) by striking ''and'' after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following:

''(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

''(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.''.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 302(2).

(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.

(c) ADMINISTRATION OF COUNTERMEASURES AGAINST SMALLPOX.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding the following:

''(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

''(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

''(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

''(A) AUTHORITY TO ISSUE DECLARATION.—

''(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

''(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (8)(A)) for purposes of administration to individuals during the effective period of the declaration.

''(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

''(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

''(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

''(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

''(ii)(I) the individual was within a category of individuals covered by the declaration; or

''(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

''(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

''(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

''(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

''(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

''(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

''(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

''(II) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

''(3) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.

''(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

''(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

''(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

''(5) DEFENDANT TO COOPERATE WITH UNITED STATES.—

''(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

''(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

''(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

''(ii) the United States shall not be liable based on the acts or omissions of such person; and

''(iii) the Attorney General shall not be obligated to defend such action.

''(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

''(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

''(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

''(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', or 'covered countermeasure against smallpox', means a substance that is—

''(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

''(II) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

''(ii) specified in a declaration under paragraph (2).

''(B) COVERED PERSON.—The term 'covered person', when used with respect to the administration of a covered countermeasure, includes any person who is—

''(i) a manufacturer or distributor of such countermeasure;

''(ii) a health care entity under whose auspices such countermeasure was administered;

''(iii) a qualified person who administered such countermeasure; or

''(iv) an official, agent, or employee of a person described in clause (i), (ii), or (iii).

''(C) QUALIFIED PERSON.—The term 'qualified person', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.''.

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 308.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 303(1)(D) of this Act, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) HOMELAND SECURITY RESEARCH.—The term ''homeland security research'' means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(b) HSARPA.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 302(4) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 302(14); and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(A) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) CRITERIA FOR SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) DISCRETION OF SECRETARY.—The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—

(1) CONSULTATION.—In carrying out the duties under section 302, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) LABORATORIES.—The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) LIMITATION ON OPERATION OF LABORATORIES.—No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

(1) IN GENERAL.—In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any ''work for others'' basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—

(1) LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) SITES.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) FEDERAL ACQUISITION REGULATION.—Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of that Act (15 U.S.C. 3710, 3710a).

(e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No 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 unless such activities support the missions of the Department of Homeland Security.

(g) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title XV, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 1501.

SEC. 311. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the ''Advisory Committee''). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(j) TERMINATION.—The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this Act.

SEC. 312. HOMELAND SECURITY INSTITUTE.

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the ''Homeland Security Institute'' (in this section referred to as the ''Institute'').

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the

vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded research and development centers.

(e) USE OF CENTERS.—The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

(f) ANNUAL REPORTS.—The Institute shall transmit to the Secretary and Congress an annual report on the activities of the Institute under this section.

(g) TERMINATION.—The Homeland Security Institute shall terminate 3 years after the effective date of this Act.

SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.

(4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subtitle C, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

Subtitle B—United States Customs Service

SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

''Commissioner of Customs, Department of the Treasury''

and inserting

''Commissioner of Customs, Department of Homeland Security.''.

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any

other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 413. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 415. DEFINITION.

In this subtitle, the term ''customs revenue function'' means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 416. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term ''customs revenue services'' means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 415.

SEC. 418. REPORTS TO CONGRESS.

(a) CONTINUING REPORTS.—The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

SEC. 419. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

''(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).'';

(2) in paragraph (4), by striking ''(other than the excess fees determined by the Secretary under paragraph (5))''; and

(3) by striking paragraph (5) and inserting the following:

''(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

''(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.''.

(b) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

Subtitle C—Miscellaneous Provisions

SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 1501, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period defined under section 1501, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following new subsection:

''(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 490(f) of title 40, United States Code.

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 425 of this Act.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 425. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

''(2) DEADLINE.—

''(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

''(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

''(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

''(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

''(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

''(ii) the need to ensure that such installations and modifications are effective; and

''(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

''(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

''(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

''(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

''(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

''(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.''.

SEC. 426. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

''(A) The Secretary of Homeland Security, or the Secretary's designee.''.

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security''.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title

49, United States Code, is amended by adding at the end the following:

''(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.''.

SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.

(a) IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate; and

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

(d) FISCAL YEARS 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

Subtitle D—Immigration Enforcement Functions

SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title XV (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department of Homeland Security a bureau to be known as the ''Bureau of Border Security''.

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 441 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under subtitle E, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under subtitle E), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 444. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall

submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

Subtitle E—Citizenship and Immigration Services

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the

criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 454. EMPLOYEE DISCIPLINE.

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

SEC. 455. EFFECTIVE DATE.

Notwithstanding section 4, sections 451 through 456, and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 456. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, 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 specified in section 455.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

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.''.

SEC. 458. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking ''not later than one year after the date of enactment of this Act;'' and inserting ''1 year after the date of the enactment of the Homeland Security Act of 2002;''.

SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives

and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 462. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a 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 by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, 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 specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; 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.

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

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

(1) the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term ''covered entity'' means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term ''transfer date'' means the date on which the transfer of functions specified under section 441 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the ''appropriate committees of Congress'' are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(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 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term ''final basic pay'' means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term ''covered entity'' has the meaning given such term in section 472(a)(2).

SEC. 474. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 475. DIRECTOR OF SHARED SERVICES.

(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

SEC. 476. SEPARATION OF FUNDING.

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 477. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 478. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed ''FIRESAT''.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. 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. 506. DEFINITION.

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

SEC. 507. 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. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS IN EMERGENCY RESPONSE.

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

SEC. 509. 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.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a ''Johnny Micheal Spann Patriot Trust''.

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

TITLE VII—MANAGEMENT

SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled ''Statistical Yearbook of the Immigration and Naturalization Service'' prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(F) Adjudication of immigrant visa petitions.

(G) Adjudication of naturalization petitions.

(H) Adjudication of asylum and refugee applications.

(I) Adjudications performed at service centers.

(J) All other adjudications performed by the Immigration and Naturalization Service.

SEC. 702. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 703. CHIEF INFORMATION OFFICER.

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 704. CHIEF HUMAN CAPITAL OFFICER.

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) IN GENERAL.—The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer.

(b) REPORT.—The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) and any actions taken by the Department in response to such allegations.

SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such officers are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Subtitle B—Inspector General

SEC. 811. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), 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 prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.''.

SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

Subtitle C—United States Secret Service

SEC. 821. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle D—Acquisitions

SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the 5-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term ''nontraditional Government contractor'' has the same meaning as the term ''nontraditional defense contractor'' as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 832. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) DELEGATION.—The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) NOTIFICATION.—Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—

(1) IN GENERAL.—The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

(2) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.

(2) CONFORMING AMENDMENTS.—Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking ''or'' at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting ''; or''; and

(C) by adding at the end the following:

''(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002.''.

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) LIMITATION.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 834. UNSOLICITED PROPOSALS.

(a) REGULATIONS REQUIRED.—Within 1 year of the date of enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) CONTENT OF REGULATIONS.—The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as I partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701 (a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVERS.—The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to

prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

Subtitle E—Human Resources Management

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.

"§ 9701. Establishment of human resources management system

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) 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 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.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) WAIVER.—If the President determines that the application of subsections (a), (b), and (d) 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.

(e) RULE OF CONSTRUCTION.—Nothing in section 9701(e) of title 5, United States Code, shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5, United States Code, by virtue of an order issued in accordance with section 7103(b) of such title and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 851. DEFINITION.

In this subtitle, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 852, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 856. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 852.

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

SEC. 861. SHORT TITLE.

This subtitle may be cited as the ''Support Anti-terrorism by Fostering Effective Technologies Act of 2002'' or the ''SAFETY Act''.

SEC. 862. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

SEC. 863. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—

(1) IN GENERAL.—Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) EXCLUSIVE RESPONSIBILITY.—The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) CERTIFICATE.—For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT.

(a) IN GENERAL.—

(1) LIABILITY INSURANCE REQUIRED.—Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal

and non-Federal government customers (''Seller'') shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) MAXIMUM AMOUNT.—For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) SCOPE OF COVERAGE.—Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) THIRD PARTY CLAIMS.—Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 865. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term ''qualified anti-terrorism technology'' means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term ''act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term ''insurance carrier'' means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term ''liability insurance'' means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term ''non-Federal Government customers'' means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle H—Miscellaneous Provisions

SEC. 871. ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

(b) TERMINATION.—Any advisory committee established by the Secretary shall terminate 2 years after the date of its establishment, unless the Secretary makes a written determination to extend the advisory committee to a specified date, which shall not be more than 2 years after the date on which such determination is made. The Secretary may make any number of subsequent extensions consistent with this subsection.

SEC. 872. REORGANIZATION.

(a) REORGANIZATION.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(1) pursuant to section 1502(b); or

(2) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(b) LIMITATIONS.—

(1) IN GENERAL.—Authority under subsection (a)(1) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(2) ABOLITIONS.—Authority under subsection (a)(2) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

SEC. 875. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.

(a) REGULATORY AUTHORITY.—Except as otherwise provided in sections 306(c), 862(c), and 1706(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority

as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

SEC. 878. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

(A) Exchange of information on research and development on homeland security technologies.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the ''Posse Comitatus Act''), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the ''Insurrection Act''), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event

of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

SEC. 887. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(i) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.

(a) IN GENERAL.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

''(33)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

''(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

''(II) an estimate of the current service levels of homeland security spending;

''(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

''(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

''(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

''(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

''(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 'Annual Report to Congress on Combatting Terrorism', the term 'homeland security' refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

''(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Committees, the House and Senate Appropriations Committees, and the Congressional Budget Office.''.

(b) REPEAL OF DUPLICATIVE REPORTS.—The following sections are repealed:

(1) Section 1051 of Public Law 105–85.

(2) Section 1403 of Public Law 105–261.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with respect to the fiscal year 2005 budget submission.

SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

''(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after and commenced services no later than February 17, 2002, to provide such security, and had not been or are not debarred for any period within 6 months from that date.''.

Subtitle I—Information Sharing

SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CONGRESS.

(a) SHORT TITLE.—This subtitle may be cited as the ''Homeland Security Information Sharing Act''.

(b) FINDINGS.—Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term ''homeland security information'' means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term ''intelligence community'' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''State and local personnel'' means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 893. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 894. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 892.

SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ''; or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,'' after ''Rule 6''; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting ''or of a foreign government'' after ''(including personnel of a state or subdivision of a state'';

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: ''or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation'';

(ii) in subclause (IV)—

(I) by inserting ''or foreign'' after ''may disclose a violation of State'';

(II) by inserting ''or of a foreign government'' after ''to an appropriate official of a State or subdivision of a State''; and

(III) by striking ''or'' at the end;

(iii) by striking the period at the end of subclause (V) and inserting ''; or''; and

(iv) by adding at the end the following:

''(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.''; and

(C) in subparagraph (C)(iii)—

(i) by striking ''Federal'';

(ii) by inserting ''or clause (i)(VI)'' after ''clause (i)(V)''; and

(iii) by adding at the end the following: ''Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

''(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

''(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: ''Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking ''section 2517(6)'' and inserting ''paragraphs (6) and (8) of section 2517 of title 18, United States Code,''; and

(2) by inserting ''and (VI)'' after ''Rule 6(e)(3)(C)(i)(V)''.

SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the ''Homeland Security Council'' (in this title referred to as the ''Council'').

SEC. 902. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 903. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 905. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

TITLE X—INFORMATION SECURITY

SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the ''Federal Information Security Management Act of 2002''.

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

"SUBCHAPTER II—INFORMATION SECURITY

"§ 3531. Purposes

''The purposes of this subchapter are to—

''(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

''(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

''(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

''(4) provide a mechanism for improved oversight of Federal agency information security programs;

''(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures

important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

''(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.''.

''§ 3532. Definitions

''(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

''(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

''(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

''(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

''(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

''(C) availability, which means ensuring timely and reliable access to and use of information; and

''(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

''(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

''(A) involves intelligence activities;

''(B) involves cryptologic activities related to national security;

''(C) involves command and control of military forces;

''(D) involves equipment that is an integral part of a weapon or weapons system; or

''(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

''(3) the term 'information technology' has the meaning given that term in section 11101 of title 40; and

''(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

''(A) computers and computer networks;

''(B) ancillary equipment;

''(C) software, firmware, and related procedures;

''(D) services, including support services; and

''(E) related resources.''.

''§ 3533. Authority and functions of the Director

''(a) The Director shall oversee agency information security policies and practices, by—

''(1) promulgating information security standards under section 11331 of title 40;

''(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

''(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(A) information collected or maintained by or on behalf of an agency; or

''(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

''(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

''(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

''(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

''(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

''(A) a summary of the findings of evaluations required by section 3535;

''(B) significant deficiencies in agency information security practices;

''(C) planned remedial action to address such deficiencies; and

''(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).''.

''(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

''§ 3534. Federal agency responsibilities

''(a) The head of each agency shall—

''(1) be responsible for—

''(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(i) information collected or maintained by or on behalf of the agency; and

''(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

''(i) information security standards promulgated by the Director under section 11331 of title 40; and

''(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

''(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

''(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

''(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

''(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

''(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

''(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

''(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

''(A) designating a senior agency information security officer who shall—

''(i) carry out the Chief Information Officer's responsibilities under this section;

''(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

''(iii) have information security duties as that official's primary duty; and

''(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

''(B) developing and maintaining an agencywide information security program as required by subsection (b);

''(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

''(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

''(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

''(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

''(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

''(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

''(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

''(2) policies and procedures that—

''(A) are based on the risk assessments required by paragraph (1);

''(B) cost-effectively reduce information security risks to an acceptable level;

''(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

''(D) ensure compliance with—

''(i) the requirements of this subchapter;

''(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

''(iii) minimally acceptable system configuration requirements, as determined by the agency; and

''(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

''(3) subordinate plans for providing adequate information security for networks, facilities, and

systems or groups of information systems, as appropriate;

''(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

''(A) information security risks associated with their activities; and

''(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

''(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

''(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

''(B) may include testing relied on in a evaluation under section 3535;

''(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

''(7) procedures for detecting, reporting, and responding to security incidents, including—

''(A) mitigating risks associated with such incidents before substantial damage is done; and

''(B) notifying and consulting with, as appropriate—

''(i) law enforcement agencies and relevant Offices of Inspector General;

''(ii) an office designated by the President for any incident involving a national security system; and

''(iii) any other agency or office, in accordance with law or as directed by the President; and

''(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

''(c) Each agency shall—

''(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

''(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

''(A) annual agency budgets;

''(B) information resources management under subchapter 1 of this chapter;

''(C) information technology management under subtitle III of title 40;

''(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

''(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

''(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

''(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

''(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

''(A) as a material weakness in reporting under section 3512 of title 31; and

''(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

''(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

''(A) the time periods, and

''(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

''(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

''(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

''§ 3535. Annual independent evaluation

''(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

''(2) Each evaluation by an agency under this section shall include—

''(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

''(B) an assessment (made on the basis of the results of the testing) of compliance with—

''(i) the requirements of this subchapter; and

''(ii) related information security policies, procedures, standards, and guidelines; and

''(C) separate presentations, as appropriate, regarding information security relating to national security systems.

''(b) Subject to subsection (c)—

''(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

''(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

''(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

''(1) only by an entity designated by the agency head; and

''(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(d) The evaluation required by this section—

''(1) shall be performed in accordance with generally accepted government auditing standards; and

''(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

''(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

''(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

''(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

''(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

''(h) The Comptroller General shall periodically evaluate and report to Congress on—

''(1) the adequacy and effectiveness of agency information security policies and practices; and

''(2) implementation of the requirements of this subchapter.

''§ 3536. National security systems

''The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

''(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

''(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

''(3) complies with the requirements of this subchapter.

''§ 3537. Authorization of appropriations

''There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

''§ 3538. Effect on existing law

''Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.''.

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading ''SUBCHAPTER II'' are amended to read as follows:

''3531. Purposes.
''3532. Definitions.
''3533. Authority and functions of the Director.
''3534. Federal agency responsibilities.
''3535. Annual independent evaluation.
''3536. National security systems.
''3537. Authorization of appropriations.
''3538. Effect on existing law.''.

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking ''(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)'' and inserting ''(b) OBJECTIVES OF THE PROGRAM.—'';

(ii) in subsection 2224(b), by striking ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.''; and

(iii) in subsection 2224(c), by inserting '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure''.

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Section 11331 of title 40, United States Code, is amended to read as follows:

''§ 11331. Responsibilities for Federal information systems standards

''(a) DEFINITION.—In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44.

''(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

''(B) REQUIRED STANDARDS.—Standards promulgated under subparagraph (A) shall include—

''(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

''(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

''(C) REQUIRED STANDARDS BINDING.—Information security standards described under subparagraph (B) shall be compulsory and binding.

''(2) STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

''(c) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

''(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

''(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

''(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.—

''(1) DEADLINE.—The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

''(2) NOTICE AND COMMENT.—A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, is amended by striking the item relating to section 11331 and inserting the following:

''11331. Responsibilities for Federal information systems standards.''.

SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

''(a) The Institute shall—

''(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

''(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

''(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

''(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

''(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

''(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

''(B) guidelines recommending the types of information and information systems to be included in each such category; and

''(C) minimum information security requirements for information and information systems in each such category;

''(2) a definition of and guidelines concerning detection and handling of information security incidents; and

''(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

''(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

''(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

''(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

''(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

''(2) provide the public with an opportunity to comment on proposed standards and guidelines;

''(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code—

''(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

''(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

''(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

''(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

''(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

''(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

''(d) The Institute shall—

''(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

''(2) provide assistance to agencies regarding—

''(A) compliance with the standards and guidelines developed under subsection (a);

''(B) detecting and handling information security incidents; and

''(C) information security policies, procedures, and practices;

''(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

''(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

''(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

''(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

''(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

''(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

''(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

''(e) As used in this section—

''(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

''(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

''(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

''(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40, United States Code; and

''(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.''.

SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking ''Computer System Security and Privacy Advisory Board'' and inserting ''Information Security and Privacy Advisory Board'';

(2) in subsection (a)(1), by striking ''computer or telecommunications'' and inserting ''information technology'';

(3) in subsection (a)(2)—

(A) by striking ''computer or telecommunications technology'' and inserting ''information technology''; and

(B) by striking ''computer or telecommunications equipment'' and inserting ''information technology'';

(4) in subsection (a)(3)—

(A) by striking ''computer systems'' and inserting ''information system''; and

(B) by striking ''computer systems security'' and inserting ''information security'';

(5) in subsection (b)(1) by striking ''computer systems security'' and inserting ''information security'';

(6) in subsection (b) by striking paragraph (2) and inserting the following:

''(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and'';

(7) in subsection (b)(3) by inserting ''annually'' after ''report'';

(8) by inserting after subsection (e) the following new subsection:

''(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.'';

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

''(h) As used in this section, the terms ''information system'' and ''information technology'' have the meanings given in section 20.''.

SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.

(a) FEDERAL COMPUTER SYSTEM SECURITY TRAINING AND PLAN.—

(1) REPEAL.—Section 11332 of title 40, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, as amended by striking the item relating to section 11332.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X (44 U.S.C. 3531 note).

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''sections 11331 and 11332(b) and (c) of title 40'' and inserting ''section 11331 of title 40 and subchapter II of this title''; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end the following:

''(c) INVENTORY OF INFORMATION SYSTEMS.—(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

''(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

''(3) Such inventory shall be—

''(A) updated at least annually;

''(B) made available to the Comptroller General; and

''(C) used to support information resources management, including—

''(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

''(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

''(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

''(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

''(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

''(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.''.

(3) Section 3506(g) of such title is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''section 11332 of title 40'' and inserting ''subchapter II of this chapter''; and

(ii) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

SEC. 1006. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

SEC. 1101. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1102.

SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

SEC. 1103. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1102, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the ''Bureau'').

(2) DIRECTOR.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the ''Director''). The Director shall be appointed by the Attorney General and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V, United States Code, for positions at level III of the Executive Schedule.

(3) COORDINATION.—The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(4) PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) ADMINISTRATION AND REVENUE COLLECTION FUNCTIONS.—There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

(d) TAX AND TRADE BUREAU.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) RESPONSIBILITIES.—The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8D(b)(1) by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''; and

(2) in section 9(a)(1)(L)(i), by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Tax and Trade Bureau''.

(b) Section 1109(c)(2)(A)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by striking ''(on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms'' and inserting ''by manufacturers of tobacco products to the Tax and Trade Bureau''.

(c) Section 2(4)(J) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173; 8 U.S.C.A. 1701(4)(J)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(d) Section 3(1)(E) of the Firefighters' Safety Study Act (15 U.S.C. 2223b(1)(E)) is amended by striking ''the Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,''.

(e) Chapter 40 of title 18, United States Code, is amended—

(1) by striking section 841(k) and inserting the following:

''(k) 'Attorney General' means the Attorney General of the United States.'';

(2) in section 846(a), by striking ''the Attorney General and the Federal Bureau of Investigation, together with the Secretary'' and inserting ''the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives''; and

(3) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(f) Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a)(4)(B), by striking ''Secretary'' and inserting ''Attorney General'';

(2) in section 921(a)(4), by striking ''Secretary of the Treasury'' and inserting ''Attorney General'';

(3) in section 921(a), by striking paragraph (18) and inserting the following:

''(18) The term 'Attorney General' means the Attorney General of the United States'';

(4) in section 922(p)(5)(A), by striking ''after consultation with the Secretary'' and inserting ''after consultation with the Attorney General'';

(5) in section 923(l), by striking ''Secretary of the Treasury'' and inserting ''Attorney General''; and

(6) by striking ''Secretary'' each place it appears, except before ''of the Army'' in section 921(a)(4) and before ''of Defense'' in section 922(p)(5)(A), and inserting the term ''Attorney General''.

(g) Section 1261(a) of title 18, United States Code, is amended to read as follows:

''(a) The Attorney General—

''(1) shall enforce the provisions of this chapter; and

''(2) has the authority to issue regulations to carry out the provisions of this chapter.''.

(h) Section 1952(c) of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

(i) Chapter 114 of title 18, United States Code, is amended—

(1) by striking section 2341(5), and inserting the following:

''(5) the term 'Attorney General' means the Attorney General of the United States''; and

(2) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(j) Section 6103(i)(8)(A)(i) of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by striking ''or the Bureau of Alcohol, Tobacco and Firearms'' and inserting '', the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury,''.

(k) Section 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury) is amended—

(1) by striking ''SECRETARY.—Except'' and inserting ''SECRETARY.—

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) ADMINISTRATION AND ENFORCEMENT OF CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

''(A) IN GENERAL.—The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term 'Secretary' or 'Secretary of the Treasury' shall, when applied to those provisions, mean the Attorney General; and the term 'internal revenue officer' shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

''(i) Chapter 53.

''(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

''(B) USE OF EXISTING RULINGS AND INTERPRETATIONS.—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.''.

(l) Section 2006(2) of title 28, United States Code, is amended by inserting '', the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,'' after ''the Secretary of the Treasury''.

(m) Section 713 of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 713. Audit of Internal Revenue Service, Tax and Trade Bureau, and Bureau of Alcohol, Tobacco, Firearms, and Explosives'';

(2) in subsection (a), by striking ''Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''Tax and Trade Bureau, Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(3) in subsection (b)

(A) in paragraph (1)(B), by striking ''or the Bureau'' and inserting ''or either Bureau'';

(B) in paragraph (2)—

(i) by striking ''or the Bureau'' and inserting ''or either Bureau''; and

(ii) by striking ''and the Director of the Bureau'' and inserting ''the Tax and Trade Bureau, Department of the Treasury, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(C) in paragraph (3), by striking ''or the Bureau'' and inserting ''or either Bureau''.

(n) Section 9703 of title 31, United States Code, is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii)(III), by inserting ''and'' after the semicolon;

(B) in clause (iv), by striking ''; and'' and inserting a period; and

(C) by striking clause (v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated by paragraph (3), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''.

(o) Section 609N(2)(L) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(p) Section 32401(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is amended—

(1) by striking ''Secretary of the Treasury'' each place it appears and inserting ''Attorney General''; and

(2) in subparagraph (3)(B), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(q) Section 80303 of title 49, United States Code, is amended—

(1) by inserting ''or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General'' after ''section 80304 of this title.''; and

(2) by inserting '', the Attorney General,'' after ''by the Secretary''.

(r) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking ''(b) and (c)'' and inserting ''(b), (c), and (d)'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c), the following:

''(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302 (a)(2) or (a)(5).''.

(s) Section 103 of the Gun Control Act of 1968 (Public Law 90–618; 82 Stat. 1226) is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

Chapter 203 of title 18, United States Code, is amended by adding the following:

''§ 3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as

any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

''(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

''(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

''(A) the seizure, summary and judicial forfeiture, and condemnation of property;

''(B) the disposition of such property;

''(C) the remission or mitigation of such forfeiture; and

''(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

''(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.''.

SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) ESTABLISHMENT.—There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) PURPOSE.—The facility established under subsection (a) shall be utilized to train Federal, State, and local law enforcement officers to—

(1) investigate bombings and explosions;

(2) properly handle, utilize, and dispose of explosive materials and devices;

(3) train canines on explosive detection; and

(4) conduct research on explosives.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to establish and maintain the facility established under subsection (a).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION PROJECT.

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

Subtitle C—Explosives

SEC. 1121. SHORT TITLE.

This subtitle may be referred to as the ''Safe Explosives Act''.

SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

''(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter.''; and

(2) by adding at the end the following:

''(r) 'Alien' means any person who is not a citizen or national of the United States.

''(s) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.''.

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking ''and'' at the end;

(2) by striking subsection (a)(3) and inserting the following:

''(3) other than a licensee or permittee knowingly—

''(A) to transport, ship, cause to be transported, or receive any explosive materials; or

''(B) to distribute explosive materials to any person other than a licensee or permittee; or

''(4) who is a holder of a limited permit—

''(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

''(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder.''; and

(3) by striking subsection (b) and inserting the following:

''(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

''(1) a licensee;

''(2) a holder of a user permit; or

''(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.''.

(c) LICENSES AND USER PERMITS.—Section 843(a) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting ''or limited permit'' after ''user permit''; and

(B) by inserting before the period at the end the following: '', including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person'';

(2) in the second sentence, by striking ''$200 for each'' and inserting ''$50 for a limited permit and $200 for any other''; and

(3) by striking the third sentence and inserting ''Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.''.

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of title 18, United States Code, is amended—

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

''(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);'';

(2) in paragraph (4)—

(A) by inserting ''(A) the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that'' before ''the applicant''; and

(B) by adding at the end the following:

''(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and'';

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

''(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.''.

(e) APPLICATION APPROVAL.—Section 843(c) of title 18, United States Code, is amended by striking ''forty-five days'' and inserting ''90 days for licenses and permits,''.

(f) INSPECTION AUTHORITY.—Section 843(f) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking ''permittees'' and inserting ''holders of user permits''; and

(B) by inserting ''licensees and permittees'' before ''shall submit'';

(2) in the second sentence, by striking ''permittee'' the first time it appears and inserting ''holder of a user permit''; and

(3) by adding at the end the following: ''The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) POSTING OF PERMITS.—Section 843(g) of title 18, United States Code, is amended by inserting ''user'' before ''permits''.

(h) BACKGROUND CHECKS; CLEARANCES.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

''(h)(1) If the Secretary receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

''(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

''(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

''(i) confirms the determination;

''(ii) explains the grounds for the determination;

''(iii) provides information on how the disability may be relieved; and

''(iv) explains how the determination may be appealed.''.

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTION.—Notwithstanding any provision of this Act, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) DISTRIBUTION OF EXPLOSIVES.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''or who has been committed to a mental institution;''; and

(3) by adding at the end the following:

''(7) is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as defined in section 101 (a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(8) has been discharged from the armed forces under dishonorable conditions;

''(9) having been a citizen of the United States, has renounced the citizenship of that person.''.

(b) POSSESSION OF EXPLOSIVE MATERIALS.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking ''or'' at the end; and

(2) by inserting after paragraph (4) the following:

''(5) who is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(6) who has been discharged from the armed forces under dishonorable conditions;

''(7) who, having been a citizen of the United States, has renounced the citizenship of that person''; and

(3) by inserting ''or affecting'' before ''interstate'' each place that term appears.

SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(i) FURNISHING OF SAMPLES.—

''(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

''(A) samples of such explosive materials or ammonium nitrate;

''(B) information on chemical composition of those products; and

''(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

''(2) REIMBURSEMENT.—The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.''.

SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the word ''shall'' the following: ''or any institution or organization receiving Federal financial assistance,''.

SEC. 1126. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

''(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

''(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

''(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.''.

SEC. 1127. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

''(p) THEFT REPORTING REQUIREMENT.—

''(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

''(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.''.

SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this subtitle and the amendments made by this subtitle.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.

Section 44303 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary of Transportation'';

(2) by moving the text of paragraph (2) of section 201(b) of the Air Transportation Safety and System Stabilization Act (115 Stat. 235) to the end and redesignating such paragraph as subsection (b);

(3) in subsection (b) (as so redesignated)—

(A) by striking the subsection heading and inserting ''AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—'';

(B) in the first sentence by striking ''the 180-day period following the date of enactment of this Act, the Secretary of Transportation'' and inserting ''the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary''; and

(C) in the last sentence by striking ''this paragraph'' and inserting ''this subsection''.

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

''(f) EXTENSION OF POLICIES.—

''(1) IN GENERAL.—The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

''(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

''(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

''(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.''.

SEC. 1203. CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by striking ''(b)'' and inserting ''(c)''.

SEC. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 1302. 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 chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Agency Chief Human Capital Officers ..... 1401".

SEC. 1303. 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. 1304. 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. 1305. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Reforms Relating to Federal Human Capital Management

SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS 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 operation 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. 1312. 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 of the following:

''(3) authority for agencies to appoint, without regard to the provision 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) The Office, in exercising its authority under section 3304, or 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 Islanders; 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. 1313. 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 an 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 Directive 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 another 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 with 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, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in 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 servicing 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 separate 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 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—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. 1314. 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''.

Subtitle C—Reforms Relating to the Senior Executive Service

SEC. 1321. 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 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. 1322. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) IN GENERAL.—Section 5307 of title 5, United States Code, is amended by adding at the end the following:

''(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting 'the total annual compensation payable to the Vice President under section 104 of title 3' for 'the annual rate of basic pay payable for level I of the Executive Schedule' in the case of any employee who—

''(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

''(B) holds a position in or under an agency which is described in paragraph (2).

''(2) An agency described in this paragraph is any agency which, for purposes of the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance.

''(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

''(B) An agency's certification under this subsection shall be for a period of 2 calendar years, except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

''(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

''(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).''.

(b) CONFORMING AMENDMENTS.—(1) Section 5307(a) of title 5, United States Code, is amended by inserting ''or as otherwise provided under subsection (d),'' after ''under law,''.

(2) Section 5307(c) of such title is amended by striking ''this section,'' and inserting ''this section (subject to subsection (d)),''.

Subtitle D—Academic Training

SEC. 1331. 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, systemic, 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 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, policy-making 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. 1332. 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 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 determined in accordance with clause (i); and''.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism Act''.

SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

''(b) PROCEDURAL REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

''(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

''(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

''(A) The type of firearm to be used by a Federal flight deck officer.

''(B) The type of ammunition to be used by a Federal flight deck officer.

''(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

''(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

''(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

''(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

''(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

''(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

''(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

''(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

''(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

''(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

''(M) Any other issues that the Under Secretary considers necessary.

''(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

''(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

''(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

''(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

''(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

''(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

''(2) TRAINING.—

''(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

''(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

''(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

''(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

''(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

''(C) TRAINING IN USE OF FIREARMS.—

''(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

''(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

''(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

''(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

''(A) the pilot is employed by an air carrier;

''(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

''(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

''(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

''(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

''(f) AUTHORITY TO CARRY FIREARMS.—

''(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

''(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

''(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

''(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

''(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

''(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

''(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

''(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

''(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

''(k) APPLICABILITY.—

''(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

''(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

''44921. Federal flight deck officer program.''.

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 1403. CREW TRAINING.

(a) IN GENERAL.—Section 44918(e) of title 49, United States Code, is amended—

(1) by striking ''The Administrator'' and inserting the following:

''(1) IN GENERAL.—The Under Secretary'';

(2) by adding at the end the following:

''(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

''(A) require both classroom and effective hands-on situational training in the following elements of self defense:

''(i) recognizing suspicious activities and determining the seriousness of an occurrence;

''(ii) deterring a passenger who might present a problem;

''(iii) crew communication and coordination;

''(iv) the proper commands to give to passengers and attackers;

''(v) methods to subdue and restrain an attacker;

''(vi) use of available items aboard the aircraft for self-defense;

''(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

''(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

''(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

''(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

''(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

''(C) establish the required number of hours of training and the qualifications for the training instructors;

''(D) establish the intervals, number of hours, and elements of recurrent training;

''(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

''(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

''(3) RESPONSIBILITY OF UNDER SECRETARY.—(A) CONSULTATION.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

''(B) DESIGNATION OF OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

''(C) NECESSARY RESOURCES AND KNOWLEDGE.—The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge.''; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

(b) ENHANCE SECURITY MEASURES.—Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by adding at the end the following:

''(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.''.

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.

(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

''(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.''.

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in paragraph (1) by striking ''Secretary'' the first and third places it appears and inserting ''Under Secretary''; and

(2) in paragraph (2) by striking ''Secretary'' each place it appears and inserting ''Under Secretary''.

SEC. 1406. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

SEC. 1501. DEFINITIONS.

For purposes of this title:

(1) The term ''agency'' includes any entity, organizational unit, program, or function.

(2) The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 1502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE STRUCTURES.

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

Subtitle B—Transitional Provisions

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 1512. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term ''completed administrative action'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants,

and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

SEC. 1513. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b).

SEC. 1516. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

SEC. 1517. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF TRANSPORTATION.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''and the Administrator of the Federal Aviation Administration each'' after ''for Security''; and

(B) by striking ''criminal violence and aircraft piracy'' and inserting ''criminal violence, aircraft piracy, and terrorism and to ensure security''; and

(2) in subsection (b)(1)—

(A) by striking '', the Under Secretary'' and inserting ''and the establishment of a Department of Homeland Security, the Secretary of Transportation'';

(B) by striking ''carrying out'' and all that follows through ''if the Under Secretary'' and inserting ''ensuring security under this title if the Secretary of Transportation''; and

(C) in subparagraph (C) by striking ''the safety of passengers in transportation'' and inserting ''transportation safety''.

(b) Section 114 of title 49, United States Code, is amended by adding at the end the following:

''(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

''(A) be an unwarranted invasion of personal privacy;

''(B) reveal a trade secret or privileged or confidential commercial or financial information; or

''(C) be detrimental to the security of transportation.

''(2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

''(3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.''.

SEC. 1602. INCREASE IN CIVIL PENALTIES.

Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).''.

SEC. 1603. ALLOWING UNITED STATES CITIZENS AND UNITED STATES NATIONALS AS SCREENERS.

Section 44935(e)(2)(A)(ii) of title 49, United States Code, is amended by striking ''citizen of the United States'' and inserting ''citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))''.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1701. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears; and

(2) by striking ''; and'' each place it appears in paragraph (1) and inserting '';'';

SEC. 1702. EXECUTIVE SCHEDULE.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting ''Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(2) in section 5313, by inserting ''Deputy Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(3) in section 5314, by inserting ''Under Secretaries, Department of Homeland Security.'', ''Director of the Bureau of Citizenship and Immigration Services.'' as new items after ''Affairs.'' the third place it appears;

(4) in section 5315, by inserting ''Assistant Secretaries, Department of Homeland Security.'', ''General Counsel, Department of Homeland Security.'', ''Officer for Civil Rights and Civil Liberties, Department of Homeland Security.'', ''Chief Financial Officer, Department of Homeland Security.'', ''Chief Information Officer, Department of Homeland Security.'', and ''Inspector General, Department of Homeland Security.'' as new items after ''Affairs.'' the first place it appears; and

(5) in section 5315, by striking ''Commissioner of Immigration and Naturalization, Department of Justice.''.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 1703. UNITED STATES SECRET SERVICE.

(a) IN GENERAL.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking ''of the Treasury'', each place it appears and inserting ''of Homeland Security''.

(2) Section 208 of title 3, United States Code, is amended by striking ''of Treasury'' each place it appears and inserting ''of Homeland Security''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 1704. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(b) TITLE 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888,

946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(2) Section 801(1) of such title is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(3) Section 983(d)(2)(B) of such title is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(4) Section 2665(b) of such title is amended by striking ''Department of Transportation'' and inserting ''Department in which the Coast Guard is operating''.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking ''Secretaries of the Army, Air Force, and Transportation'' both places it appears and inserting ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security''; and

(B) in subsection (b), by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(6) Section 7361(b) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(7) Section 12522(c) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(d) TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(e) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking ''of Transportation'' and inserting ''of Homeland Security''; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking ''of Transportation'' and inserting ''of Homeland Security''.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking ''after consultation with the Secretary of Transportation''.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking ''of Transportation'' in the fourth paragraph and inserting ''of Homeland Security'';

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking ''Secretaries of Army, Navy, Air Force, or Transportation'' and inserting ''Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,''; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(f) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(g) EFFECTIVE DATE.—The amendments made by this section (other than subsection (f)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' between ''in coordination with'' and ''the Secretary of Veterans Affairs''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO TITLE 40.—Section 581 of title 40, United States Code, is amended—

(1) by striking subsection (a); and

(2) in subsection (b)—

(A) by inserting ''and'' after the semicolon at the end of paragraph (1);

(B) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

(b) LAW ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Section 1315 of title 40, United States Code, is amended to read as follows:

''§ 1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

''(a) IN GENERAL.—To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security (in this section referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

''(b) OFFICERS AND AGENTS.—

''(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

''(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

''(A) enforce Federal laws and regulations for the protection of persons and property;

''(B) carry firearms;

''(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

''(D) serve warrants and subpoenas issued under the authority of the United States; and

''(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

''(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

''(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

''(d) DETAILS.—

''(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail

officers and agents designated under this section for the protection of the property and persons on the property.

''(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

''(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

''(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

''(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

''(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

''(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

''(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) preclude or limit the authority of any Federal law enforcement agency; or

''(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.''.

(2) DELEGATION OF AUTHORITY.—The Secretary may delegate authority for the protection of specific buildings to another Federal agency where, in the Secretary's discretion, the Secretary determines it necessary for the protection of that building.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 40, United States Code, is amended by striking the item relating to section 1315 and inserting the following:

''1315. Law enforcement authority of Secretary of Homeland Security for protection of public property.''.

SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting ''for a period not to exceed 90 days'' after ''effective''; and

(2) in section 114(l)(2)(B), by inserting ''ratified or'' after ''unless''.

SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

SEC. 1709. COLLABORATION WITH THE SECRETARY OF HOMELAND SECURITY.

(a) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The second sentence of section 351A(e)(1) of the Public Health Service Act (42 U.S.C. 262A(e)(1)) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

(b) DEPARTMENT OF AGRICULTURE.—The second sentence of section 212(e)(1) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking ''Secretary of Transportation'' in the first sentence of subsection (a) and inserting ''Secretary concerned'';

(2) by striking ''Secretary'' each place it appears (except the first sentence of subsection (a)) and inserting ''Secretary concerned'';

(3) by striking ''Secretary's duties under chapters 203–213 of this title'' in subsection (d) and inserting ''duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)'';

(4) by striking ''chapter.'' in subsection (f) and inserting ''chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).''; and

(5) by adding at the end the following new subsection:

''(g) DEFINITIONS.—In this section—

''(1) the term 'safety' includes security; and

''(2) the term 'Secretary concerned' means—

''(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

''(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.''.

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after ''1970.'' the following: ''When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.''.

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting ''and laws, regulations, and orders related to railroad security'' after ''safety'' in the first sentence;

(2) by inserting ''or security'' after ''safety'' each place it appears after the first sentence; and

(3) by striking ''Transportation'' in the second sentence and inserting ''Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),''.

SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking ''transportation'' the first place it appears in subsection (b)(1) and inserting ''transportation, including security,'';

(2) by striking ''aspects'' in subsection (b)(1)(B) and inserting ''aspects, including security,''; and

(3) by adding at the end the following:

''(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.''.

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking ''chapter or a regulation prescribed under this chapter'' in subsection (a)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security'';

(2) by striking ''chapter or a regulation prescribed under this chapter.'' in subsection (a)(2) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.''; and

(3) by striking ''chapter or a regulation prescribed under this chapter,'' in subsection (b)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,''.

SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting ''the Office of Homeland Security,'' after ''National Security Council,''.

SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

''(14) Other Federal officials the Council considers appropriate.''.

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking ''under its label any vaccine set forth in the Vaccine Injury Table'' and inserting ''any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine''; and

(2) in the second sentence, by inserting ''including any component or ingredient of any such vaccine'' before the period.

SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.''.

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

''(7) The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.''.

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

Mr. SANTORUM. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

NOMINATION OF DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to vote on the Shedd nomination.

The majority leader.

Mr. DASCHLE. Mr. President, let me remind my colleagues that the votes from here on out will be 10 minutes in length. And I intend to cut off the votes at 10 minutes. I hope everybody will stay on the floor and cast their votes so we can complete our work at a reasonable hour.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Mr. KENNEDY. Mr. President, I oppose the confirmation of Judge Shedd to the Court of Appeals for the Fourth Circuit. His nomination is also opposed by a large number of individuals, law professors, bar association and civil rights groups across the country, because he has not shown the commitment to the protection and vindication of Federal rights that is essential for this high position in the judiciary.

Judge Shedd has an unacceptable record in cases involving race and gender discrimination. In race discrimination cases, for example, he consistently grants summary judgment against African-American civil rights plaintiffs, preventing even close cases from reaching a jury, and he often does so with little or analysis. In one case, he granted summary judgment for the defendant after the EEOC determined there was a reasonable cause to find that the plaintiff was denied promotion and the denial was based on race. In another case, the plaintiff was denied a pay increase despite the recommendation of his immediate supervisor, where the employer was found by the State to have been discriminating against African-Americans on pay increases.

Judge Shedd has a similar record in gender discrimination cases. He granted summary judgment for an employer in a sexual harassment case in which the male supervisor's conduct was so inappropriate that Judge Shedd himself stated that the supervisor's conduct was ''sufficiently severe and pervasive to constituent a hostile work environment.'' Nonetheless, Judge Shedd granted summary judgment for the employer, finding no evidence that the plaintiff herself thought the work environment had been hostile. This ruling is impossible to reconcile with the facts of the case—the plaintiff had told her supervisor that his comments were offensive, she had reported the conduct to her supervisor, she had taken concrete steps to pursue the complaint, and she eventually quit her position.

In another case, Judge Shedd reversed a magistrate judge's decision to deny summary judgment for an employer. In this case, the plaintiff's supervisor had harassed both the plaintiff and a number of other female employees. Yet Judge Shedd dismissed this case, against the recommendation of the magistrate, because the plaintiff had complained to two different people, a supervisor and the company's chief financial officer, but did not complain to the president of the company, as required by company policy. Judge Shedd ignored the fact that the company's policy also called for the supervisor and the CFO themselves to report the plaintiff's complaints to the president, which they failed to do. Judge Shedd also relied on the fact that the plaintiff's complaint referred to ''harassment,'' instead of ''sexual harassment.''

These were not merely cases in which Judge Shedd ultimately decided on the facts that discrimination had not taken place. These are cases in which he determined that the jury should not even be permitted to hear the plaintiff's claim. Judge Shedd dismissed the vast majority of race discrimination cases brought by African-Americans, before those cases could reach the jury. By contrast, in the five discrimination cases brought by white males, Judge Shedd allowed four to go to a trial. This pattern is very disturbing. The people of the Fourth Circuit deserve better from their Federal judges.

In addition, Judge Shedd has often reached out from the bench to affect the litigation of the cases before him. In discrimination cases, he is known to raise arguments on behalf of the defense from the bench, even arguments not raised by the defendants themselves. He has gone so far as to dismiss cases on grounds not raised by the defendant. In one case, he initiated an inquiry into finances of an unemployed woman who had been granted pauper status by another Federal judge; Judge Shedd ruled that she did not deserve such status, in large part because of the money she had spent pursuing her claim, and recommended that the Fourth Circuit dismiss an appeal the woman had pending in a different suit. He published his conclusions, he said, because other judges may want to know of his personal findings shout this woman.

The States of the Fourth Circuit have a large minority population, the highest percentage of African-Africans of any circuit in the country, and they deserve a fair judiciary, committed to protecting basic rights.

For all of these reasons, I oppose this nomination. the administration can, and must, do better for the people of the Fourth Circuit.

U.S. CIRCUIT COURT NOMINEES

Mrs. MURRAY. Mr. President, I rise to express my opposition to the confirmation of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit, and the confirmation of Professor Michael McConnell to the United States Court of Appeals for the Tenth Circuit.

At every level of the Federal court system, federal judges have a tremendous impact on the rights and protections of all Americans. The federal judiciary effectively ended segregation and ensured a woman's right to reproductive choice. Every day we count on federal judges to protect our civil rights and liberties.

The Senate serves as the only effective check on the Federal judiciary. The Constitution gives the Senate the power to advise and consent to the President's judicial appointments. These are lifetime appointments. Furthermore, because the U.S. Supreme Court hears only a few cases, the Circuit Courts of Appeals are often the courts of last resort for citizens seeking justice from the federal bench. As Senators, we have a constitutional responsibility to evaluate these candidates.

I believe judicial candidates should be experienced, even-handed, possess a fair judicial temperament, and be committed to upholding the rights and liberties of all Americans.

Dennis Shedd does not meet that standard. He has failed to show this Senator that he possesses the characteristics necessary to receive a lifetime appointment to the Circuit Court of Appeals.

As a Federal District Court Judge, Shedd's rulings and actions on the bench indicate he lacks the even-handedness we expect from our federal judges. He has consistently sided with employers in workplace discrimination suits on issues ranging from sexual harassment to race and age discrimination. In fact, in his 11 years on the Federal bench not a single plaintiff in a civil rights or employment discrimination case has prevailed in his courtroom.

His willingness to inject his own personal bias about the rights of individuals shows he also lacks the requisite judicial temperament we should require in a Federal judge. He has shown hostility to those seeking justice from the bench by assisting the defense and granting summary judgment for the defense in a disproportionate number of cases.

Aside from employee rights and discrimination cases, he has also shown an unwillingness to uphold the basic civil liberties and rights of all Americans. He has favored a state government's ability to violate an individual's right of privacy by selling their personal information despite a federal law to the contrary. He also struck down part of the Family and Medical Leave Act, FMLA, by arguing a State cannot be sued under FMLA due to sovereign immunity.

He has further shown a disregard for protecting the rights of voters, and has displayed an insensitivity on issues concerning race.

Considering his history of narrowly interpreting the rights of individuals

and his hostility toward civil liberty protections, we can only assume he would not uphold the civil liberty of privacy, including honoring the Roe v. Wade decision. In fact, at his confirmation hearing he refused to commit to upholding the fundamental right of reproductive freedom.

Dennis Shedd's record clearly illustrates he is not even-handed, that he lacks the right temperament for the appeals bench, and that he has consistently failed to protect the rights and liberties of our people. He should not be confirmed for the Federal appeals court. I urge my colleagues to vote against this nomination.

I would also like to express my opposition to Professor Michael McConnell's recent confirmation to the United States Court of Appeals for the Tenth Circuit.

Professor McConnell has consistently expressed strong opposition to protecting civil rights and liberties, going so far as to call the Roe case ''a gross misinterpretation of the Constitution.'' He has also argued, contrary to existing law, that abortion protestors have a ''constitutional right to protect against abortion—forcefully and face-to-face.''

He holds extreme opinions on the separation of church and state and other key civil rights protections. Professor McConnell has severely criticized the Supreme Court's 8 to 1 decision in Bob Jones University v. United States. In that case, the Supreme Court held that the IRS may deny tax-exempt status to a religious school with racially discriminatory policies. Professor McConnell wrote that the racial discriminatory practices at Bob Jones University should be tolerated because they were religious in nature. He has also argued for giving religious institutions preferential treatment and has advocated direct federal funding of religious institutions. Clearly, Professor McConnell's opinion on the separation of church and state strays far from the mainstream and far from generally recognized conservative legal analysis.

Finally, Professor McConnell has argued for weakening both statutory and constitutional protections against discrimination based on race, gender, and sexual orientation through exemptions for private entities.

Like Judge Shedd, I believe Professor McConnell lacks the basic qualities needed to serve on the Federal appellate bench.

Mr. LEVIN. Mr. President, I will vote against the confirmation of Dennis Shedd to be a United States Judge for the 4th Circuit Court of Appeals. Judge Shedd's record as a judge on the United States District Court raises a number of concerns about both his approach on the bench and his commitment to equal justice—leading me to the conclusion that he should not be promoted to the second highest court in the land.

Of particular concern to me are Judge Shedd's extreme view on the limits of Congressional authority and his record of hostility to plaintiffs in civil rights and employment discrimination cases. This combination is extremely dangerous given the critical role that Congress plays in passing laws to ensure that Constitutional protections are afforded to all Americans. Further, I am troubled by what appears to be a lack of thorough consideration in Judge Shedd's approach. This is particularly unsettling given the significant Constitutional issues that have been at stake in his courtroom.

With respect to Judge Shedd's view of the Constitutional role of the Congress, two cases stand out, Condon v. Reno and Crosby v. South Carolina.

I voted for, and Congress enacted, the Drivers Privacy Protection Act in 1994 to limit the availability of personal information—such as photographs, social security numbers, addresses and telephone numbers, and even some medical information—contained in motor vehicle records. In Condon v. Reno, the state of South Carolina challenged the law, claiming that it was an unconstitutional infringement on the state's rights because it restricted South Carolina from setting its own standards for releasing State motor vehicle records. In Condon v. Reno, Judge Shedd ruled that the law was unconstitutional and in the process endorsed a view that—if permitted to stand—would have severely limited Congress ability to legislate under the Commerce clause of the Constitution. Judge Shedd's decision endorsed a view of congressional authority so far out of the mainstream that the Supreme Court ruled unanimously to overturn him in a decision written by Chief Justice Rehnquist.

Judge Shedd's decision in Crosby v. South Carolina Department of Health and Environmental Control also deeply troubles me. In Crosby, Judge Shedd adopted a magistrate's recommendation granting defendant's summary judgement—agreeing with the magistrate that the 11th Amendment doctrine of state sovereign immunity should prevent the plaintiff from suing the state for violation of the Family and Medical Leave Act because he believed that Act was an improper exercise of Congress's enforcement power under the 14th amendment. Despite the obvious and profound implications of this decision for Congress's authority, Judge Shedd offered virtually no analysis to support his decision. This is despite the absence of directly controlling precedent and the presence of a split among other Federal district courts on the issue. Acts of Congress are entitled to a presumption of Constitutionality. Ruling to overturn a Federal law should not be taken lightly. In a case of this import, Judge Shedd's failure to articulate a rationale for his decision is deeply disturbing. The fact that other judges may have reached the same conclusion as Judge Shedd is not the point here. Parties before the court on an issues of this magnitude are entitled to a judge's reasoning. Judge Shedd offered none.

The Crosby decision is not the only example of Judge Shedd's tendency to accept magistrate recommendations with little or no comment on important matters. In South Carolina, all cases under Title VII of the Civil Rights Act of 1964 are automatically referred to magistrates for pretrial matters. In important employment discrimination cases, Judge Shedd has often adopted magistrates' recommendations in favor of summary judgement. And he has done so without comment in many instances where it appears to me that comment was warranted. In fact, Judge Shedd has done so in cases where a party has raised an objection to one of the magistrate's recommendations and he was required to conduct a de novo review. In a number of these cases, Judge Shedd's rulings do not address the objections at all. Instead, his decisions simply adopt the magistrate's recommendations and pay lip service to his obligation by including a statement that he has conducted the required de novo review. Given the concerns I have about this approach in the Crosby case, this practice deeply concerns me.

Mr. President, nothing is more important for a judge than a commitment to equal justice. A review of Judge Shedd's record also raises the question whether this ideal is being upheld.

In a number of civil rights cases, Judge Shedd appears to have intervened in a manner that has tilted toward defendants. He has granted summary judgement for defendants on grounds not even raised by the defendants. He has ordered a defendant to file a motion to dismiss a case and later granted the motion. And Judge Shedd even granted summary judgment against a petitioner even though it appears that the defendant never filed a motion for summary judgement. These decisions raise serious questions about whether plaintiffs are getting a fair hearing in Judge Shedd's courtroom.

I was particularly struck by the Judge's answer to a question from Senator Edwards in his Judiciary Committee hearing earlier this year. Senator Edwards asked Judge Shedd whether he had ever granted relief to a plaintiff in an employment discrimination case. Judge Shedd could not recall a single instance where a plaintiff alleging employment discrimination was granted relief in his courtroom. Judge Shedd's inability to recall such a case is actually not surprising as a review of his published opinions failed to reveal even one such instance. Eleven years on the bench and not one of his published opinions reflects a favorable ruling for an employee in a discrimination case.

Mr. President, I'm afraid Judge Shedd's record simply does not support his promotion to the 4th Circuit Court of Appeals.

Mr. KERRY. Mr. President, I rise today to voice my strong opposition to

the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals. Although the President has pledged to nominate qualified individuals with outstanding judicial records to the Federal Court System, he has, time and time again, failed to make good on that pledge. Judge Shedd is no exception. During his tenure as a trial judge, Judge Shedd has exhibited extreme, even radical views on an array of important issues. Judge Shedd's record demonstrates that in cases involving civil rights, privacy, discrimination and federalism, he is willing to cross the boundaries of established case law and rule in a manner that is out of touch with mainstream thinking.

A few cases in particular merit the attention of this body. In a case demonstrating Judge Shedd's extreme stance on federalism, he struck down as unconstitutional the Driver's Privacy Protection Act, which we passed to ensure that states keep drivers' license information confidential. This legislation, designed as ''antistalking'' legislation, was drafted in part because antiabortion activists have used accessible drivers' license information to obtain the addresses of doctors who performed abortions in order to post that information on websites. Mr. President, this case was reversed unanimously by the Supreme Court, with Chief Justice Rehnquist authoring the opinion.

Judge Shedd also has a record of condoning serious civil liberties violations by law enforcement. In one particularly disturbing case, Judge Shedd dismissed a lawsuit brought against a corrections officer who had stripped an inmate naked and left him without bedding for 48 hours after the inmate confessed to not knowing the prison's rules concerning lights out. In dismissing the case, Judge Shedd merely stated that he did not think the inmate had been punished. In another instance, he imposed an inconsequential $250 fine in a case where a sheriff and a prosecutor secretly videotaped a jailhouse conversation between a defendant and his lawyer. Judge Shedd defended the penalty stating that he did not think the pair committed any civil rights violation. I am deeply troubled that we might appoint a judge who does not recognize the blatant civil rights violation in this circumstance.

Perhaps most troubling is Judge Shedd's overwhelming tendency to grant summary judgement against plaintiffs in race and gender employment discrimination cases, preventing the vast majority of such cases from going to trial. In a case involving sexual harassment in the workplace, Judge Shedd reversed the recommendation of a magistrate that the plaintiff be allowed to present her case to a jury, granting summary judgment for the employer even though Judge Shedd himself concluded that the supervisor's conduct ''clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile work environment.'' He relied, therefore, on a tortured interpretation of both the facts and the law to rule against the plaintiff in that case. This is one of many instances that demonstrate a clear pattern in which Judge Shedd has prevented cases brought by people of color and women from ever reaching a jury.

We routinely put aside our partisan differences to send qualified men and women to the federal bench because it is in the best interests of our country to fill seats with those individuals who have pledged to interpret the law objectively and without bias, whether or not they happen to be liberal or conservative in temperament. We place a great deal of trust in these men and women, as their appointments are guaranteed for life. Unfortunately, based on the records and statements I have reviewed, I do not believe we can place our trust in Judge Shedd to protect the civil liberties Americans of all races and beliefs have fought so hard to win. It is because of this that I will vote against his nomination.

Mr. EDWARDS. Mr. President, every judicial nomination that comes before this body is critically important. However, I take a particular interest in appointments to the Fourth Circuit, which includes my home State of North Carolina. The Fourth Circuit needs qualified, fair-minded judges who will put aside their personal views and follow the law. After reviewing his record carefully, I have concluded that Judge Dennis Shedd is not such a judge.

While Judge Shedd's record provides numerous reasons to oppose his confirmation, I am most troubled by his poor record on civil rights, where he has demonstrated an alarming propensity for putting his personal views above the law. Judge Shedd has repeatedly overstepped the bounds of judicial restraint and engaged in judicial activism on behalf of defendants in discrimination cases.

I raised this concern with Judge Shedd earlier this year during his confirmation hearing before the Judiciary Committee. Judge Shedd could not point to one instance in his eleven years on the bench in which an individual alleging discrimination—based on race, sex, age or disability—has ever won a case in his court. In the same period, there have been over 20 verdicts in favor of plaintiffs in other Federal courts in the State. In written questions, I asked Judge Shedd to say whether a victim of employment discrimination had ever prevailed in his courtroom. He could name no such case.

On the other hand, there is considerable and disturbing evidence of Judge Shedd's conduct in civil rights cases to benefit the defendant. To name only one example: in a sexual harassment matter, Judge Shedd overruled a magistrate's ruling allowing a case to go to trial, even though the plaintiff had offered sworn evidence that her supervisor had commented on her breasts, asked her graphic sexual questions, bought her panty-less pantyhose, and frequently stood behind her, rubbed her shoulders while trying to look down her shirt, and so on.

Finally, in a major case involving the Federal Government's power to protect the privacy of individuals' personal records, Judge Shedd sided against individual rights, and was reversed by a unanimous Supreme Court. There is no other case since 1995 in which a lower court has limited Congress's power and the Supreme Court has reversed.

Federal judges have no responsibility more important than enforcing our laws equally. Because Judge Shedd has proven his willingness to put his personal views above the law, especially in civil rights cases, I must vote against his confirmation.

I ask unanimous consent that a letter I received from a group of 16 North Carolina law professors addressing these and several other of Judge Shedd's decisions be printed in the RECORD.

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

JUNE 12, 2002.

Hon. JOHN R. EDWARDS,
U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR EDWARDS: We are writing to you—as individual members of the faculties of the School of Law of the University of North Carolina, Duke Law School, and North Carolina Central University School of Law—concerned that the Senate Judiciary Committee may be poised to act without conducting a full investigation of President Bush's recent nominee to the United States Court of Appeals for the Fourth Circuit, United States District Judge Dennis W. Shedd. We suggest that to act precipitously on this important nomination would be a serious mistake.

As you know, the Fourth Circuit is one of the region's most influential governmental bodies; its impact on constitutional, statutory, and regulatory issues in the Southeast has no equal apart from the Supreme Court itself. Moreover, a wide range of responsible observers concur that during the past decade the Fourth Circuit has become the most activist federal court in the nation. In certain crucial areas, including federal judicial efforts to confine Congress in the exercise of its traditionally broad national powers, the Fourth Circuit has no peer. It has led the way in attempting to narrow the Congress's Commerce Clause powers, see, e.g., Condon v. Reno, 155 F.3d 453 (4th Cir. 1998), rev'd, 528 U.S. 141 (2000) (challenging Congress's authority under the Commerce Clause to enact the Driver's Privacy Protection Act); Brzonkala v. Virginia Polytechnic Inst., 169 F.3d 820 (4th Cir. 1999) (en banc), aff'd United States v. Morrison, 529 U.S. 598 (2000) (challenging Congress's authority under the Commerce Clause to enact the Violence Against Women Act), its Section 5 powers under the Fourteenth Amendment, see, e.g., Brzonkala, 169 F.3d 820 (4th Cir. 1999) (en banc) (challenging Congress's authority under Section 5), and in promulgating aggressive conceptions of the Tenth and Eleventh Amendments. See South Carolina State Ports Authority v. Federal Maritime Comm'n 243 F.3d 165 (4th Cir. 2001), aff'd 122 S. Ct. 1864 (2002) (invalidating the FMC's authority over state port entities, previously -

granted by Congress under the Shipping Act of 1984, 46 U.S.C. §§1701 et seq., on Eleventh Amendment grounds).

As a federal district judge during the past eleven years, Judge Shedd has been a sympathetic participant in this judicial campaign to disempower Congress. He authored the original decision in Condon v. Reno, 972 F. Supp. 977 (D. S.C. 1997), and struck down the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721–25, a decision later overturned in a 9-to-0 decision of the Supreme Court authored by Chief Justice Rehnquist. Judge Shedd also acted to invalidate the application of the Family and Medical Leave Act to state agencies, holding that ''Congress did not properly enact the FMLA under §5 of the fourteenth amendment, and therefore, has not abrogated [the State defendant's] eleventh amendment immunity from suit.'' Crosby v. South Carolina Dep't of Health & Environmental Control, C.A. No. 3–97–3588119BD, at 1 (D. S.C. Oct. 14, 1999).

Were Judge Shedd's highly protective views of state sovereignty, his skepticism about Congressional power, and his aggressive use of judicial authority the only issues presented by his nomination, they would suffice to require careful Senate consideration. However, we are concerned by three other features of his record: (1) an apparent skepticism of federal civil rights claims; (2) a marked sympathy for employers in employment disputes; and (3) an unusually vigorous use of Rule 56 of the Federal Rules (the summary judgment provision) and similar procedural provisions to wrest lawsuits from trial juries and end them by judicial fiat.

We are not prepared to say, at this point, that Judge Shedd has acted with bias in these areas, since so many of his decisions are unreported (and we have not been able to review the briefs in these cases) and since an unusual number of his reported decisions are merely brief orders that accept and adopt relatively summary reports from United States Magistrates. However, in some sixty-six cases that presently appear in the LEXIS online system, we note the following patterns. Judge Shedd appears never to have granted relief to a plaintiff in an employment discrimination case, although he has granted numerous summary judgment motions in favor of employers. See, e.g., Roberts v. Defender Services, Inc., C.A. No. 0:00–1536–19BC (D.S.C., Sept 27, 2001) (rejecting a female employee's sexual harassment and hostile work environment claims); Austin v. FN Manufacturing, Inc., C.A. No. 3:98–3605–19BC (D.S.C., March 23, 2000) (rejecting an African American employee's racial discrimination, hostile environment, and constructive discharge claims); Taylor v. Cummings Atlantic, Inc., 852 F. Supp. 1279 (D.S.C. 1994) (rejecting an older employee's age discrimination, fraud, and breach of contract claims); (Bailey v. South Carolina Dep't of Social Services, 851 F. Supp. 219 (D.S.C. 1993) (rejecting an African American employee's non-promotion claim, although backed by EEOC Determination of reasonable cause that plaintiff was not promoted because of his race); White v. Roche Biomedical Laboratories, Inc., 807 F. Supp. 1212 (D.S.C. 1992) (rejecting an employee's breach of contract and promissory estoppel claims).

In the Roberts case, for example, Judge Shedd granted summary judgment to an employer in a sexual harassment lawsuit, even after he noted that ''the alleged conduct [of Ms. Robert's supervisor] clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment.'' Roberts, supra, at 2. Judge Shedd concluded, nonetheless, that plaintiff Rogers raised no genuine issue of fact about whether she herself ''subjectively perceived the environment to be abusive,'' id., although it was undisputed that she had joined in making a formal complaint about her supervisor's abusive behavior to corporate headquarters, and then met with a corporate investigator to detail and protest the supervisor's sexually suggestive behavior.

We have also obtained a list of unpublished fifty-three federal race, gender, age, and disability cases in which Judge Shedd has dealt with cases on summary judgment. In most, he has granted defendants' motions and dismissed the cases, denying all relief to the plaintiffs. Since these cases are not reported, we have not yet been able to review them to discern whether they manifest bias, but the overall anti-plaintiff pattern is troubling.

The tendency by Judge Shedd to resolve cases on his own, short of trial, is also manifest in his use of Rule 56 summary judgment in other, non-employment contexts, see, e.g., Alston v. Ruston, C.A. No.: 9–99–244–19RB, 2000 U.S. Dist. LEXIS 11939 (D.S.C. March 9, 2000) (prisoner's Section 1983 and Eighth Amendment claim); Joye v. Richland County Sheriff's Dep't, 47 F. Supp. 2d 663 (D.S.C. 1999) (Section 1983 and Fourth Amendment, false arrest claim); Cianbro Corp. v. Jeffcoat & Martin, 804 F. Supp. 784 (D.S.C. 1992) (attorney malpractice action), and by the use of other procedural devices, such as Rule 12(b)(6) motions to dismiss, see, e.g., Gray v. Petoseed Co., 985 F. Supp. 625 (D.S.C. 1996) (fraud in sale of contaminated watermelon seeds), as well as by use of Rule 50 motions to grant judgment notwithstanding the verdict, see, e.g., Storms v. Goodyear Tire & Rubber Co., 775 F. Supp. 862 (D.S.C. 1991) (wrongful discharge and breach of implied contract); Wilds v. Slater, C.A. No. 3:97–1608–19BD, 2000 U.S. Dist. LEXIS 20771 (D.S.C. March 7, 2000) (National Environmental Policy Act action for failure to file environmental impact statement).

In Alston, for example, Judge Shedd granted summary judgment on a Section 1983 complaint after somehow concluding, as a matter of law, that a prison guard had not used excessive force—despite an affidavit and a well-pleaded complaint from the plaintiff alleging that the officer had sprayed him in the face with tear gas without justification, advanced toward him ''swinging his fists and punching [plaintiff] in the mouth,'' and wielded a broomstick until other officers intervened. We do not, of course, know whether the plaintiff's version of these facts is correct or, instead, whether the correctional officer's version should be credited; we do believe it is impossible fairly to conclude that the conflicting evidence of record about what happened that evening raised no ''genuine issue of material fact.''

In another such case, Joye v. Richland Co. Sheriff's Dep't, Judge Shedd dismissed a Section 1983 claim brought by a person wrongfully arrested by sheriff's deputies under a bench warrant issued for his son. Despite the fact that the arrest warrant described a man aged 31, standing 5'11'' (while the plaintiff was 61 years old and stood only 5'8''), despite plaintiff's allegations that the arresting officers ''refused to inform him of the basis for his arrest or provide him with a copy of the warrant,'' despite the fact that ''the warrant . . . listed the driver's license of [the proper suspect]'' which ''differ[ed] from plaintiff's driver's license number,'' Judge Shedd granted summary judgment on the grounds that the defendants had ''a reasonable, good faith belief that they were arresting the correct person'' He thereby rejected, as a matter of law, the contrary conclusion of a United States magistrate that the officers were not entitled to a ''good faith'' defense on these facts since ''[a] simple check of the bench warrant should have revealed that Joye was not the person wanted.'' Joye, 47 F. Supp. 2d at 665–66.

Judge Shedd also appears to be willing to interject himself in unusual ways into ongoing judicial proceedings. In one case, Maytag Corp. v. Clarkson, 875 F. Supp. 324 (D.S.C. 1995), he went out of his way to draft and publish an opinion castigating a lawyer for making a closing argument urging the jury to decide a case on its notion of ''what is right and . . . what is moral and . . . what is just.'' Judge Shedd had submitted the case to the jury on a special verdict—limited to the question whether the defendant was liable to the plaintiff under a written guarantee—and although plaintiff's attorneys made no objection to the defendant's closing argument (and although the jury subsequently returned a verdict for the plaintiff), Judge Shedd felt the need to publish an opinion declaring that the defendant's appeal to morality, decency, and justice—what the Court termed the sympathy of the jury—was inappropriate: ''Therefore, while this matter is now closed, this Order should serve as a reminder to all counsel that arguments of the type addressed herein are improper and will not be tolerated in this Court.'' 875 F. Supp. at 330.

In yet another such example, Judge Shedd initiated, sua sponte, an inquiry into the finances of an unemployed party, living with her mother, who had been granted in forma pauperis status by another federal judge and whose case was already pending on appeal in the Fourth Circuit. Assaad-Faltas v. University of South Carolina, 971 F. Supp. 985 (D.S.C. 1997). Based on ''the prolific litigiousness in which she has engaged,'' id. at 986—specifically citing her use of a telephone to make long-distance telephone calls to the Fourth Circuit and her use of her mother's automobile ''to travel to the courthouse on a regular basis,'' as well as her practice of ''flood[ing] the Court and opposing counsel with numerous legal filings, many of which contain multiple pages and/or exhibits''—Judge Shedd revoked her in forma pauperis status and recommended that the Fourth Circuit dismiss her pending appeal, concluding that these acts were ''certainly indicative of the fact that she has financial resources available to her to fund this litigation.'' Id. at 988.

In our considered judgment, these cases suffice to raise red flags that should require the Senate Judiciary Committee to proceed only after the most careful review of Judge Shedd's full judicial record—most of which has only become available for consideration in the past few days. The Fourth Circuit does not, in our view, need another federal appellate judge who would constrain the authority of Congress in the 21st century by resort to outdated and reactionary views of federal power. It does not need a federal judge who would be hostile to African Americans, to women, to the aged, or to the disabled who bring serious claims of employment discrimination or other forms of discrimination prohibited by federal laws or the Constitution. It does not need a federal judge who would reflexively side with management against labor, with employers against employees. Nor does it need a federal judge who is dismissive of the precious right to trial by jury, cutting short legitimate factual disputes that, under the Seventh Amendment, properly belong to federal juries.

Sincerely,

John Charles Boger, Lissa L. Broome, Kenneth S. Broun, John O. Calmore, Charles E. Daye, Eugene Gressman, Ann Hubbard, Daniel H. Pollitt, Marilyn V. Yarbrough, Professors of Law, UNC-Chapel Hill, School of Law.

Christopher H. Schroeder, Jerome Culp, Professors of Law, Duke University, School of Law.

Renee F. Hill, David A. Green, Irving Joyner, Nichelle J. Perry, Fred J. Williams, Professors of Law, North Carolina Central, University School of Law.

One final note. The Fourth Circuit, as you know, presently is comprised of eleven judges, and there are four pending vacancies. Although North Carolina is the largest State within the Circuit, it has no current representation on the Circuit at all, and has had none since 1999, despite a federal statute that requires that ''in each circuit, there shall be at least one circuit judge in regular active service appointed from the residents of each state in the circuit.'' 28 U.S.C. §44.

South Carolina, the state in which Judge Shedd currently sits, has three judges currently on the Fourth Circuit. Judge Shedd's elevation would constitute the fourth. We respect our sister state, of course, yet we do not understand why, with a population less than half of North Carolina's, it should receive its fourth active judge while North Carolina languishes without a single sitting representative, and with only two seats even authorized.

Mr. DASCHLE. Mr. President, the Senate has confirmed 99 judicial nominees during the 107th Congress—all of which have occurred since Democrats assumed the majority. Democrats have also confirmed more circuit court nominees than Republicans did any of their prior six years of control. Today we are considering the nomination of Judge Shedd for the Fourth Circuit.

There has been much discussion over Judge Shedd's nomination, and I understand the Judiciary Committee has received hundreds of letters from individuals and organizations expressing concern over elevating Judge Shedd. While his nomination was reported out of the committee last week, there was considerable debate and many members raised serious concerns. I am troubled by allegations that Judge Shedd has a pattern of injecting his personal opinions into the proceedings before him, including—ordering defendants to make motions for summary judgment, and deciding on issues before they are raised.

I am also concerned about allegations that individuals raising employment discrimination claims before him are unable to receive a fair and impartial forum. I understand that through questioning by the Judiciary Committee, it was uncovered that Judge Shedd could not think of a single plaintiff in a civil rights or employment discrimination case who had prevailed in his courtroom—in fact, Judge Shedd has never granted substantive relief to a plaintiff in an employment discrimination case.

I am also concerned about his extreme views of the constitutional allocation of powers between the States and the federal government—views that are not shared even by the current conservative Rehnquist Court. In a 1997 case challenging the constitutionality of the Driver's Privacy Protection Act (DPPA), Judge Shedd held that the federal government did not have the power to require states to protect the confidentiality of state driver's license records. In a 9–0 reversal of Judge Shedd's ruling, the Supreme Court made clear that he had gone too far. The Senate has a constitutional responsibility to evaluate the President's nominees, offer advice, and grant—or withhold—its consent. I take this responsibility very seriously.

Unfortunately, in Judge Shedd's case I believe enough concerns have been raised about his judicial temperament to lead me to the conclusion that he should not be elevated to the Fourth Circuit. So, on this vote I plan to vote against Judge Shedd's nomination.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. There are now 2 minutes equally divided prior to the vote.

Who yields time?

The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise today to express my strong support for the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. Judge Shedd is a man of great character who will make an outstanding addition to the Federal appellate bench. He possesses the highest sense of integrity, a thorough knowledge of the law, and a good judicial temperament.

I want to assure my colleagues that Judge Shedd is committed to upholding the rights of all people under the Constitution. This fine man is truly deserving of such high honor, and he will serve the people of the Fourth Circuit with distinction.

Mr. President, I ask unanimous consent that letters of support for Judge Shedd be printed in the RECORD.

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

To: United States Senators.
From: Luonne Abram Rouse.
Re: Dennis Shedd.

Dennis Shedd is an outstanding American citizen, and a friend of high integrity and godliness. The United States of America will benefit greatly from his service in the 4th Circuit Court of Appeals.

The Honorable Senator Strom Thurmond of South Carolina introduced me to Dennis in 1983. Putting history behind, we came together in the 80s, while I served as president of a local NAACP chapter in South Carolina. We established a friendship and respectful sharing that has been mutually beneficial for our work in America and beyond. Since that time, I have found Dennis Shedd to be the type of person that I trust to weigh the issues with dignity and legal focus.

In 1982, Senator Thurmond was a guest in our home following a time when he and I had written communication concerning the Civil Rights Act. The Senator visited my home to personally thank me for the communication, and state that he had changed his mind and agreed to support the Civil Rights Act after dialogue with several African American leaders. During the same visit, he extended an invitation for me to be a guest chaplain at the United States Senate in Washington, DC. I responded with my presence in April of 1983, at which time I met Dennis Shedd.

Dennis and I have kept up with one another's growth and experiences. He has prayerfully supported my appointments in United Methodist Churches across racial lines in South Carolina, since 1986. The support he has shown for racial inclusiveness in churches, during a time in which leading sociologists claimed that there are no truly desegregated churches in South Carolina, has been encouraging to my ministry of intentionality and reconciliation in this period of church desegregation.

I am confident that persons will be able to communicate with this experienced Judge, and find him seeking to maintain peace with justice based soundly on the law. When this matter is concluded, I would like to have Hillary Shelton, another outstanding man and long time activist who has been an overnight guest in our home, to dinner and discover the real essence of Dennis Shedd as a judge of fairness and justice regarding issues of human rights.

Many people have sought to block Dennis Shedd's appointment to the 4th Circuit Court of Appeals, and some have led me to study his decisions closely. I respectfully ask those who would oppose him to consider that there is more to a decision than a final report reveals, and much more to the person having to issue the judgment regarding the same. I have known Dennis as a man of his word, who reaches decisions weighing the evidence with matters of law. I have been a long time advocate for women's rights and civil rights, and would never support someone whom I believed had personal issues outweighing legal judgment on matters concerning the same. Even is disagreement, his listening ear would grant the same respect offered to him by those with opposing views. And the respect he provides for one, I trust him to provide to others. As a political leader Senator Thurmond has been most respectful in communicating with me, and as a legal representative Dennis has been most receptive and respectful of my calls.

In conclusion, my wife and I have two daughters; our hopes and dreams for the future are in them. I believe Dennis will represent equality and justice for women and all ethnicities in America with devotion to oath he has taken. I do not believe that he will forsake the law with favoritism for economic giants or big business. I sincerely view Dennis as one who will grant persons of every socioeconomic level the same psycho-social respect within the law.

Therefore, I strongly favor the nomination of Dennis Shedd to the 4th Circuit Court of Appeals, because Dennis stands firm on his convictions, but is open to intelligent and informed opinions of law. He is open to change, but I do not expect him to change just for political correctness. He will, however, hear the ethical and moral points. I support him because of his listening ear and desire for justice.

I appreciate your prayerful action and reception of this letter.

LAW OFFICES OF JACK B. SWERLING,
Columbia, SC, January 26, 2001.

Re the Honorable Dennis W. Shedd.

Hon. ERNEST F. HOLLINGS,
U.S. Senator,
Columbia, SC.

DEAR SENATOR HOLLINGS: I am writing you in support of the nomination of the Honorable Dennis W. Shedd to the Fourth Circuit Court of Appeals. I believe that you could not find from our great state a more able or deserving jurist to sit on the Fourth Circuit.

I have been in practice for almost 28 years and a significant part of my practice is dedicated to the representation of defendants in criminal cases in the District of South Carolina. Since Judge Shedd was appointed to serve as a District Judge, I have had the opportunity to appear before him on many occasions, in both hearings and in trials.

Judge Shedd presides over the proceedings before him in a fair and impartial manner.

All litigants, whether they be private individuals, corporations, or governmental entities, enjoy the opportunity to be fully heard in the presentation of their case. I have always felt that while one side or another must ultimately prevail, each litigant as well as their counsel have been treated with the utmost respect and dignity in Judge Shedd's courtroom. He is known among the federal bar to be intellectually gifted. He has a complete command of not only the federal rules of evidence and procedure, but also the federal case law throughout the country. His orders and trial rulings are based upon a sound and insightful perspective of the applicable federal rules and law. In order to reach a just result in a recent case, Judge Shedd and his very able law clerks worked long into the night and started again early the next morning to study the transcripts and research all of the applicable federal law before ruling on my motion for a judgment of acquittal. His Order, with underlying factual and legal support, is a model for any jurist.

It has been an honor and a privilege to practice before the Judge over these years. He is a man of integrity with the highest ethical standards; a highly energetic and motivated jurist; and one with the demeanor and intellectual ability to serve with distinction on the Fourth Circuit just as he has served in our District over these past years. On behalf of this lawyer, I would urge you to support his nomination.

Very truly yours,

JACK B. SWERLING.

JAN S. STRIFLING,
ATTORNEY AT LAW, P.A.,
Columbia, SC, October 2, 2002.

Re Hon. Dennis W. Shedd, U.S. District Judge.

Hon. CHARLES SCHUMER,
U.S. Senator, Leo O'Brien Bldg., Albany, NY.

DEAR SENATOR SCHUMER: By way of introduction, I introduced myself to you in the Tetons last summer when you and your family were hiking in cascade canyon.

I am writing you in support of Judge Dennis Shedd's confirmation as Judge of the Fourth Circuit Court of Appeals. I practice criminal law and can understand that a great deal of the outcry against Judge Shedd comes from the results of the criminal cases. From my viewpoint, Judge Shedd makes decisions which follow the law notwithstanding their popularity.

I have practiced criminal law for over thirty years and have had a substantial number of cases before Judge Shedd since he began as a District Judge. He has always been courteous to me and my clients and cognizant of the rights of all parties.

I think that he has been a judge who has been fair to all litigants and that he would continue in that manner in the Circuit Court.

Thank you for your consideration.

Sincerely,

JAN S. STRIFLING.

THE ''QUATTLEBAUM CASE'': WHAT THE LAWYERS SAY

E. Bart Daniel, the criminal defense attorney who represented the lawyer who pled guilty and was sentenced to jail for perjury (letter to Senator Hatch dated November 18, 2002)

I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, and Assistant U.S. Attorney, a United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a ''white collar'' criminal defense practice. I have appeared many times in court before Judge Shedd and found him to be courteous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in United States v. John Earl Duncan. Mr. Duncan was a practicing attorney who was convicted of perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33,386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge Shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, Judge Shedd was courteous and patient and listened intently to the many people who spoke on our client's behalf including my co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or I can be of any further support, please do not hesitate to call.

Jack Swerling, the criminal defense attorney who represented the Deputy Solicitor who was tried for perjury before Judge Shedd (letter to Senator Hollings dated January 26, 2001)

I am writing you in support of the nomination of the Honorable Dennis W. Shedd to the Fourth Circuit Court of Appeals. I believe that you could not find from our great state a more able or deserving jurist to sit on the Fourth Circuit.

I have been in practice for almost 28 years and a significant part of my practice is dedicated to the representation of defendants in criminal cases in the District of South Carolina. Since Judge Shedd was appointed to serve as a District Judge, I have had the opportunity to appear before him on many occasions, in both hearings and trials.

Judge Shedd presides over the proceedings before him in a fair and impartial manner. All litigants, whether they be private individuals, corporations, or governmental entities, enjoy the opportunity to be fully heard in the presentation of their case. I have always felt that while one side or another must ultimately prevail, each litigant as well as their counsel have been treated with the utmost respect and dignity in Judge Shedd's courtroom. He is known among the federal bar to be intellectually gifted. He has a complete command of not only the federal rules of evidence and procedure, but also the federal case law throughout the country. His orders and trial rulings are based upon a sound and insightful perspective of the applicable federal rules and law.

It has been an honor and a privilege to practice before the Judge over these years. He is a man of integrity with the highest ethical standards; a highly energetic and motivated jurist; and one with the demeanor and intellectual ability to serve with distinction on the Fourth Circuit just as he has served over these past years. On behalf of this lawyer, I urge you to support his nomination.

Joseph M. McCullough, Jr., the criminal defense attorney who intervened on behalf of Quattlebaum in the federal prosecution to have the videotape suppressed at trial (letter to Senator Hollings dated January 29, 2001)

Having practiced law in South Carolina for more than 20 years, and as past President of the South Carolina Criminal Defense Lawyers Association, I have had occasion to be in Judge Shedd's courtroom frequently and have tried several cases before him. I have always been impressed with Judge Shedd's factual familiarity and legal preparation in every matter before him. I have found him to be extremely intelligent and a firm hand in the courtroom. I have always been impressed with his understanding of the law, and believe that he would be a strong addition to the Fourth Circuit Court of Appeals.

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, SC, November 18, 2002.

In re Dennis W. Shedd, Nominee to Fourth Circuit Court of Appeals.

Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I, therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

In response to your specific inquiries, I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant).

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to rescuse himself and he is very consistent about this.

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

In regard to the issue of granting summary judgment or otherwise dismissing cases short of trial, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial and a great number of those eventually settle before the trial can be conducted. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards.

JOSEPH F. ANDERSON, Jr.,
Chief United States District Judge.

THE SENATE,
STATE OF ARKANSAS,
October 11, 2002.

Re confirmation for Federal Judge Dennis Shedd (South Carolina) to the US Court of Appeals.

Hon. BLANCHE LINCOLN,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LINCOLN: I am writing this letter to provide my strongest possible recommendation for the Hon. Dennis Shedd, of

Columbia, South Carolina, who has been nominated by President Bush to sit on the U.S. Court of Appeals in Richmond.

Yesterday, I read the story in the A Section of the Arkansas Democrat-Gazette regarding the Senate Judiciary Committee's decision to delay confirmation of Judge Shedd until after the recess, after which Senator Strom Thurmond (R–SC) will have retired from the Senate.

I understand that you are not a member of the Judiciary Committee. However, I am writing this letter as one of your loyal supporters and good friends, and as a good Democrat as well. I want you to know that I cannot think of many people who would make a better Appeals Court Judge than Dennis Shedd.

Dennis and I are good friends from the days when we both worked in Washington, he for Senator Thurmond and I for Senator Bumpers. In addition, he was my landlord for over four years at the townhouse where I lived. We have kept in touch over the years as we got both got married and built families. I have also visited Dennis and his wonderful wife, Elaine, in South Carolina during the occasions my family vacations there.

However, taking friendship and political philosophies aside, I can honestly say that he has one of the finest minds I have ever encountered, including President Clinton and many others with whom I have had the good fortune to become well acquainted. Furthermore, his sense of personal and professional integrity is unrivaled, as is his knowledge and understanding of the law. He was one of the lawyers involved in the dissolution of the Heritage USA Bankruptcy (Jim Baker), and he gave half of his legal fees to victims. On one visit to South Carolina, I had the opportunity to sit in on a high profile case, and was very impressed with the way he dispensed justice in that proceeding, and with the relationship he had with the then Democratic US Attorney's Office. He has a wonderful family and is someone I would say is a true patriot.

In short, I believe Dennis Shedd has proven to be a good and valued officer of the court, and would make an excellent Appeals Court Justice. I believe the problem with the confirmation has more to do with the politics of having been chief of staff to the Senate Judiciary Committee when President Reagan was in office, and several Democrats see an opportunity for partisan retribution for some of the judicial politics of that era. I want you to know that I saw Dennis Shedd almost every day during that period, and there is no one who would deny his professionalism in handling these matters. The politics of that era had more to do with who was in power than it did with the staff. The US Senate, including Democrats, should move his confirmation forward.

Dennis is a self-made person who came from a small South Carolina town and worked his way through law school while a member of Senator Thurmond's staff, and who did such a good job was ultimately promoted. You know that I am a good and loyal Democrat. However, the fact of his political affiliation should not prevent or detract from all of these qualifications, and I sincerely plead with you to bring this up in the Senate Democratic Caucus with a request that the Judiciary Committee honor its word to Senator Thurmond, and move Judge Shedd's nomination forward and out of the Senate.

I think this is one of only a handful of letters I have ever written you. Thank you for your time, and please forgive the length of this letter. However, I do hope you will take this request seriously, and pass it on to your colleagues.

Sincerely,

KEVIN A. SMITH,
State Senate.

GARRY L. WOOTEN,
ATTORNEY AND COUNSELOR AT LAW,
Columbia, SC, November 18, 2002.

Senator ERNEST F. HOLLINGS,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: I am writing to express my strong support for the confirmation of Dennis W. Shedd to the Fourth Circuit Court of Appeals.

I have practiced law for over twenty years in Columbia, South Carolina. I handle primarily personal injury and criminal cases. My practice is a Plaintiff's practice. I have been a member of the South Carolina Trial Lawyers Association since graduating from law school and appreciate your strong support for that organization.

I have appeared before Judge Shedd in a certain number of cases. Some cases have been won and some were lost. In one case, my client was African American. That case involved a lawsuit in which the Federal Government fought to deny my client life insurance benefits after the death of his wife. Judge Shedd ruled favorably and properly for my client on the law. My client received a verdict for the full amount of the benefits. During the trial, Judge Shedd was fair, extremely knowledgeable on the law, and showed absolute integrity.

I am confident that Judge Shedd will be fair to all and show complete integrity if confirmed for a position on the Fourth Circuit Court of Appeals.

With the kindest regards, I am.

Sincerely,

GARRY L. WOOTEN.

GREGORY P. HARRIS,
ATTORNEY AT LAW,
Columbia, SC, November 18, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, Senate Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: This is the second letter that I have written to you in support of the confirmation of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I believe that it is necessary to write another letter in light of recent accusations that I have read concerning Judge Shedd fairness and temperament on the district court bench.

I was the Deputy Chief of the Criminal Division in the U.S. Attorney's Office when Judge Shedd took the bench in 1992. As a federal prosecutor, I tried three cases in front of Judge Shedd. He was tough, but fair. In 1993, I entered private practice specializing primarily in federal criminal defense. Since entering private practice, I have tried seven cases in Judge Shedd's court and appeared on other matters on numerous occasions. During each of these trials, Judge Shedd was similarly tough and fair. It has been my experience as a federal prosecutor and a private attorney that Judge Shedd feeds everyone out of the same spoon.

As to his temperament, on occasion when he and I have disagreed over the admittance of evidence, the admission of a statement, or any other matter of law, he has been professional, courteous, and usually right. Nevertheless, even after these disagreements, he has never left the court room at the end of the day without a smile and a kind word to the lawyers.

It seems to me that those leveling the accusations at Judge Shedd have never even seen him in court, much less appeared before him. Almost all of us who have, strongly support his confirmation to the Fourth Circuit. If have any questions, please do not hesitate to contact me regarding my professional and personal feelings about Judge Shedd.

Regards,

GREGORY P. HARRIS.

NATHANIEL ROBERSON,
ATTORNEY AT LAW,
Columbia, SC, November 18, 2002.

Re nomination for the 4th Circuit Court of Appeals.

Senator EARNEST F. HOLLINGS,
Senator ORRIN HATCH.

GENTLEMEN: This is on behalf of Dennis Shedd and his nomination for the 4th Circuit Court of Appeals.

I have tried many cases, argued motions, and have done may guilty pleas before Judge Shedd since he became a District Court Judge in South Carolina.

I have found him to be open and honest with litigant members of the bar and witnesses relevant to the issues before him. He has at all times demonstrated the kind of judicial temperament that has made him a credit to our judiciary.

He has been accused by groups and organizations of being biased either for against certain issues that has not endeared him for the reasons expressed by those organizations that oppose him.

My experience with Judge Shedd has been professional, judicial, and he has never blocked or interfered with my representation of clients and those issues that I was required to make on behalf of the people I represented. I urge you and your colleagues to vote in favor of Judge Shedd being elevated to the Fourth Circuit Court of Appeals.

Thanks for your consideration.

Sincerely,

NATHANIEL ROBERTSON.

YOUNG AND SULLIVAN, L.L.P.,
ATTORNEYS AND COUNSELORS AT LAW,
Charleston, SC, November 18, 2002.

Re Judge Dennis W. Shedd, nomination, Fourth Circuit.

Senator ORRIN HATCH,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HATCH: I have been in an eight week (8) long jury trial before Judge Dennis W. Shedd and many other jury trials, motion hearings, and sentencing hearings and appeals to the Fourth Circuit. I have appeared before Judge Shedd as much or more than any defense lawyer in South Carolina.

I am not a political crony of Judge Shedd, I am a trial lawyer. I was Chief Public Defender in Columbia, SC (1972–87) Adjunct Professor of Law, USC School of Law (1974–89), President SC Public Defenders Association (1972–88), Founder, SC Association of Criminal Defense Lawyers, Served by election ABA Criminal Justice Council, and was awarded the Bronze Star in Vietnam (1969–70).

Judge Shedd is a competent, fair, even-handed jurist and I urge your support for him to be a Judge on U.S. Court of Appeals—Fourth Circuit.

Tell any U.S. Senator opposed to Judge Shedd's nomination to call me, I am in my office.

Sincerely,

JOHN MCMAHON YOUNG,
Attorney At Law.

Mr. THURMOND. I thank the chair.

(Applause, Senators rising.)

The Senator from Utah.

Mr. HATCH. Mr. President, we are so proud of our senior Senator from South Carolina.

Mr. President, I rise today in support of the confirmation of Judge Dennis Shedd and to congratulate the President on getting his 100th judicial nominee confirmed. Yesterday, I made much more detailed remarks in Judge's Shedd's favor.

I am also glad for Senator STROM THURMOND. He is much loved in the Senate, he is much loved in South Carolina and throughout this country, and I know that he wanted to see his former Chief Counsel confirmed before the end of his long career in the Senate.

In the recent election, as far as I see it, the President took three issues to the American people: his Iraq policy, Homeland Security and his judicial nominees. The election showed that Americans trust this President including in his selection of judicial nominees.

The election indicated that voters rejected obstruction in the Senate, including on judicial nominees, and voters especially rejected the distortions of reputations that they read and heard about in hundreds of news stories, scores of editorials, and dozens of opeds . . . and that they saw on TV.

Voters sent us a clear message, it seems to me, that we should end the obstruction and maltreatment of judicial nominees. We need to evaluate judges or potential judges as unbiased umpires who call the balls and the strikes as they are, not as they alone see them and not as they want them to be. We must end the practice of projecting ideology to see if an umpire is pro-bat or pro-ball, pro-batter or pro-pitcher.

Our job is to determine the character and temperament of a nominee to the judiciary. Period. This is true of the trial bench, the appellate court, and the Supreme Court.

Again, I express my great satisfaction that the Judiciary Committee has favorably recommended the nomination of Judge Dennis Shedd of South Carolina for a vote of the full Senate.

When Judge Shedd was nominated to the federal trial bench, Chairman BIDEN had this to say to him: ''I have worked with you for so long that I believe I am fully qualified to make an independent judgment about your working habits, your integrity, your honesty, and your temperament. On all these scores, I have found you to be beyond reproach.''

This is high praise, indeed, and from a colleague from the other side of the aisle for whom we all have the greatest respect.

Judge Sheed has strong bipartisan support in his home state as well, and not only from Senators THURMOND and HOLLINGS. He is also strongly supported by Dick Harpootlian, South Carolina State Chairman of the Democratic Party, and himself a trial lawyer.

Dennis Shedd has served as a federal jurist for more than a decade following nearly twenty years of public service and legal practice. While serving the Judiciary Committee, Judge Shedd worked, among many other matters, on the extension of the Voting Rights Act, RICO reform, the Ethics in Post-Employment Act, and the 1984 and 1986 crime bills.

As Senator BIDEN put it: ''His hard work and intelligence helped the Congress find areas of agreement and reach compromises.''

Judge Shedd will add diversity to the Fourth Circuit Court of Appeals. The last five Fourth Circuit confirmations have all been Democrats. When Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit.

The American people should be grateful that President Bush has nominated Dennis Shedd to serve this country further. He has already served for nearly 25 years.

Judge Dennis Shedd has heard more than 5,000 civil cases, reviewed more than 1,400 reports and recommendations of magistrates, and has had before him nearly 1000 criminal defendants. He has been reversed fewer than 40 times, less than one percent.

In employment cases, he has only twice been reversed in his decisions. Remarkbly, in criminal cases, Judge Shedd has never been reversed on any ruling considered before or during trial, or on the taking of guilty pleas.

Now, detractors have made much of the fact that he has a relative few decisions that he has chosen to publish. But, in fact, he falls in the middle of the average for published opinions in the Fourth Circuit. One Carter appointee has published all of 7 cases, one Clinton appointee has published only 3, and another Carter appointee has published 51, only one more than Judge Shedd, despite being on the court for 10 years longer.

Notably, on cases involving the Voting Rights Acts, Judge Shedd has ruled for plaintiffs in each instance, an Act, I might add that he worked to extend in the Senate.

From his service in the Senate to his role on the South Carolina Advisory Committee of the United States Civil Rights Commission, Judge Shedd has been a leader on civil rights. He led efforts to appoint the first African American woman ever to serve as a magistrate judge in South Carolina and has sought the Selection Committee to conduct outreach to women and people of color in filling such positions. He pushed for an African American woman to be Chief of Pretrial Services. He has actively recruited persons of color to be his law clerks.

And because of Judge Shedd's work in an award-winning drug program that aims to reverse stereotypes among 4,000 to 5,000 school children, he was chosen as the United Way's School Volunteer of the Year.

This record stands in contrast to the distortions we have heard about Judge Shedd's sensitivity on civil rights.

The Judiciary Committee received a very touching letter from one of Judge Shedd's former law clerks, Thomas Jones and I placed in the RECORD yesterday.

Now this young man,—this young lawyer happens to be a person of color—an African American. He says:

> It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd . . . I trust the allegations are given the short shrift they are due.

I would like to read from a letter I received from Niger Innis who has inherited his father's mantle and is the national spokesman for the Congress of Racial Equality. We all know his father, of course, Roy Innis, who was a great leader of the civil rights movement in the 1960's together with Dr. King.

I received this letter even while I was on the floor of the Senate yesterday.

Mr. Innis writes:

> This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

He goes on:

> Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.
>
> Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.
>
> Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. . .
>
> We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair smear against his name. Let Judge Shedd have his day on the Senate floor.

Another letter I received while I was on the floor yesterday came from Phyllis Berry Myers, President of the Centre for New Black Leadership; another great name in the African American community.

Ms. Myers writes:

> The Senate can restore itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

And at 2:32 pm yesterday, while I was on the floor, we also received a letter from the former Chairman of the NAACP of South Carolina. The Rev Dr. Luonne Abram Rouse writes:

> Dennis Shedd is an outstanding American citizen, and a friend of high integrity and godliness. The United States of America will benefit greatly from his service in the 4th Circuit Court of Appeals.

The Honorable Senator Strom Thurmond of South Carolina introduced me to Dennis in 1983. Putting history behind, we came together in the 80s, while I served as president of a local NAACP chapter in South Carolina. We established a friendship and respectful sharing that has been mutually beneficial for our work in America and beyond. Since that time, I have found Dennis Shedd to be the type of person that I trust I trust to weigh the issues with dignity and legal focus. . .

Reverend Rouse wrote a remarkable letter and ends this way:

In conclusion, my wife and I have two daughters; our hopes and dreams for the future are in time. I believe Dennis will represent equality and justice for women and all ethnicities in America with devotion to oath he has taken. I do not believe that he will forsake the law with favoritism for economic giants or big business. I sincerely view Dennis as one who will grant persons of every socioeconomic level the same psycho-social respect within the law.

Therefore, I strongly favor the nomination of Dennis Shedd to the 4th Circuit Court of Appeals, because Dennis stands firm on his convictions, but is open to intelligent and informed opinions of law. He is open to change, but I do not expect him to change just for political correctness. He will, however, hear the ethical and moral points. I support him because of his listening ear and desire for justice.

But these are not unique letters. We have received letters from the people who know Judge Shedd. They are the ones that matter.

I want to take a moment to read a few excerpts from some of the letters we've received in support of Judge Shedd. Keep in mind that the letters are from lawyers who know Judge Shedd, who have practiced before him, and who are in the best position to assess his qualifications for the appellate bench.

The first letter is from J. Preston Strom, Jr. Mr. Strom writes:

I write to support Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit. As a former United States Attorney for the District of South Carolina appointed by President Clinton, my office had daily dealings with Judge Shedd. Judge Shedd is a fair and efficient jurist who even-handedly applied substantive and procedural rules. On occasions when my office disagreed with Judge Shedd's rulings, I found that he always provided well-reasoned analyses for his decisions. Further, when the rules provided for discretion in sentencing for cooperation with federal agents in the prosecution of crime, Judge Shedd deliberated and provided substantial sentence reductions when warranted.

Following my tenure as United States Attorney, I have practiced before Judge Shedd representing criminal defendants and civil plaintiffs. In my criminal defense practice, I have represented many African-Americans before Judge Shedd, and found Judge Shedd to be fair and consistent to each of my clients, regardless of race.

As a member of the Board of Governors of the South Carolina Trial Lawyers Association and a member of the Association of Trial Lawyers of America, I appreciate a judge who pushes civil cases towards resolution and does not permit parties to engage in unwarranted delay tactics. Judge Shedd is such a judge.

Here is another letter. This one is from attorney Garry Wooten. He writes:

I have practiced law for over twenty years in Columbia. I handle primarily personal injury and criminal cases . . .

I have appeared before Judge Shedd in a certain number of cases. Some cases have been won and some were lost. In one case, my client was African-American. That case involved a lawsuit in which the Federal Government fought to deny my client life insurance benefits after the death of his wife. Judge Shedd ruled favorably and properly for my client on the law. My client received a verdict for the full amount of the benefits. During the trial, Judge Shedd was fair, extremely knowledgeable on the law, and showed absolute integrity.

I am confident that Judge Shedd will be fair to all and show complete integrity if confirmed for a position on the Fourth Circuit Court of Appeals.

Another letter, this one from Jonathan Harvey, states:

I am the current treasurer of the South Carolina Association of Criminal Defense Lawyers and a member of its board as well as past representative to its Board of Directors from the Fifth Judicial Circuit. . . . I have had many opportunities to appear in front of Judge Shedd. I have left each proceeding convinced that my clients irrespective of social status, creed, gender, or race were treated fairly and with a proper application of the law.

I trust this letter will enable you to inform your colleagues that there exists a significant history of Judge Shedd exercising his discretion objectively and fairly toward those parties who have appeared before him.

In another letter, lawyer John Simmons writes:

In all of my litigation before Judge Shedd, I have found him to be fair and impartial. He possesses the highest integrity and intellect and always treats the attorneys and litigants with the utmost respect.

In one particular civil matter, I represented an individual non-party who was alleged to have donated blood contaminated with the HIV virus. Judge Shedd handled this sensitive and difficult matter with patience and care, protecting my client's identity while affording all litigants their adequate discovery rights. I was extremely impressed with the thoughtful diligence Judge Shedd pursued in ensuring my client's confidentiality while balancing the rights of the parties.

Finally, here is a letter from Howard Hammer. Mr. Hammer writes:

I have been a practicing South Carolina attorney for over thirty (30) years. My practice primarily involves representation of plaintiffs in civil litigation, including representation of numerous individuals in employment disputes. . . .

I have found Judge Shedd to be firm, just and deliberate in all my dealings with him. He is a man of highest integrity and I would respectfully urge your support of his confirmation.

I could go on and on reading testimonials from lawyers in South Carolina who have regularly appeared before Judge Shedd and who strongly support his confirmation on the Fourth Circuit. Yesterday I entered other letters into the record.

Mr. President, Dennis Shedd is well qualified to serve on the Fourth Circuit Court of Appeals. I think so and the American Bar Association, hardly a bastion of conservative politics, has said so as well. In supporting his confirmation I for one express my gratitude on behalf of the American people for an entire life in public service.

Mr. President, I ask unanimous consent that letters of support for the confirmation of Judge Shedd be printed in the RECORD.

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

CONGRESS OF RACIAL EQUALITY,
New York, NY, November 18, 2002.

Hon. ORRIN HATCH,
U.S. Senate, U.S. Capitol,
Washington, DC.

DEAR SENATOR HATCH: This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.

Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.

Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. His efforts have championed the efforts to recruit and elect the first African-American U.S. Magistrate Judge in the South Carolina District, Margaret Seymour. He has actively sought minority and female candidates for other Magistrate Judge positions, and has directed the Selection Commission in South Carolina to bear in mind diversity in the selection of candidates for these positions.

Judge Dennis Shedd's accomplishments and service have transcended bi-partisan support even from his home state Senators, notably, Senators Strom Thurmond and Senator Ernest Hollings who wholly support his nomination.

In the interest of fairness, balance we ask you to look past the unfounded partisan attacks of propaganda against Judge Shedd and fairly examine his work for yourselves. We strongly believe Judge Shedd's accomplishments and contributions to justice and civil rights speaks for itself.

We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair smear against his name. Let Judge Shedd have his day on the Senate floor.

Sincerely,

NIGER INNIS, *National Spokesman.*

CENTRE FOR NEW BLACK LEADERSHIP,
November 18, 2002.

Hon. ORRIN HATCH,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: The Centre for New Black Leadership (CNBL) believes the Senate's judicial nomination system is broken and needs repairing.

We have watched with great trepidation as the Senate's role of ''advise and consent'' for Presidential nominations, especially judicial nominations, has become increasingly, ''search and destroy,'' ''slander and defame.'' It is a wonder that reasonable, decent people

agree to go through the confirmation process at all.

The confirmation process has become particularly brutal if the nominee is labeled ''conservative.'' Traditional civil rights groups mass to castigate and intimidate, as they do now, attempting to thwart the confirmation of Judge Dennis W. Shedd to the U.S. Fourth Circuit Court of Appeals.

Once again, we are witnessing the new depth to which public discourse and debate has sunk when fabrications, statements taken out of context, misinformation and disinformation can pass as serious political deliberation and debate. The vitally needed discussion about continued civil rights progress in a 21st Century world gets lost in the cacophony. Our nation and true civil rights advocates are poorer because of this.

The Senate can restore to itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

Sincerely,

PHYLLIS BERRY MYERS,
President & CEO.

ROSENBERG PROUTT FUNK & GREENBERG, LLP,
Baltimore, MD, June 25, 2002.

Senator PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: My name is Thomas W. Jones, Jr. I am an African-American attorney currently practicing as a litigation associate in Baltimore, Maryland.

Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd (''Judge Shedd'') on the U.S. District Court for the District of South Carolina. During my eighteen months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of Judge Shedd's jurisprudence or daily activities.

It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable Committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit.

Thank you for your attention regarding this matter.

Respectfully,

THOMAS W. JONES, JR.

E. BART DANIEL,
ATTORNEY AT LAW,
Charleston SC, November 18, 2002.

Hon. ORRIN HATCH,
104 Hart Office Building, Washington, DC.

Re Nomination of Dennis W. Shedd to Fourth Circuit Court of Appeals.

DEAR SENATOR HATCH: I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, and Assistant U.S. Attorney, United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a ''white collar'' criminal defense practice.I have appeared many times in court before Judge Shedd and found him to be courtcous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in *United States v. John Earl Duncan* (3:99–638–001). Dr. Duncan was a practicing attorney who was convicted for perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33.386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, judge Shedd was courtrous and patient and listened intently to the many people who spoke on our client's behalf including co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or if I can be of any further support, please do not hesitate to call.

Yours very truly,

E. BART DANIEL.

J. KERSHAW SPONG,
Columbia, SC, November 4, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: Please allow this letter to voice my strong support for the nomination of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. Your support for Judge Shedd's nomination is appreciated, and, as a fellow South Carolinian, I hope you will continue to support him throughout this process.

Having worked with Judge Shedd in the U.S. Senate, and as a practicing lawyer in South Carolina, I know him to be a person of the highest integrity, professional competence, and judicial temperament. As you may be aware, the ABA, which reviews the nominees, has given Judge Shedd a majority rating of ''well qualified,'' its highest rating.

I am also concerned about the nominating process. I think many things have been unfairly said about Judge Shedd by outside special interest groups which have little basis in fact. It will become increasingly more difficult to get good and competent attorneys to step forward to serve in the judiciary if they have to go through this highly charged partisan atmosphere.

I hope for your continued support for this exceptional nominee and ask that you urge the Senate Judiciary Committee to bring this nomination to a vote before the end of Congress. After having to wait well over a year since his nomination, and more than several months since his hearing at the Committee, it is time for Judge Shedd to be confirmed to the Fourth Circuit.

Thank you for your consideration of my views.

Sincerely,

J. KERSHAW SPONG.

TOMPKINS AND MCMASTER, LLP,
Columbia, SC, October 31, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: I was extremely disappointed in your recent action denying Judge Dennis Shedd, nominee to the Fourth Circuit Court of Appeals, a vote on the Committee's October 8th markup. Despite your promises to Senator Strom Thurmond and other members of the Senate Judiciary Committee—and in contravention of Committee rules—you refused to schedule a vote to allow his nomination to proceed to the full Senate.

It would appear that you are bowing to the demands of outside interest groups who have unfairly characterized Judge Shedd's ruling on the district court. The facts are that he has been reversed in fewer than 1% of the more than 5,000 cases he has heard in his twelve years on the district court. After reviewing his record, the ABA rated Judge Shedd ''well-qualified,'' its highest rating. You once referred to the ABA rating system as the ''gold standard.'' In addition, Judge Shedd is well-represented by the members of the bench and bar in South Carolina, and has the bipartisan support of Senators Thurmond and Hollings—his home state senators.

The Senate Judiciary Committee has had nearly a year and a half to review Judge Shedd's record. I urge you to stop delaying a vote on his nomination. Judge Shedd, an exceptional nominee with the bipartisan support, deserves to be confirmed to the Fourth Circuit before the end of this Congress.

Thank you.

Yours very truly,

HENRY DARGAN MCMASTER.

STROM LAW FIRM L.L.C.,
Columbia, SC, November 18, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senator-South Carolina,
Washington, DC.

Re confirmation of the Honorable Dennis Shedd to the United States Court of Appeals for the Fourth Circuit

DEAR SENATOR HOLLINGS: I write to support Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit. As a former United States Attorney for the District of South Carolina appointed by President Clinton, my office had daily dealings with Judge Shedd. Judge Shedd is a fair and efficient jurist who evenhandedly applied substantive and procedural rules. On occasions when my office disagreed with Judge Shedd's rulings, I found that he always provided well-reasoned analysis for his decisions. Further, when the rules provided for discretion in sentencing for cooperation with federal agents in the prosecution of crime, Judge Shedd deliberated and provided substantial sentence reductions when warranted.

Following my tenure as United States Attorney, I have practiced before Judge Shedd representing criminal defendants and civil plaintiffs. In my criminal defense practice, I have represented many African-Americans before Judge Shedd, and found Judge Shedd to be fair and consistent to each of my clients, regardless of race.

As a member of the Board of Governors of the South Carolina Trial Lawyers Association and a member of the Association of Trial Lawyers of America, I appreciate a judge who pushes civil cases towards resolution and does not permit parties to engage in unwarranted delay tactics. Judge Shedd is such a judge.

From my many years of practice before Judge Shedd, I can say that one admirable characteristic stands above all. Diligence. Each time I have appeared before Judge Shedd, it is clear that Judge Shedd has examined the entire case file and performed the requisite research necessary to frame the issues. For attorneys who vigorously represent their clients at every stage of the criminal and civil processes, a hard working judge is much appreciated. It is Judge Shedd's diligence in examining each case on its facts and the supporting law that makes him an excellent candidate for appointment to the United States Court of Appeals for the Fourth Circuit.

If you or anyone on your staff has questions, please contact me.

With regards, I am

Very truly yours,

J. PRESTON STROM, JR.

LAW OFFICE OF JONATHAN HARVEY,
ATTORNEY AT LAW,
Columbia, SC, October 1, 2002.

Re Nomination of the Honorable Dennis Shedd.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: I am taking the liberty of contacting your office on behalf of Judge Shedd.

I had heretofore been grateful for the bipartisan support of our senators and until recently thought that protocol would suffice to ensure his nomination.

However, recent developments concerning his nomination have compelled me to contact you to provide a recommendation based upon a hands on perspective.

I am writing to express my support for his nomination. I am the current treasurer of the South Carolina Association of Criminal Defense Lawyers and a member of its board as well as past representative to its Board of Directors from the Fifth Judicial Circuit. As I am sure you know, the Fifth Judicial Circuit encompasses Richland County and Columbia. My practice is focused in the Midlands. I have had many opportunities to appear in front of Judge Shedd. I have left each proceeding convinced that my clients irrespective of social status, creed, gender, or race were treated fairly and with a proper application of the law.

I trust this letter will enable you to inform your colleagues that there exists a significant history of Judge Shedd exercising his discretion objectively and fairly toward those parties who have appeared before him.

I am grateful and appreciative of the support you have shown for his nomination and hope that my comments and insight will prove to be beneficial on his behalf.

Our State is fortunate to have been able to count on you as a steward for its interests and I thank you for your tireless efforts on behalf of our Country and State.

Yours truly,

JONATHAN HARVEY.

SIMMONS & GRIFFIN, L.L.C.,
Columbia, SC, November 18, 2002.

Re Judge Dennis W. Shedd.

Hon. ORRIN HATCH,
U.S. Senate, Committee on Judiciary, Washington, DC.

DEAR SENATOR HATCH: I am a former United States Attorney who now practices law in Columbia, South Carolina. Prior to entering government service and private practice, I served as a law clerk on the Fourth Circuit Court of Appeals.

Over the past twelve years, I have had the opportunity to appear before Judge Dennis Shedd in criminal cases as both a prosecutor and defense attorney. In addition, I have handled numerous civil cases before Judge Shedd as a representative of the plaintiff and defense.

In all of my litigation before Judge Shedd, I have found him to be fair and impartial. He possesses the highest integrity and intellect and always treats the attorneys and litigants with the utmost respect.

In one particular civil matter, I represented an individual non-party who was alleged to have donated blood contaminated with the HIV virus. Judge Shedd handled this sensitive and difficult matter with patience and care, protecting my client's identity while affording all litigants their adequate discovery rights. I was extremely impressed with the thoughtful diligence Judge Shedd pursued in ensuring my client's confidentiality while balancing the rights of the parties.

I respectfully write in support of Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit.

Thank you for your consideration of this matter.

With kind regards, I remain,

Sincerely,

JOHN S. SIMMONS.

HAMMER HAMMER & POTTERFIELD,
Columbia, SC, November 18, 2002.

Hon. ERNEST HOLLINGS,
Russell Senate Office Buildings,
Washington, DC.

DEAR SENATOR HOLLINGS I am writing regarding consideration of United States District Judge Dennis Shedd for a position on the Fourth Circuit Court of Appeals. As you know, I have been a practicing South Carolina attorney for over thirty (30) years. My practice primarily involves representation of plaintiffs in civil litigation, including representation of numerous individuals in employment disputes.

I have known Judge Shedd for over twelve (12) years. I have found Judge Shedd to be firm, just and deliberate in all of my dealings with him. He is a man of highest integrity and I would respectfully urge your support of his confirmation.

With kind regards, I remain,

Very truly yours,

HOWARD HAMMER, P.A.,
HAMMER, HAMMER & POTTERFIELD.

The PRESIDING OFFICER. Is there any Senator requesting time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I yield back the remainder of the time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

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

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 250 Ex.]

YEAS—55

Allard	Frist	Miller
Allen	Graham	Nelson (NE)
Bennett	Gramm	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Byrd	Helms	Smith (NH)
Campbell	Hollings	Smith (OR)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Stevens
Craig	Inouye	Thomas
Crapo	Kyl	Thompson
DeWine	Lincoln	Thurmond
Domenici	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McCain	
Fitzgerald	McConnell	

NAYS—44

Akaka	Daschle	Leahy
Barkley	Dayton	Levin
Baucus	Dodd	Lieberman
Bayh	Dorgan	Mikulski
Biden	Durbin	Murray
Bingaman	Edwards	Nelson (FL)
Boxer	Feingold	Reed
Breaux	Feinstein	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Jeffords	Sarbanes
Carper	Johnson	Schumer
Cleland	Kennedy	Stabenow
Clinton	Kerry	Torricelli
Conrad	Kohl	Wyden
Corzine	Landrieu	

NOT VOTING—1

Murkowski

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table. The President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

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

ON 100 JUDICIAL CONFIRMATIONS BY THE DEMOCRATIC-LED SENATE

Mr. LEAHY. Mr. President, as the 107th Congress concludes, it is time to reflect on the important work we have performed for the American people. In the past few days, the full Senate voted on 20 of the nominees reported favorably by the Judiciary Committee in addition to the 80 judicial nominations previously confirmed. Since the change in majority 16 months ago, the Senate Judiciary Committee has voted on 102 of President George W. Bush's judicial nominees and has held hearings on 103 judicial nominations, some of whom have proven to be quite controversial and divisive. We voted on 102 of them, reported 100 of them favorably and this week the full Senate took the final step of confirming the last of these 100 nominees. This remarkable record compares most favorably to the 38 judicial confirmations averaged per year during the 6½ years when the Republican majority was in control of the Senate.

Last week, on the Senate floor, the Democratic-led Senate confirmed more judges in just 1 day than the Republican majority allowed to be confirmed in the entire 1996 session. In that year, the Republican majority allowed only 17 district court judges to be confirmed all year and would not confirm any circuit court nominees, not one. In contrast, last Thursday the Senate acted to confirm 17 district court nominations and, in addition, another circuit court nominee. In all, the Senate has confirmed 17 circuit court nominees and 83 district court nominees in just 16 months. That should put our historic demonstration of bipartisanship toward this President's judicial nominees in perspective.

The hard, thankless, but steady work of the Democratic members of the Judiciary Committee have served to reduce judicial vacancies substantially during these last 16 months. We inherited 110 vacancies. Today, after 100 district and circuit court confirmations, those vacancies number only 58 and that takes into account the additional 47 vacancies that have arisen since the shift in majority. Without those additional vacancies, we would have reduced our inherited judicial vacancies to 10.

When Senator HATCH was chairman of the committee and a Democratic President occupied the White House, Senator HATCH denied that even 100 vacancies was a vacancies crisis, according to a column he wrote for the September 5, 1997, edition of USA Today. When a Democrat was in the White House, Senator HATCH repeatedly stated that 67 vacancies was the equivalent of ''full employment'' in the Federal judiciary. As of today, there are only 58 district and circuit vacancies total. By Senator HATCH's standards, we have reached well beyond ''full employment'' on the Federal bench in just 16 months.

Since the summer of 2001, when they allowed the Judiciary Committee to reorganize following the change in majority, we have moved more quickly and more fairly. Democrats have worked hard to confirm on average six district and circuit court nominees per month. The Republican rate of confirmation was half that during their prior years of control of the Senate, 3.2 confirmed per month in the 104th Congress, 4.25 in the 105th, and 3.04 per month in the 106th Congress. We have moved nearly twice as fast as they did.

Partisans on the other side of aisle interested in trying to create campaign issues have proclaimed their disappointment that a few nominees have not yet received votes in committee, despite our votes on 102 judicial nominees and our having attained results in 16 months that they did not come close to in twice the time during their last 30 months in the majority. I am concerned that the tone and language of hurtful remarks against the Democrats have been destructive. In truth, only 11 of the remaining nominees who have not yet had hearings have home State consent and peer review ratings, and some of those peer review ratings have come in only in the last few weeks. We have thus given hearings to 90 percent of the nominees eligible for a hearing.

The vitriolic rhetoric regarding committee consideration of the most controversial and ideologically chosen judicial nominees is troubling to me as a Senator and as chairman of the Judiciary Committee. I have worked diligently to hold a record number of 26 hearings for 103 of this President's circuit and district court nominees in the past 16 months and to bring as many as we could to a vote, given all of the competing responsibilities of the committee and the Senate in these times of great challenges to our Nation. We have transcended the inaction of the prior 6½ years of Republican control. For example, during the 6½ years the Republicans chaired the Judiciary Committee, in 34 of those months there were no confirmation hearings for judicial nominations at all. In the past 16 months, the Senate Judiciary Committee has held 26 hearings for 103 judicial nominees, in addition to a second hearing for one of the more controversial nominees. I think Democrats deserve some credit for our diligence, fairness, and bipartisanship especially in contrast to the prior period of Republican control of the Senate.

In particular, we have held hearings for 20 circuit court nominees, confirmed 17 of them in this period, and reduced the circuit court vacancies from those we inherited. By contrast, circuit court vacancies more than doubled during Republican control, from 16 in January 1995 to 33 by the summer of 2001 when they allowed the Judiciary Committee to reorganize following the change in majority.

While the opposition party continues to inflame the public with skewed statistics, the reality is that we have approved far more judicial nominees for this President than past Senates did for other Presidents. This Democratic-led Senate has confirmed 100 district court and circuit court judges, including 17 circuit court nominees. In President George H.W. Bush's first 2 years in office, 71 judicial nominees were confirmed by the Democratic-led Senate. When a Republican majority was considering Senator Clinton's nominees in their first 2 years working together, 75 judicial nominees were confirmed. Even when a Republican majority was considering President Reagan's judicial nominations in his first 2 years, only 89 judicial nominees were confirmed. Thus, we have not only exceeded the confirmation achieved when the Senate and White House were divided by political party but the number of confirmations when Republicans controlled both branches. In less than 2 years, just 16 months, we have evaluated, held hearings for, reported out, and confirmed 100 judicial nominees of President George W. bush.

While Republicans continue to play base politics and inflame certain quarters of the public with their skewed statistics, the reality is that the Democratic-led Senate has acted far more fairly toward this President's judicial nominees than Republicans acted toward President Clinton's.

The raw numbers, not percentages, reveal the true workload of the Senate on nominations and everyone knows that. Anyone who pays attention to the Federal judiciary and who does not have a partisan agenda must know that. Democrats have moved more quickly in voting on judicial nominees of a President of a different party than in any time in recent history. This should be beyond dispute, but I believe that partisan advisers told this President and the Republicans that it is a great election issue for them to complain that not every nominee has been confirmed. We have given hearings to 103 of the 114 judicial nominees now eligible for a hearing 90 percent, as of today, for those focused on percentages. The remaining 16 without a hearing either lack home State consent or peer reviews or both. Many of those were nominated only recently and are being used by Republicans to skew the percentages further because they know that the ABA is taking about 60 days to submit ratings from the date of nomination and some would not receive ratings in time for hearings this session. The committee has voted on 102 of the 103 judicial nominees eligible for a vote, 99 percent. And with the vote on Judge Dennis Sheed, we have cleared the Senate calendar of all judicial nominations rather than adopt the recent Republican practice of holding nominees over without a final vote and forcing them to be renominated and have second hearings in a succeeding Congress.

I ask fair-minded people to contrast what we have achieved in the past 16 months with the most recent period of Republican control of the committee. In all of 2000 and the first several months of 2001 before the change in Senate majority, the Senate confirmed only 39 judicial nominees, including eight to the circuits. Even if you look at the last 30 months of Republican control, they confirmed only 72 judges. In much less time, we have confirmed 100.

If you consider the first 24-months of Republican control instead of their last 30 months we have accomplished far more: more hearings, 26 versus 18, far more judicial nominees, 103 versus 87, and had more confirmations, 100, including 17 to the circuit courts, versus 73 with 11 to the circuit courts. We have reached the 100 mark for committee votes in less than half the time it took Republicans to vote on 100 of President Clinton's judicial nominees. It took them 33 months to reach that mark, while we reached that mark in just 15 months.

With these confirmations, the Democratic-led Senate has addressed a number of long standing vacancies. For example, we held the first hearing for a nominee to the Fifth Circuit in 7 years and confirmed her, even though Republicans refused to allow hearings for 3 of President Clinton's nominees to this court. We held the first hearing for a nominee to the Tenth Circuit in 6 years, and confirmed 3 nominees to that circuit in less than 1 year, even though two of President Clinton's nominees to that circuit were never allowed hearings by Republicans. We confirmed the first nominee to the Sixth Circuit in almost 5 years and have now confirmed two judges to that court, even though three of President Clinton's nominees to that court were never allowed hearings or votes. We held the first hearing for a nominee to

the fourth Circuit in 3 years, and confirmed the first African American appointed to that court in American history, even though that nominee and 6 other nominees of President Clinton to the Fourth Circuit, for a total of 7 in that circuit alone, never received hearings during Republican control of the Senate. Today, another of President Bush's nominees was confirmed to that circuit. These are just a few of the firsts we have achieved in just 16 months.

There were many other firsts in courts across the Nation. For example, we held hearings for and confirmed the first judges appointed to the Federal courts in the Western District of Pennsylvania in almost 7 years, even though several of President Clinton's nominees to the courts in that district were blocked by Republicans. They allowed none of President Clinton's nominees to be confirmed to that court during the entire period of Republican control. They also blocked the confirmation of a Pennsylvania nominee to the Third Circuit, among others. Democrats confirmed the first nominees to the Third Circuit and Ninth Circuit in 2 years, even though the last nominees to those seats never received hearings during Republican control of the Senate.

We have had hearings for a number of controversial judicial nominees and brought many of them to votes this year just as I said we would when I spoke to the Senate at the beginning of the year. Of course, it would have been irresponsible to ignore the number of vacancies we inherited and concentrate solely on the most controversial, time consuming nominees to the detriment of our Federal courts. The President has made a number of divisive choices for lifetime seats on the courts and they take time to bring to a hearing and a vote. None of his nominees, however, have waited as long for a hearing or a vote as some of President Clinton's judicial nominees, such as Judge Richard Paez who waited 1,500 days to be confirmed and 1,237 days to get a final vote by the Republican-controlled Senate Judiciary Committee or Judge Helene White whose nomination languished for more than 1,500 without ever getting a hearing or a committee vote.

As frustrated as Democrats were with the lengthy delays and obstruction of scores of judicial nominees in the prior 6½ years of Republican control, we never attacked the chairman of the committee in the manner as was done in recent weeks. Similarly, as disappointed as Democrats were with the refusal of Chairman HATCH to include Allen Snyder, Bonnie Campbell, Clarence Sundram, Fred Woocher, and other nominees on an agenda for a vote by the committee following their hearings, we never resorted to the tactics and tone used by Republican members of this committee in committee statements, in hallway discussions, in press conferences, or in Senate floor statements. As frustrated and disappointed as we were that the Republican majority refused to proceed with hearings or votes on scores of judicial nominees, we never sought to override Senator HATCH's judgments and authority as chairman of the committee.

The President and partisan Republicans have spared no efforts in making judicial nominations a political issue, without acknowledging the progress made in these past months when 102 of this President's judicial choices have been given committee votes. One indication of the fairness with which we have proceeded is my willingness to proceed on nominations that I do not support. We have perhaps moved too quickly on some, relaxing the standards for personal behavior and lifestyle for Republican nominees, being more expeditious and generous than Republicans were to our nominees, and trying to take some of them at their word that they will follow the law and the ethical rules for judges.

For example, as I noted on October 2, 2002, we confirmed a personal friend of the President's, Ron Clark, to an emergency vacancy in the United States District Court for the Eastern District of Texas. Clark's commission was not signed and issued promptly. We learned later that Clark was quoted as saying that he asked the White House, and the White House agreed, to delay signing his commission while he ran as a Republican for reelection to a seat in the Texas legislature so that he could help Republicans keep a majority in the Texas State House until the end of the session in mid-2003. The White House was apparently complicit in these unethical partisan actions by a person confirmed to a lifetime appointment to the Federal bench. Clark, who was confirmed to a seat on the Federal district court in Texas, was actively campaigning for election despite his confirmation.

These actions bring discredit to the court to which Judge Clark was nominated by the President and confirmed by the Senate, and calls into question Judge Clark's ability to put aside his partisan roots and be an impartial adjudicator of cases. Even in his answers under oath to this committee, he swore that if he were ''confirmed'' he would follow the ethnical rules. Canon 1 of the Code of Conduct for United States Judges explicitly provides that the code applies to ''judges and nominees for judicial office'' and Canon 7 provides quite clearly that partisan political activity is contrary to ethical rules. In his answers to me, the chairman of this committee, Clark promised ''[s]hould I be confirmed as a judge, my role will be different than that of a legislator.'' As the Commentary to the Code of Conduct for United States Judges, (which applies to judges and nominees), states, ''Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges [which] depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law as well as the provisions of this Code.'' The code sets standards intended to help ensure that the public has access to Federal courts staffed with judges who not only appear to be fair but are actually so.

Yet he was flouting the standards set by the code and the promises he made to me personally and to the Senate Judiciary Committee and, by proxy, to the Senate as a whole. That the White House was prepared to go along with these shenanigans reveals quite clearly the political way they approach judicial nominations. Only after the New York Times reported these unseemly actions, did the President sign Judge Clark's appointment papers. As Judge Clark hoped, he ''won'' the election and so the Republican Governor of Texas may be able to name a Republican to replace him in the state legislature.

With a White House that is politicizing the Federal courts and making so many divisive nominations, especially to the circuit courts, to appease the far-right wing of the Republican party, it would be irresponsible for us to turn a blind eye to this and simply rubber-stamp such appointees to lifetime seats. Advice and consent does not mean giving the President carte blanche to pack the courts with ideologues from the right or left. The system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone to pack the courts with judges whose views are outside of the mainstream and whose decisions would further divide our nation.

I have worked hard to bring to a vote the overwhelming majority of this President's judicial nominees, but we cannot afford to make errors in these lifetime appointments out of haste or sentimental considerations, however well intentioned. To help smooth the confirmation process, I have gone out of my way to encourage the White House to work in a bipartisan way with the Senate, like past Presidents, but, in all too many instances, they have chosen to bypass bipartisanship cooperation in favor of partisanship and a campaign issue. Arbitrary deadlines will not ensure that nominees will be fairminded judges who are not activists or ideologues. The American people have a right to expect the Federal courts to be fair forums and not bastions of favoritism on the right or the left. These are the only lifetime appointments in our whole government, and they matter a great deal to our future. I will continue to work hard to ensure the independence of our Federal judiciary.

TERRORISM RISK INSURANCE ACT OF 2002—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the conference report to accompany H.R. 3210.

The legislative clerk read as follows:

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, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of November 13, 2002.)

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the conference report to accompany H.R. 3210, the Terrorism Risk Protection Act.

Christopher Dodd, Zell Miller, Joseph Lieberman, Harry Reid, Jack Reed, Jon Corzine, Debbie Stabenow, Hillary Rodham Clinton, Charles Schumer, Maria Cantwell, Paul Sarbanes, Byron L. Dorgan, Tom Carper, Jeff Bingaman, Tom Daschle, Barbara Boxer.

The PRESIDING OFFICER. There are 2 minutes of debate evenly divided before the vote. Who yields time?

Mr. SARBANES. Mr. President, I urge Members to vote in favor of invoking cloture. I am not quite sure why we are doing the cloture vote, but in any event, so we can get to the legislation and pass it—this is worthy legislation—I hope the Senate will first impose cloture, and then, under the unanimous consent agreement, we would go to a final vote on the legislation.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, much good work has gone into this bill. I am going to vote against cloture. I don't think the industry retention figures are high enough. I think the taxpayer is too exposed. I am afraid the secondary market will not develop under these circumstances, and, despite all our efforts, the bill still retains the provision that will produce punitive damage judgments against victims of terrorism. In my mind, that is licensing piracy on hospital ships and should not be allowed.

The PRESIDING OFFICER. Is all time yielded back?

All time is yielded back.

By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the conference report accompanying H.R. 3210, the Terrorism Risk Protection Act, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Arkansas (Mr. HUTCHINSON) are necessarily absent.

The yeas and nays resulted—yeas 85, nays 12, as follows:

[Rollcall Vote No. 251 Leg.]

YEAS—85

Akaka	Dayton	Lott
Allard	DeWine	Lugar
Allen	Dodd	McCain
Barkley	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Edwards	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Fitzgerald	Reed
Boxer	Frist	Reid
Breaux	Graham	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Sarbanes
Burns	Harkin	Schumer
Byrd	Hatch	Smith (NH)
Campbell	Hollings	Smith (OR)
Cantwell	Inhofe	Snowe
Carnahan	Inouye	Specter
Carper	Jeffords	Stabenow
Chafee	Johnson	Stevens
Cleland	Kennedy	Thompson
Clinton	Kerry	Thurmond
Cochran	Kohl	Torricelli
Collins	Landrieu	Voinovich
Conrad	Leahy	Warner
Corzine	Levin	Wyden
Crapo	Lieberman	
Daschle	Lincoln	

NAYS—12

Craig	Grassley	Santorum
Ensign	Hutchison	Sessions
Enzi	Kyl	Shelby
Gramm	Nickles	Thomas

NOT VOTING—3

Helms	Hutchinson	Murkowski

The PRESIDING OFFICER. On this vote, the ayes are 85, the nays are 12. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HATCH. Mr. President, today I rise to speak on final passage of H.R. 3210, the conference report to the Terrorism Risk Insurance Act of 2002. Most of us agree that something needs to be done in this area. This legislation is important to our economy and the many jobs and construction projects that have been in limbo due to the uncertainty following the tragic events of September 11th. My constituents have come to me on multiple occasions, imploring that the Senate act on this issue. They are genuinely concerned about the negative impact lack of coverage has had on their businesses and their employees. Without insurance, our economic growth is in jeopardy, businesses will fail and jobs will be lost. For that reason, I will support final passage.

However, I am concerned that we have not addressed the issue in a prudent and responsible manner that provides the appropriate stability to our economy without exposing our taxpayers to an unreasonable financial burden. In this legislation, we have failed to provide elements that are necessary to the businesses that are themselves the victims of the terrorist attacks, those very same businesses that provide the thousands of jobs in this country that we are seeking to preserve. Moreover, I have concerns about implementing a program such as this without ensuring that the hardworking taxpayers in this county are not forced to pick up the tab for the overzealous and unrestrained trial bar. With the type of litigation that would likely result from massive losses, even just from one attack, it defies common sense that some would oppose implementing principles of litigation management to ensure that all victims get treated fairly and jury awards, based more on emotion rather than actual legal culpability, do not dry up the resources of defendant businesses, which in turn hurts victims, employees and taxpayers.

In a letter dated June 10, 2000, from the Treasury Department and signed by not only the Secretary of the Treasury, but the Director of the Office of Management and Budget, the Director of the National Economic Council and the Director of Economic Advisers really underscores the serious ramifications to our economy that have resulted from a lack of coverage for terrorist acts and supports Congressional action in this area. But it also emphasizes that we must do so in a responsible manner.

One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable companies have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists . . . It makes *little economic sense* to pass a terrorism insurance bill that leaves our economy exposed to such *inappropriate and needless legal uncertainty*. [emphasis added]

In seeking to provide stability to our economy we must not act irresponsibly. The conference report on H.R. 3210, while providing a necessary backstop to our economy, includes some weaknesses that concern me. While I believe this measure is necessary and should be enacted as soon as possible, I sincerely hope this body will address my concerns in the next Congress.

Mr. GRASSLEY. Mr. President, I rise to express my concern about the conference report to H.R. 3210, the Terrorism Risk Insurance Act. When the Senate first considered this bill in June, I expressed the hope that Congress would send the President a bill that was fair and balanced with respect to basic liability protections for all victims of terrorism. However, I believe that the conference report before us fails to provide reasonable restrictions on lawsuit liability, and instead exposes the American taxpayer to potentially excessive costs of unmitigated litigation as a result of terrorist attacks beyond anyone's control. Consequently, I am reluctant to vote for final passage of this conference report.

I am glad that the final version of the terrorism reinsurance legislation is only a temporary fix. As a general matter, the Government should not be in the business of writing claims.

Some have implied that we wrongly predicted an insurance crisis following the events of September 11, 2001, which was the reason for this temporary backstop. The insurance companies have survived without government support thus far, and banks are still lending where there is uncovered risks. According to the Wall Street Journal, ''the economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums.'' The article states that a short-term solution would be nice, but the bill is ''a bonanza for the trial lawyers, an entitlement for insurers.''

Again, I do not believe that this legislation contains adequate liability protections. While some restrictions were negotiated in conference, I don't believe that they go far enough. Basically, American companies that are themselves victims of terrorists acts should not be subject to predatory lawsuits or unfair and excessive punitive damages. If that happens, not only will Americans be the victims of another attack, but the taxpayers will be the victims of trial lawyers who will seek the deepest pocket and rush to the courthouse to sue anyone regardless of fault. There needs to be careful restrictions on lawsuit liability to protect taxpayer funds from being exposed to opportunistic, predatory assaults on the United States Treasury.

In fact, I agree with an editorial in the Washington Post: the other side of the aisle should be ''embarrassed by their efforts to defend trial lawyers at the expense of the American economy.'' Rather, we should be working to enforce the long-standing Federal policies behind the Federal Tort Claims Act: namely, that lawyers should not be making handsome profits when they are paid from the U.S. Treasury. I agree with a statement made by House Judiciary Chairman SENSENBRENNER, that ''especially today, in a time of war, excessive lawyer fees drawn from the U.S. Treasury should not be allowed to result in egregious war profiteering at the expense of victims, jobs and businesses.''

Many say we can come back and revisit these provisions later. I say we get it right the first time we sign it into law.

I ask unanimous consent to print the Wall Street Journal article to which I referred in the RECORD.

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

[From the Wall Street Journal, Nov. 6, 2002]

A TERRIFYING INSURANCE DEAL

A BONANZA FOR THE TRIAL LAWYERS, AN ENTITLEMENT FOR INSURERS

After the elections the 107th Congress is threatening to return to pass some unfinished business, including a compromise on terrorism insurance. Having looked at the details of the insurance deal, we can only hope they'll all stay home.

The two parties have been battling for a year over this bill, especially the extent to which trial lawyers could profit from acts of terror. Republicans and some Democrats want to ban punitive damages against property owners. But Tom Daschle, carrying his usual two oceans of water for the plaintiff's bar, resisted any erosion in the right to sue the owner should a plane crash into his or her building.

And it looks like Mr. Daschle has prevailed. The compromise permits such suits, albeit before a single federal court as opposed to the more accommodating state courts. In other words, the White House appears to have caved, and after months of arguing the opposite now says terror insurance is about ''jobs, not tort reform.''

Well, we're not sure it's still about jobs either. The bill makes insurance companies liable for claims amounting to a certain percentage of their premiums, puts the government on the hook for 90% of losses over that deductible, and allows the government to recover some portion of its payment by levying a surcharge on all policy owners. The best news is that government help sunsets in 2005, or at least that's the promise.

Unfortunately, the bill ignores the crucial problem of risk. Risk-based premiums—which reward the careful and punish the careless—are a superb tool for reducing risk. Consider: There are lots of things property owners can do to reduce the damage from terrorism—retrofitting air-filtration systems to guard against biological agents, redesigning underground parking garages to prevent bomb attacks, fireproofing steel girders to minimize fire damage. And insurance companies can discipline them to take these measures by charging risk-based premiums.

If insurers were required to pay premiums to the government based on the premiums they receive, market incentives to reduce risk would improve markedly. If, on the other hand, terror insurance is essentially free, as it would be under the current bill, insurers have less incentive to charge the full cost of risk; instead they have every incentive to underprice it.

An alternative has been suggested by David Moss, an economist at Harvard Business School: Let the federal government pay 80% of losses from a terrorist attack, as long as insurers also pass along 80% of the premiums they collect. This way, says Mr. Moss, insurers would price risk near or at its full cost, exerting discipline against the careless, and prices would be set in the private market.

We mention Mr. Moss's idea because, despite heavy breathing by the insurance industry, it isn't at all clear that there's an immediate economic need for this legislation. It's true that right after 9/11 the property insurance market seized up. Insurers didn't know how to price for the risk of another attack, and so rent their garments that the economy would collapse without government reinsurance. We were also open to the idea, but it turns out they were wrong. The economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums.

We aren't arguing that a federal backstop might not perk up business in the short term, or that some sort of insurance wouldn't be nice to have in place before another attack. But the assertion that billions of dollars of projects have been shelved and 300,000 jobs lost is bogus. Despite efforts to quantify a slowdown, including a survey by the Fed, evidence of suffering is scattered and anecdotal—and mostly confined to trophy properties.

The bigger point here is that any legislation is likely to be permanent, since no entitlement of this size has ever been allowed to ride quietly into the sunset. That argues for doing it right, and waiting until the next Congress if need be. Many Republicans are privately unhappy with the deal the White House has cut with Mr. Daschle. We hope they'll urge President Bush to insist on something better.

Mr. HARKIN. Mr. President, I am very pleased that this conference report includes bipartisan legislation that I authored with my colleague, Senator ALLEN of Virginia, which will make state sponsors of terrorism and their agents literally pay for the dastardly attacks they perpetrate on innocent Americans.

Last June, the Senate approved our amendment to the terrorism insurance bill on an 81 to 3 vote to mandate that at least $3.7 billion in blocked assets of foreign state sponsors of terrorism and their agents, at the current disposal of the U.S. Treasury Department, be used—first and foremost—to compensate American victims of their terrorist attacks. That lop-sided vote made it very clear that most Americans and their elected representatives understand the importance of making the rogue governments who sponsor international terrorism pay literally, instead of blithely dunning the American taxpayer to compensate the victims of their outrageous attacks or doing nothing.

Our global struggle against terrorism must be fought and won on multiple fronts. In so doing, we cannot forget that terrorist attacks are ultimately stories of human tragedy. The young woman from Waverly, IA—Kathryn Koob—seeking to build cross-cultural ties between the Iranian people and the American people only to be held captive for 444 days in the U.S. Embassy in Tehran. The teenage boy from LeClaire, Iowa—Taleb Subh—who was visiting family in Kuwait in 1990, and who was terrorized by Saddam Hussein and Iraqi troops in the early stages of the invasion of Kuwait. The U.S. aid worker from Virginia—Charles Hegna—who was tortured and killed in 1984 by Iranian-backed hijackers in order ''to punish'' the United States. These are only a few of the American families victimized by terrorist attacks abroad I have come to know. There is not a Senator in this body who cannot count additional American victims of state-sponsored terrorism among his or her constituents.

What do we say to these families, the wives, mothers and fathers, sons and daughters? More importantly, what can we do, as legislators and policymakers, to mitigate their suffering and to answer their cries for justice?

Those who sponsor as well as those who commit these inhumane acts must pay a price. That is why I sponsored the Terrorism Victim's Access to Compensation Act, whose key provisions are included in this conference agreement.

In 1996, the Congress passed an important law—the Anti-Terrorism and Effective Death Penalty Act—with bipartisan support and with the support of the U.S. State Department. That statute allows American victims of state-sponsored terrorism to seek redress and pursue justice in our Federal courts. A central purpose of that law is to make the international terrorists and their sponsors pay an immediate price for their attacks on innocent Americans abroad. For the first time starting in 1996, the money of foreign sponsors of terrorism and their agents that is frozen bank accounts in the United States and under the direct control of the U.S. Treasury was to have become available to compensate American victims of state-sponsored terrorism who bring lawsuits in federal court and win judgments on the merits against the perpetrators of such attacks.

The law enacted in 1996 only applies to seven foreign governments officially designated by the U.S. State Department as state sponsors of international terrorism. They are the governments of Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba. It is these state sponsors of international terrorism, not the American taxpayer, who must be compelled first and foremost to compensate the American victims of their inhumane attacks.

The U.S. Treasury Department currently and lawfully controls at least $3.7 billion in blocked or frozen assets of these seven state sponsors of terrorism. But some officials of the U.S. Treasury and State Departments who think they know better, until now, have been flaunting the law, ignoring the clear intent of the Congress, and opposing the use of these blocked assets of Saddam Hussein, the ruling mullahs in Iran, and other state sponsors of terrorism to compensate American victims of terrorist attacks. In fact, in the on-going case involving the 53 Americans taken hostage in the U.S. Embassy in Iran in 1979 and held in captivity for 444 days and their families, U.S. Justice Department and State Department attorneys have intervened in federal court to have their lawsuit dismissed in its entirety, thus de facto siding with the Government of Iran.

Incredibly, since 1996 American victims of state-sponsored terrorism have been actively encouraged to seek redress and compensation in our federal courts. These long-suffering American families have complied with all requirements of existing U.S. law and many have actually won court-ordered judgments, only to be denied any compensation and what little justice they seek in a court of law. The opponents of this legislation apparently want American taxpayers to foot the bill for what could amount to hundreds of millions of dollars instead of making the terrorists and their sponsors pay.

With the passage of this new legislation, the Congress is requiring that this misguided policy be abandoned. Holding the blocked assets of state sponsors of terrorism in perpetuity might make sense in the pristine world of high diplomacy, but not in the real world after the September 11 terrorist attacks on America.

First, paying American victims of terrorism from the blocked and frozen assets of these rogue governments and their agents will really punish and impose a heavy cost on those aiding and abetting the terrorists. This tougher U.S. policy will provide a new, powerful disincentive for any foreign government to continue sponsoring terrorist attacks on Americans, while also discouraging any regimes tempted to get into the ugly business of sponsoring future terrorist attacks.

Second, making the state sponsors actually lose billions of dollars will more effectively deter future acts of terrorism than keeping their assets blocked or frozen in perpetuity in pursuit of the delusion that long-standing, undemocratic, brutish governments like those in Iran and Iraq can be moderated.

Third, American victims of state-sponsored terrorism and their families will finally be able to secure some measure of justice and compensation. Public condemnation by the U.S. Government of state-sponsored terrorism only goes so far. This new legislation enables American victims to fight back, to hold the terrorists who are responsible accountable to the rule of law, and to make the perpetrators and their sponsors pay a heavy price.

In his last days in office, former President Clinton signed a law endorsing a policy of paying American victims of terrorism from blocked assets, while simultaneously signing a waiver of the means to make this policy work. The Bush administration has not changed this mistaken policy as yet. That is why Senator ALLEN joined me in pushing this bipartisan legislation to establish two new policy cornerstones for our Nation's struggle against international terrorism. First, the U.S. will first require that compensation be paid from the blocked and frozen assets of the state sponsors of terrorism in cases where American victims of terrorism secure a final judgment in our Federal courts and are awarded compensation. Second, the U.S. Government will provide a level playing field for all American victims of state-sponsored terrorism who are pursuing redress by providing equal access to our federal courts.

American victims of state-sponsored terrorism deserve and want to be compensated for their losses from those who perpetrated the attacks upon them, including our former hostages in Iran and their families. The Congress should clear the way for them to get some satisfaction of court-ordered judgments and, in so doing, help deter future acts of state-sponsored terrorism against innocent Americans.

Mr. KYL. Mr. President, I rise today to express my opposition to the conference report on H.R. 3210, the terrorism insurance bill.

I had hoped that Congress would approve legislation that encouraged building construction, gave business owners limited liability protection in the event of a terrorist attack, and protected taxpayers from exorbitant costs. These goals were all enunciated by President Bush when he pressed Congress to act on this issue after months of delay.

Unfortunately, the legislation in its current form fails to meet any of those objectives.

First, the conference report subjects victims of terrorism to potentially unlimited liability by placing no restrictions on court awards of punitive damages or non-economic damages. This has the potential of encouraging a slew of frivolous lawsuits against business owners whose business may be destroyed in terrorist attacks. Certainly no business that was located in the World Trade Center, for example, should be held at fault for the unforeseeable tragedy that took place on September 11.

As several of the President's economic advisors noted in a June 10, 2002 letter to Senate Minority Leader LOTT, ''the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal wrongdoing.'' The letter goes on to say ''the availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.''

I strongly agree with that position and am troubled that the conferees did not take these concerns into account before bringing this legislation to the Senate floor.

Additionally, I am concerned that this legislation leaves taxpayers open to liability for terrorist attacks. One of the original goals of this bill was to allow the Secretary of the Treasury to sign off on out-of-court settlements to protect the taxpayers from exorbitant costs. Without such a provision, taxpayers, who are liable for as much as 90 percent of property and casualty costs after a terrorist attack, could be gouged by trial attorneys. That is primarily because insurers, with only a ten percent stake in the outcome of litigation, will favor faster, rather than fairer, settlements—at the taxpayers' expense.

Of additional concern, the low per-company deductibles will impede the development of a private reinsurance market and will increase the likelihood that this temporary federal program becomes permanent. Since the Federal Government limits each company's liability, rather than that of the entire industry, insurance companies have less incentive to spread their risk.

I am also troubled by certain provisions in Title II of this legislation covering victim compensation through

seized assets from terrorists and terrorist-sponsoring states. As the conference report stands now, this provision would create a race to the courthouse benefiting a small group of Americans over a far larger group of victims just as deserving of compensation.

Economic sanctions against terrorist states have kept the economic activity of those states to a minimum. Yet this limited pool of frozen assets and diplomatic property would be exhausted quickly as large, and often uncontested, compensatory and punitive damage awards are satisfied, leaving most victims with nothing. For example, the special provisions for terrorism victims of Iran expands the number of judgment holders eligible for payment under the 2000 Act (to approximately eight), but metes out all of the approximately $30 million remaining in the fund to satisfy judgments in only two cases. And there are a number of ongoing lawsuits by terrorism victims and their families against Iran that will be foreclosed under this agreement.

This section would also disproportionately benefit trial lawyers, since plaintiff's lawyers whose fees are contingent upon satisfying their clients' judgments stand to gain the lion's share of the compensation, not the victims.

Overall, this legislation is far from what President Bush wanted. It is a major disappointment that literally benefits trial lawyers at the expense of the taxpayers.

I realize that many of my colleagues want to support this bill, despite its flaws. And I understand that. It is regrettable that special-interest groups exerted so much influence in the drafting of this legislation, leaving the President with a bill that amounts to little more than the best he could get from this Congress.

But as it stands today, I cannot ask Arizona taxpayers to absorb the potential losses they might incur because of the self-serving and unjustified lawsuits that are the all but inevitable outcome of this legislation.

Mr. HARKIN. Mr. President, I rise to address a portion of this conference agreement relating to enforcement of judgments obtained by victims of terrorism against state sponsors of terrorism. These provisions strike an important blow in our global struggle against terrorism.

The purpose of title II is to deal comprehensively with the problem of enforcement of judgments issued to victims of terrorism in any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties. As the conference committee stated, this title establishes, once and for all, that such judgments are to be enforced against any assets available in the U.S., and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act.

Title II expressly addresses three particular issues which have vexed victims of terrorism in this context. First, there has been a dispute over the availability of ''agency and instrumentality'' assets to satisfy judgments against a terrorist state itself. Let there be no doubt on this point. Title II operates to strip a terrorist state of its immunity from execution or attachment in aid of execution by making the blocked assets of that terrorist state, including the blocked assets of any of its agencies or instrumentalities, available for attachment and/or execution of a judgment issued against that terrorist state. Thus, for purposes of enforcing a judgment against a terrorist state, title II does not recognize any juridical distinction between a terrorist state and its agencies or instrumentalities.

Second, title II amends Section 2002 of the Justice for Victims of Terrorism Act of 2000 to address a miscarriage of justice in the drafting and implementation of that act. In that provision, Congress had directed that specified claimants against Iran receive payment in satisfaction of judgments from two specified accounts, namely Iran's Foreign Military Sales, ''FMS'', Trust Account and the proceeds of rental of certain Iranian government properties. Contrary to Congressional intent, the legislative language has been construed by the Departments of State and Treasury to exclude unspecified claimants and to allow the executive branch to bar enforcement of their awards against other blocked assets. As one United States District Court has noted, the result is a gross injustice that demands immediate correction.

To address this injustice, we are adding to the list of those to be compensated, all persons who meet two criteria—either, 1, they had a claim filed when Section 2002 was enacted and have already received a final judgment on that claim as of the date of enactment, or 2 were added to the list by the State Department Reauthorization Bill enacted last month. In accordance with amended Section 2002(b)(2)(B), each of these claimants are to be treated as if they were originally included in Section 2002, and are to be paid an amount determined by the Secretary of the Treasury to have been available for payment of their judgment on the date their judgment was issued. Once these amounts are paid, any remaining amounts in these accounts are to be paid to remaining claimants under the formula specified in amended Section 2002(d).

Moreover, to address this injustice, this amendment will treat all of these victims—those originally included in Section 2002 and those now being added—equally to the maximum extent possible. No priority is given to one group or the other. Those in each group which have filed timely lawsuits and received a final judgment by the enactment of this Act are to be paid within the strict deadlines set in the Act, i.e., within 60 days, without delay. Those not included within this time frame may pursue satisfaction from blocked assets. This will necessarily include some who, for whatever reason, have failed to obtain a judgment in their lawsuit by the date of enactment of this act.

Third, the term ''blocked asset'' has been broadly defined to include any asset of a terrorist party that has been seized or frozen by the United States in accordance with law. This definition includes any asset with respect to which financial transactions are prohibited or regulated by the U.S. Treasury under any blocking order under the Trading With the Enemy Act, the International Emergency Economic Powers Act, or any proclamation, order, regulation, or license. Moreover, by including the phrase ''seized by the United States'' in this section, it is our intent to include within the definition of ''blocked asset'' any asset of a terrorist party that is held by the United States. This is intended as an explicit waiver of any principle of law under which the United States might not be subject to service and enforcement of any judicial order or process relating to execution of judgments, or attachments in aid of such execution, in connection with terrorist party assets that happen to be held by the United States. In this respect, the United States is to be treated the same as any private party or bank which holds assets of a terrorist party, and such terrorist party assets held by the United States are not immunized from court procedures to execute against such assets. However, any assets as to which the United States claims ownership are not included in the definition of ''blocked assets'' and are not subject to execution or attachment under this provision.

Mr. ENZI. Mr. President, first of all, I want to thank all of the conferees for the long hours and late nights they here worked to complete this bill. I know this has been a difficult process and a long year.

Unfortunately, now I kind myself in a very difficult position. I find myself forced to oppose this legislation even though it is a Presidential priority and even though I support the underlying goals.

It was a little over a year ago that Senators SARBANES, GRAMM, DODD, and I announced an agreement for terrorism risk insurance legislation. That agreement outlined the parameters that we thought were a reasonable response to disruptions occurring in the marketplace as a result of the lack of reinsurance. This agreement outlined very limited and specific liability protections that would protect both the taxpayer's pocketbook and businesses which may themselves be victim's of terrorism from frivolous lawsuits after future terrorist attack.

These limited protections were: First, suits filed as a result of a terrorist attack would be consolidated

into a Federal district court; second, punitive damages would not be allowed; and third, the Secretary of the Treasury was given the ability to agree to out-of-court settlements.

Now, in this new conference report, two out of these three protections have been eliminated. The new program in this conference report will allow frivolous lawsuits to be filed against businesses that may be victims of the terrorist act themselves. Think about a business located in the World Trade Center on 9/11. This business was destroyed and likely lost a number of its employees. The next thing that happens is while attempting to rebuild, the business gets slapped with a frivolous lawsuit by a greedy trial lawyer. It is ridiculous to believe that a business could have prevented an attack of this kind. Yet this legislation will subject them to the will of the trial bar.

This conference report keeps America's businesses and the taxpayer subject to punitive damages. I have a Statement of Administration Policy from the executive Office of the President's Office of Management and Budget. In the second paragraph of the letter dated June 13, 2002, it states ''the Administration cannot support enactment of any terrorism insurance bill that leaves the Nation's economy and victims of terrorist acts subject to predatory lawsuits and punitive damages.'''

Also from the administration, I have a letter signed by Treasury Secretary O'Neill, OMB Director Daniels, Director of the National Economic Council Lindsey, and Director of the Council of Economic Advisors Glenn Hubbard dated June 10, 2002. This letter states ''the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal worngdoing.'' It goes on the say ''the availability of punitive damages in terrorism cases would in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.'' I could not agree more with the administration's position from just a few months ago that this legislation could lead to the bankruptcies of American companies who were victims of terrorist acts themselves.

In addition, this conference report does not include a provision which allows the Secretary of the treasury to agree to out-of-court settlements. This legislation has the American taxpayer pay potentially 90 percent of property and casualty costs after a terrorist attack. I can think of no other instance where the group liable for paying 90 percent of a lawsuit is unable to agree to an out-of-court settlement. If another catastrophic terrorist attack occurs, every trial lawyer in America will file a lawsuit because they know that the insurance company, which only pays 10 percent of the settlement, will agree immediately. The mansions of the trial lawyers will be built with the dollars of the American taxpayer.

I do not consider the inclusion of these protections to be extreme measures and I do not think that most of the members of this chamber believe them to be unreasonable. They are very simple and reasonable protections that basically say the trial bar should not take advantage of tragedies caused by terrorists.

The President invited Senate Republican conferees to the White House a few weeks ago where concerns were raised regarding the lack of these specific taxpayer protections. Unfortunately, these protections were not reintroduced into the legislation and now this conference report comes to the floor of the Senate without a single Senate Republican conferee's signature.

For these reasons, I am unable to support passage of this legislation. I support the program and understand the possible economic problems by not passing the legislation. I cannot in good faith subject the hard-working taxpayers of Wyoming to the potential losses they might incur because of the self-serving and unjustified lawsuits which may result.

However, even though I cannot support this bill because of the lack of taxpayer protections, I would like to commend those who have worked so diligently on the legislation for over a year now. Senator DODD, in particular, has given more time and effort to this project than probably anyone. He and his staff, Alex Sternhell, have remained committed to seeing the passage of this legislation and have done remarkable work to bring the issues that relate to the structure of the program to a compromise. I have to say that I agree with Senator DODD'S position on the structure of the program and always felt confident in the manner which he negotiated these provisions.

Mr. President, my position on this legislation has not changed since the very beginning. I believe we need a Federal backstop and I believe at one point we had a bill that did just that. I am sorry the trial bar was able to derail the bill for over a year now. I can only hope that the trial lawyers of America will stop to realize that subjecting Americans to lawsuits to line their pockets after the devastation of a terrorist attack is simply the wrong thing to do .

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, I am pleased to support this conference report to provide a federal backstop for terrorism insurance. I believe this bipartisan bill will boost our economy by providing extra protection against terrorist attacks for buildings and construction projects with resulting new jobs in Vermont and across the nation. I agree with President Bush that this legislation is essential for our future economic growth.

I worked with the distinguished Majority Leader, Senator DODD, Senator SARBANES, Senator SCHUMER and others to craft a balanced compromise in the conference report on legal procedures for civil actions involving acts of terrorism covered by the legislation. The conference report protects the rights of future terrorism victims and their families while providing federal court jurisdiction of civil actions related to acts of terrorism, consolidating of such cases on a pre-trial and trial basis, and excluding punitive damages from government-backed insurance coverage under the bill. These provisions do not limit the accountability of a private party for its actions in any way.

Further, the conference report, identical to the Senate-passed bill, fully protects federal taxpayers from paying for punitive damage awards. Under the conference report only corporate wrongdoers pay punitive damages, not U.S. taxpayers as some incorrectly claimed on the Senate floor during consideration of the Senate-passed bill.

The U.S. Chamber of Commerce has declared that the conference report ''will improve the legal rights of plaintiffs and defendants and, importantly, will help American workers and the economy.'' I agree.

I thank the conferees for rejecting the special legal protections in the House-passed bill. The liability limits for future terrorist attacks in the House-passed bill were irresponsible because they restricted the legal rights of victims and their families and discouraged private industry from taking appropriate precautions to promote public safety. Restricting damages against a wrongdoer in terrorism-related civil actions involving personal injury or death, for example, could discourage corporations from taking the necessary precautions to prevent loss of life or limb in a future terrorist attack. There is no need to enact these special legal protections and take away the legal rights of victims of terrorism and their families.

For example, the House-passed bill would have permitted a security firm to be protected from punitive damages if the private firm hired incompetent employees or deliberately failed to check for weapons and a terrorist act resulted.

The threat of punitive damages is a major deterrent to wrongdoing. Eliminating punitive damages under the House-passed bill would have severely undercut this deterrent and permitted reckless or malicious defendants to find it more cost effective to continue their wanton conduct without the risk of paying punitive damages. Without the threat of punitive damages, callous corporations could have decided it is more cost-effective to cut corners that put American lives at risk. This approach failed to protect public safety, and the conferees rightly rejected it.

In addition, I thank the managers for including language in the conference report to help captive insurance companies participate in the federal backstop program. Many captives deal in

property and casualty lines, but some do not. Senator JEFFORDS and I strongly support language in the conference report to allow those captives in property and casualty the option of participating in the program while not requiring other captives to start offering terrorism risk insurance.

The state of Vermont is the premier U.S. domicile for captive insurance companies. Vermont's captive owners represent a wide range of industries including multinational corporations, associations, banks, municipalities, transportation and airline companies, power producers, public housing authorities, higher education institutions, telecommunications suppliers, shipping companies, insurance companies and manufacturers, among others. Since 1981, Vermont has averaged approximately 25 captives licensed annually, and those numbers are on the rise. Vermont closed 2001 with 38 new captives, 37 pure and I sponsored, for a total of 527 at year-end. The first half of 2002 saw 26 new captives licensed in Vermont setting a record pace, according to the Vermont Department of Banking, Insurance and Health Care Administration.

At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror and jump-start our economy, this conference report is a shining example of bipartisan progress. I applaud Senator DASCHLE, SENATOR DODD, Senator SARBANES, Senator SCHUMER and the other Senate and House conferees on their good work on this bipartisan conference report.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Mr. President, I have consulted with the chairman and the ranking member of the Appropriations Committee. As I think our colleagues know, the next order of business is a debate and then a vote on the continuing resolution. I am told they will need no more than 40 minutes. So Senators should be prepared to vote on final passage on the continuing resolution at about 9:10 to 9:15 p.m. Please return to the Chamber if you are not going to stay. That will be the final vote of the evening. We will vote at approximately 9:10 to 9:15 p.m., following this vote.

The PRESIDING OFFICER. Under the previous order, cloture having been invoked, the question is on agreeing to the conference report to accompany H.R. 3210.

Mr. DODD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 86, nays 11, as follows:

[Rollcall Vote No. 252 Leg.]

YEAS—86

Akaka	Dayton	Lincoln
Allard	DeWine	Lott
Allen	Dodd	Lugar
Barkley	Domenici	McCain
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Edwards	Murray
Biden	Ensign	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Reed
Boxer	Fitzgerald	Reid
Breaux	Frist	Roberts
Brownback	Graham	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sarbanes
Byrd	Harkin	Schumer
Campbell	Hatch	Smith (NH)
Cantwell	Hollings	Smith (OR)
Carnahan	Inhofe	Snowe
Carper	Inouye	Specter
Chafee	Jeffords	Stabenow
Cleland	Johnson	Stevens
Clinton	Kennedy	Thompson
Cochran	Kerry	Thurmond
Collins	Kohl	Torricelli
Conrad	Landrieu	Voinovich
Corzine	Leahy	Warner
Crapo	Levin	Wyden
Daschle	Lieberman	

NAYS—11

Craig	Hutchison	Sessions
Enzi	Kyl	Shelby
Gramm	McConnell	Thomas
Grassley	Nickles	

NOT VOTING—3

Helms	Hutchinson	Murkowski

The conference report was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Georgia, Mr. CLELAND, be recognized for up to 10 minutes.

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

SERVICE IN THE SENATE

Mr. CLELAND. Mr. President, I rise today to reflect on a 6 year term in the Senate which has been simultaneously the most challenging, yet most rewarding, experience of my life. I have had the chance to realize a lifelong dream by following in the footsteps of one of my personal my heroes, Senator Richard Russell of Georgia. I have been able to represent the state I love in an institution I revere. And I have been able to add my voice to the others that have risen before me in this chamber, from William Fulbright to Harry Truman to John Kennedy to Everett Dirksen to so many other outstanding men and women of history.

In my Senate office, I have surrounded myself with small reminders of the men I most admire. I sit at Richard Russell's desk. On my walls, I have photographs of just two people. President Franklin Roosevelt and Prime Minister Winston Churchill. Theirs were no ordinary times, and we can safely say now, neither are ours. After the Pentagon was attacked on September 11th, I looked at FDR's picture and finally understood the gravity of his day of infamy, because this generation now had one of its own. I have used Churchill's and Roosevelt's examples of strength and courage to make it through every day in this town. Some days have been better than others, but every one has been a gift because this has been the life of my dreams.

When I came to the Senate, I came to do the best job I could for the people of Georgia and the people of the United States, particularly our men and women in uniform. I am proud of what we've accomplished since then. Today, over 60% of our service members are married, and their benefits have finally begun to reflect that fact in order to retain those talented professionals. We knew that the decision to stay in the military is made at the dinner table, not the conference table, so we've increased pay for service members by nearly 20% since I came to the Senate. We've modernized the G.I. bill so that service members can transfer their benefits to start a college fund for their children. We set a schedule to eliminate out of pocket housing expenses and we even added a measure to help families take their pets with them when serving in Hawaii. Keeping the family dog may not be the highest priority for some lawmakers, but it's the whole world to a child moving around the globe as their mother or father serves our country. The family matters to the military member, so the family has mattered to me in my time here.

Beyond these individual personnel matters, I became deeply concerned about the shrinking numbers of our U.S. military, and this year was able to raise the ceiling of our force strength. In our new war on what Sam Nunn calls ''catastrophic terrorism,'' we must continue to go on the strategic offensive. Our military may be winning the battle, but we will lose the war if we continue to ignore the fact that our forces are critically over-deployed and being asked to do too much with too little. We are out of balance. Our commitments are far outpacing our troop levels, and the situation is only getting worse.

Since the end of Operation Desert Storm in 1991, the armed forces have downsized by more than half a million personnel, but our commitments have increased by nearly 300%, including new deployments to Afghanistan, Yemen, the Philippines, Georgia, and Pakistan. Today, a Desert Storm-size deployment to Iraq would require 86% of the Army's deployable end strength, including all stateside deployable personnel, all overseas-deployed personnel, and most forward-stationed personnel.

To make the war on terrorism possible, we have activated more than 80,000 guard and reserve troops and instituted stop-loss for certain specialties. This is no way to fight a war when our strategic national interests are at stake. The President has rightly told the country to be prepared for a long commitment. But the Pentagon has not requested an increase in end

strength for services other than the Marines. Our military is on a collision course with reality of families they don't see, training they aren't receiving and divisions borrowing from each other to meet the bare minimum in staffing. We can prevent a loss tomorrow, but we have to act today by increasing our numbers, and I hope that we will.

Just as we must go on the strategic offensive overseas, we have to be on the strategic defensive here at home. The Senate has just passed the bill to create a new Department of Homeland Security, which was long overdue. For my own part, I am pleased to see passage of several measures I have worked on that I believe will significantly improve our sense of security here at home. The homeland security bill itself contains provisions to coordinate law enforcement and public health emergencies and to move the Federal Law Enforcement Training Center into the new department. The Port Security bill will help the ports of Brunswick and Savannah cut off options for terrorists who want to attack the U.S. on our own shores. The Bus Security bill will ensure that bus passengers are finally accorded some of the same security measures that the flying public receives.

I look ahead now, and see our nation facing perilous challenges. Iraq and Saddam Hussein are back on our radar screen. We are right to insist on disarmament, and I leave the Senate confident that my vote to give the President the authority to use force to that end was the right one. I also believe my vote to go after Osama bin Laden was the right one, but we have miles to go before we sleep on that front.

As all of these issues continue, I hope that the Senate and the country will continue to vigorously debate the proper course for our nation's foreign policy. A policy unchallenged is a policy unproven. Why would we wait to prove our theories to ourselves and our allies until our troops are in the field proving our policies for us?

When he was in Vietnam, Colin Powell swore to his men, as I swore to mine, that when we were the generals instead of the captains, when we were the senators instead of the sergeants, we would not send our boys into a fight willy-nilly. And we haven't. And we shouldn't. In retrospect it seems to me that the real failure of Congress in Vietnam was not so much passage of the open-ended Gulf of Tonkin resolution, but its subsequent failure to exercise its Constitutional responsibilities after the resolution passed.

Likewise, Congress' vote on the Iraq resolution provided a tangible, militarily achievable objective, but it did not discharge the Congress of all future responsibility with respect to our policy on Iraq. After the 1990–91 Gulf War, Powell put forth six questions which he believed must be addressed before future military interventions:

Is the political objective important, clearly defined, and well understood?

Have all non-violent means been tried and failed?

Will military force achieve the objective?

What will be the cost?

Have the gains and risks been thoroughly analyzed?

After the intervention, how will the situation likely evolve and what will the consequences be?

The first three questions have been addressed thus far, but when we turn to the final three of General Powell's questions, we see the need for some serious and sustained attention not only by the Administration, but by the Congress as well. What will be the cost, not only the cost of the immediate military operation, but also the costs of what could be a very long-term occupation and nation-building phase? What about the cost for our economy? The mere threat of war has sent oil prices upward and caused shudders on Wall Street. What will a full blown war do? Have the gains and risks been thoroughly analyzed? And after the intervention, how will the situation likely evolve and what will the consequences be?

Powell has said that the purpose of the American military is to prevent war. But if war cannot be prevented, we should go in, win and win quickly. I am grateful to have Colin Powell's voice in this debate today. And I am hopeful we will have his and others like his in the debates of tomorrow. I hope the members of the 108th Congress will ask these questions and these are the ones I will be asking from whatever vantage point I move to after January 2.

In his farewell speech to Congress, General Douglas McArthur said that old soldiers never die, they just fade away. This old soldier is not going to fade away, but I will take my battles to another front. The people of Georgia have given me a chance to live the life of my dreams here in the Senate, but now I may have the chance to live a life that exceeds my dreams, and I am grateful for that.

As much as Richard Russell achieved for Georgia and for America, he said his greatest regret in his life was that he never married. I am happy to say that this old soldier has learned a thing or two from Russell, and I will be married to my fiancee, Miss Nancy Ross, after I retire. There is life after the Senate, and it will be a wonderful life. FDR said that the purpose of politics is to generate hope, but for me, the purpose of life is to generate hope. I will continue to try to live up to FDR's example every day.

Before I leave, I want to thank several people. Senator ROBERT BYRD, for teaching me so much about this institution. Senators REID and DASCHLE for your constant help and support, as well as Senator ZELL MILLER. Senators JOHN MCCAIN, JOHN KERRY and CHUCK HAGEL, who reminded me that nothing is stronger than brotherhood, and some things are more important than politics. I thank my staff for letting me lean on them, and I thank the entire Senate family, from our Chaplain Lloyd Ogilvie to the reporters who cover the Senate, from the wonderful elevator operators to the staff in the Senate dining room and the barber shop and everyone in between—you've been my friends and my family and I will always remember your kindness. Finally, to my colleagues and the people of Georgia, a song from one of my favorite old westerns comes to mind. Happy trails to you, 'til we meet again. God bless you.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, the two managers of this bill, the President pro tempore of the Senate and the soon to be President pro tempore of the Senate, are both here managing this bill. It is my understanding they are not going to take a long period of time. As soon as they finish, it is my understanding we would have final passage.

The majority leader has come upon the floor. Senator BYRD said he is ready to begin the debate.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2003

The PRESIDING OFFICER. The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 124) making further continuing appropriations for the fiscal year 2003, and for other purposes.

The Senate proceeded to consider the joint resolution.

Mr. BYRD. Mr. President, I shall be brief and my colleague, Mr. STEVENS——

The PRESIDING OFFICER. The Senate will come to order. Please remove conversations from the floor.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair.

I do not intend to speak more than 15 minutes, if that much. And my colleague has indicated he will speak about the same amount of time. So I would say to Senators we ought to be voting within 30 minutes.

Last July, almost 4 months ago, the Senate Appropriations Committee completed action on all 13 of our appropriations bills, each on a bipartisan unanimous vote. These bills restored essential funding for programs that the administration proposed to cut.

We provided $1.1 billion more than the President requested for veterans medical care.

We restored the $8.6 billion cut proposed by the President in highway funding.

The President proposed only a 1-percent increase for education programs. He would turn the No Child Left Behind bill into another unfunded mandate. Our bill would have provided a 6-percent increase for education, including key funding to reduce class size.

We included sufficient funding to keep Amtrak operating.

We restored over $1 billion of cuts that the President proposed for State and local law enforcement programs.

We fully funded the President's proposed increases for homeland security programs, but we provided the funds through existing programs that our nation's fire and police organizations support.

We provided a significant increase for the Securities and Exchange Commission in order to investigate corporate fraud.

We provided $400 million for election reform.

Sadly, the President believes that these increases represent wasteful and unnecessary spending. He worked with the House Republican leadership to shut the appropriations process down. The House has not passed a regular appropriations bill in nearly 17 weeks. By contrast, the Senate Appropriations Committee reported all thirteen bills by July 25th, the earliest date that this was accomplished since 1988. However, without the House-passed bills, our process stalled.

The Senate Appropriations Committee, on a bipartisan basis, believes in making responsible choices. It believes in governing. The President, sadly, appears to believe more in rhetoric and political posturing.

This year, only two of the thirteen appropriations bills have been signed into law. The House has voted for and the President has supported a fifth continuing resolution that would extend appropriations for the domestic side of the government until January 11. This is the worst performance of the Congress in attending to one of its most basic responsibilities, the funding of the government, since 1976 when the beginning of the fiscal year was moved to October 1.

Why did the President precipitate this unprecedented failure? Despite the fact that Congress approved the President's 13 percent, $45 billion, increase for defense programs and his 25 percent, $5 billion, increase for homeland defense programs, the President believes that the 3.5 percent increase for domestic programs that the Senate Appropriations Committee approved, was excessive. The President proposed to virtually freeze domestic programs that were not for homeland defense. The Senate Appropriations Committee provided $13 billion more for domestic programs, barely enough to cover inflation.

The President has forced the entire domestic side of the government to operate on automatic pilot at fiscal year 2002 levels for over one quarter of the fiscal year. In a bit of pre-election posturing, the President's Press Secretary Ari Fleischer said on October 20th, ''For the first time in probably a decade, Congress has left town before an election without going on a spending spree using taxpayers' money. There's a new sheriff in town, and he's dedicated to fiscal discipline. And Congress for the first time in a decade has listened to the new sheriff.''

That new sheriff is shooting the country in the foot with his Administration's shortsighted political games. But, were the items that the Senate Appropriations Committee funded with the $13 billion increase a spending spree?

No.

With great fanfare, the President signed numerous authorization bills this year that authorize increase spending on important programs. Last January, he signed the No Child Left Behind Act in order to invest additional resources in important education programs for our children. Last May, he signed a border security bill to strengthen glaring weaknesses in our border security. Last July, he signed the Bioterrorism Preparedness Act authored by Senators KENNEDY and FRIST in order to provide critical resources to State and local governments to improve the capacity of hospitals, clinics and emergency medical personnel to respond to biological or chemical attacks. Last July, he signed the Sarbanes-Oxley Act to combat corporate fraud. In October, he signed the election reform bill in order to help State governments overhaul the nation's electoral system.

Yet, when it came time to actually fund these important initiatives, the President worked to postpone action on the FY 2003 spending bills. He worked with the House Republican leadership to force the funding of the entire domestic side of our government onto a continuing resolution. Instead of making careful choices, the President has forced the government to operate on automatic pilot, leaving the legislation that he signed with such fanfare, to operate without the increased resources authorized by those laws.

The Senate is now considering a fifth continuing resolution to extend funding for the eleven bills that fund domestic agencies through January 11, 2003. This puts the entire domestic side of the government, including homeland security programs, on automatic pilot at the levels approved for FY 2002.

You must watch what this President does, not what he says. What he has done, is to force the government to operate on automatic pilot. What he has said bears very little resemblance to what he has done.

The U.S. Senate is reputed to be the world's greatest deliberative body. In ''Democracy in America,'' French visitor Alexis de Tocqueville described this body as an institution ''composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose arguments would do honor to the most remarkable parliamentary debates of Europe.''

That was the Senate of 1831—an institution that prided itself on its deliberate, careful, judicious debates; an institution that possessed, as once the Senate of ancient Rome possessed, a great firmness, anchored by oratory that was as brilliant as the immense gold eagle atop the dais of the old Senate Chamber. But the Senate that de Tocqueville watched in 1831, I am sad to say, is a far, far cry from the institution that the American people have observed over the past few months.

Instead, the American people have seen a body more concerned about politics than substance; more concerned about party than about the people; more concerned about the state of the midterm elections than the state of the union.

President Bush came to Washington in 2001 and promised to change the tone in Washington. Instead, the President has sent an unambiguous message to Congress on virtually every major policy issue. His message—my way, or the highway. No room for debate. No room for deliberation. The nation needs to pursue energy independence, but the President has said my way or the highway. Our elderly need a prescription drug benefit, the President has said my way or the highway. The Director of Homeland Security says our nation is facing an imminent risk of a terrorist attack, but when it comes to homeland security legislation, the President said my way or the highway.

Similarly, the Congress has been manacled by the President and the House Republican leadership in its efforts to fund the operations of government.

On September 17, I came to the floor and I warned Members that the White House was leading an effort to stall the appropriations process. At that time, the House had not taken up an appropriations bill for eight weeks. I complained that the Administration seemed to believe that the federal government is nothing more than a ''Monopoly'' board, with the President living on Park Place, while the rest of the country relegated to Mediterranean Avenue.

In those remarks, I noted that Lawrence Lindsay, the President's principal economic advisor, had estimated that the costs of the war in Iraq would be $100 to $200 billion but that spending at that level would have no impact on the economy. I stressed my concern that the White House is willing to put the entire domestic side of the government on automatic pilot in a long-term continuing resolution over their insistence that the $13 billion difference between the House topline for discretionary spending and the Senate topline is, in their view, excessive spending. I noted that the House Republican leadership, at the bidding of

the White House, is willing to force all of the domestic agencies to operate at current rates over their objection to the Senate's wanting to provide a 3-percent increase for domestic health, education, environmental, law enforcement and other programs, barely enough to cover inflation.

On September 24, I came to the Senate floor and I warned Members about the dire consequences of forcing veterans health care programs, education programs, transportation programs to operate at last year's spending levels.

On October 2, I returned to the floor and I asked the White House why they had turned a deaf ear to the needs of the American people; and why the fundamental duties of the President and the Congress to make careful and responsible choices about how to spend the taxpayers' hard-earned dollars had been put on automatic pilot.

For months, the President called on Congress to send him the Defense Appropriations bill. The Congress fully cooperated with the President in this regard. Congress sent the President the Defense and Military Construction bills at levels $800 million above the original House bills.

There is no doubt that the Congress and the President can work together. When the President asked for the necessary Defense funding, the Congress cooperated. But it's a far different story when it comes to the domestic programs of the United States Government.

The rest of the appropriations bills remain on hold, stuck in the mud of election-year politics. The President has sent the message that he will be satisfied to put the entire domestic side of the government on automatic pilot. He has already signed four continuing resolutions that fund the government at the levels in last year's laws.

Many members of Congress, myself included, are proud to wear the label of ''defense hawk.'' But, in this new age of terrorism, being a defense hawk must also mean being a ''hawk'' on domestic defense. It must mean defending and funding domestic initiatives that will make Americans safer and more secure in their own backyards just as vociferously as defending and funding the production of military aircraft, and missiles, and tanks.

The White House stall on the remaining appropriations bills means that one front of our two-front war on terrorism will be provided with funds to do battle, but the other front will be shortchanged. If we fail to pass the rest of our appropriations bills, all of our efforts here, on American soil, to make more secure our states, cities and neighborhoods, will be getting short shrift.

Many on the other side of the aisle have claimed that this fiscal train wreck is the result of the Senate's not passing a budget resolution. That may make for good campaign rhetoric, but every Senator knows that a budget resolution is not necessary to pass appropriations bills. Congress was able to pass appropriations bills for nearly 200 years without a budget resolution.

The Budget Act specifically provides authority for the House to move forward on the appropriations bills in the absence of a budget resolution. Sadly, the House Republilcan leadership, at the prodding of our ''my-way-or-the-highway President'', chose instead to shut the appropriations process down.

The President insisted on a topline of $749 billion for the thirteen discretionary bills and has not budged. He seems satisfied to put the government on automatic pilot. No choices. No judgment. No opportunity for the Congress to reflect the needs of the American people in its consideration of the thirteen bills. No, let's just put the government on automatic pilot. Government by formula, rather than government by choice.

According to news reports, the President considers himself to be an education President. He speaks before Veterans groups. He speaks about combating the war on terrorism by strengthening the FBI's investigative capabilities and shoring up security at the Nation's airports, ports, and borders. But talk is cheap. The necessary funding for these priority programs is not. Where is the White House cooperation when it comes to priority domestic funding, especially those relating to homeland security and the plight of our veterans and the state of our education programs? Remember, watch what he does, not what he says.

Mr. President, as the days and weeks slip by and the domestic programs of the Federal Government limp along on autopilot under the provisions of the continuing resolutions, the four-million veterans who rely on the Veterans Administration for their health care are having to worry about whether that care will be available to them. Maybe they are not sleeping too well. While the weeks slip away, the 11,420 FBI agents who are supposed to be combating the war on terrorism are having to wonder whether they have the necessary resources to fight that war. Maybe we all ought not to sleep too well. While the weeks slip away, the government's effort to root out corporate fraud is being put on hold. Watch what they do, not what they say. While the weeks slip away, the President appears to be satisfied to forget his No Child Left Behind promise and turn the commitment to educating America's children into another unfunded mandate, another unfulfilled promise.

The President is quick to champion homeland security, but his budget priorities reflect a different agenda. The administration's adamant refusal to move off of the dime in these appropriations discussions could jeopardize homeland security, no matter when or how any new Department of Homeland Security is created.

Recently, former Senators Rudman and Hart released a report that concluded that the American transportation, water, food, power, communications, and banking systems remain easy targets for terrorist attacks. According to the report, ''A year after 9/11, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greter casualties and widespread disruption to our lives and economy.''

The report highlighted the vulnerabilities created by: the minuscule fraction of trains, ships, trucks and containers that are searched for weapons of mass destruction; poor radio communications and equipment and training for police, fire and emergency medical personnel; inadequate coordination and focus on threats to food safety; lack of lab capacity to test for biological or chemical contaminants; and insufficient sharing of intelligence information with State and local governments on potential terrorist threats.

Not only has President Bush failed to lead the nation in addressing this vulnerability, he has, in fact, actively opposed efforts to provide the resources necessary to address these significant weaknesses. When it comes to homeland defense, the President talks a good game, but puts no points on the board for our needs. Under pressure from the White House, since September 11, 2001, critical funding to address the specific concerns identified in the Rudman/Hart report have been squeezed out of spending bills considered by the Congress.

The Congress has succeeded in approving $15 billion for homeland defense programs in December of 2001 and July of 2002, $5.3 billion above the President's request. However, on several occasions in November, December and July, the President threatened to veto legislation that would have provided nearly $24 billion more for critical homeland security programs, including $15 billion from the stimulus bill and $8.9 billion from Fiscal Year 2002 bills reported by the Senate Appropriations Committee.

In August of 2002, the President chose to terminate $2.5 billion of funding that Congress approved for homeland security programs in the Fiscal Year 2002 supplemental. He turned his back to funds that would have helped to save lives.

In October of 2002, the White House took credit for forcing the entire domestic side of the government to operate by automatic pilot under a continuing resolution of last year's funding levels. That means that agencies like the FBI, the Customs Service, the new Transportation Security Administration, the Coast Guard, FEMA and the Immigration and Naturalization Service, agencies that are critical participants in securing our homeland, have no new resources to address known homeland security vulnerabilities. This postponed over $5

billion of increases approved by the Senate Appropriations Committee for homeland security programs.

When the President called on Congress to send him the Defense bills, Congress responded. But, how about the other eleven bills? We hear no call from the President to send him the remaining bills. The silence is palpable.

Under the long term continuing resolution, the veterans health care system will be funded at a level that is $2.4 billion short of the level proposed in the Senate passed FY2003 VA–HUD bill. There are currently over 280,000 veterans on waiting lists for VA medical care. Under a long-term continuing resolution, the waiting lists will more than double. VA will schedule 2.5 million fewer outpatient clinic appointments for veterans, and 235,000 fewer veterans will be treated in VA hospitals.

Thousands of FEMA fire grants, grants to resolve the interoperable emergency communications equipment problem, grants to upgrade emergency operations centers, grants to upgrade search and rescue teams, grants for emergency responder training and grants to improve state and local planning would be funded under the Senate's appropriations bills. But the Administration insists on operating the domestic programs of the Federal Government under the autopilot provisions of the continuing resolution which are mindless, formulaic, and without any trace of human judgment.

Has the President asked the Congress to send him the VA/HUD Appropriations bill that funds these critical veterans and homeland defense programs? No.

Many of the requirements of the Transportation Security Act require large expenditures in the first quarter of Fiscal Year 2003. Local airports are required to purchase explosive detection equipment to keep bombs from being placed on our airliners. To do that, they need help. Our highway program is facing a $4.1 billion cut in spending that could reduce jobs by over 160,000. Could our economy use those jobs? Amtrak could go bankrupt, throwing 23,000 people out of work and eliminating train service to 1.7 million citizens per month. Merry Christmas Amtrak workers from the White House. The Senate Transportation bill addresses these concerns. Has the President asked Congress to send him the Transportation bill to fund these programs? No.

Federal funds also are needed to hire new federal screeners and to make our nation's seaports more secure. But this cannot be accomplished under a continuing resolution. The INS is at a critical juncture in developing a comprehensive Entry/Exit system to protect our nation's borders. The Senate bill provides $362 million for this initiative. But the Administration's inflexibility means that this program is frozen under the provisions of a continuing resolution just like our progress on protecting our borders—frozen! The President signed an authorization bill to help root out corporate fraud, but the continuing resolution would deprive the Securities and Exchange Commission of $300 million contained in the Senate bill to investigate corporate fraud. Let the fraud flourish for just a little while longer. Has the President asked the Congress to send him the Commerce/Justice/State bill that funds those programs? No.

The Customs Service is scheduled to hire more than 620 agents and inspectors to serve at the nation's high-risk land and sea points of entry. The Senate provides the funding for the Customs Service. But, again, the Administration seems to be satisfied with government by autopilot. A continuing resolution does not fund new agents for our border. Has the President asked the Congress to send him the Treasury/General Government bill to fund that border security program? No.

Without additional funding for security at our nuclear facilities, the Department of Energy will have to lay off 240 security guards at nuclear facilities in Tennessee and Texas. These 240 guards are the first line of defense between our enemies and a significant portion of our nation's nuclear material. Has the President asked us to send him the Energy and Water bill? No.

By forcing the government to operate on autopilot, the Administration wants the nation to fight terrorism with a wink and a nod.

Last month, Congress passed landmark election reform legislation. $3.8 billion is authorized for grants to state and local governments to improve our election systems. Yet, there is no funding for this initiative under a continuing resolution. Has the President asked the Congress to send him legislation to actually fund these new election reform grants? No.

Last year, Congress passed the No Child Left Behind Act with bipartisan support. But, this law becomes nothing but an unfunded mandate on our local governments if the federal funding is not there for states to implement the new act. It takes money to reduce class size, to provide teacher training, to invest in new technology and to develop meaningful assessment tools. The No Child Left Behind Act requires States to ensure that all teachers teaching in core academic subjects are ''highly qualified'' by the end of the 2005–2006 school year. But, the President's budget included no new money for teacher training. The Senate bill would increase funding for Teacher Quality State Grants by $250 million, for a total of $3.1 billion. The President's budget would increase funds for education by just $367 million—less than a 1% increase. That level gets an ''F'' in my grade book. The bill passed by the Senate Appropriations Committee, meanwhile, would increase education funds by $3.2 billion, or 6.5%. Has the President asked Congress to send him the Labor/HHS/Education bill? No.

Here in the Senate, Senator STEVENS and I sat down and worked out a topline for discretionary spending that reflected our views of the level of spending that would be required to produce thirteen bipartisan, fiscally responsible bills. We then followed through and the Senate Appropriations Committee produced all thirteen bills by the end of July consistent with that allocation. All thirteen annual appropriations bills cleared the Senate Appropriations Committee with fifteen Democratic members and fourteen Republican members voting aye. There is nothing partisan about these Appropriations bills. I worked with my Republican colleagues, led by that very able Senior Senator from Alaska, TED STEVENS, to make sure that these bills represented a consensus of our members, both Democratic and Republican. There are no gimmicks. The bills have been available for all Members to see for over sixteen weeks. Yet, the lack of action in the House has shut down progress in the Senate as well.

Senators should know that frustration with the lack of progress on the FY 2003 appropriations bills is bipartisan and bicameral. In a recent, widely distributed memorandum to the Speaker of the House of Representatives, House Appropriations Committee Chairman BILL YOUNG said, ''A long-term continuing resolution that funds government operations at FY 2002 levels would have disastrous impacts on the war on terror, homeland security, and other important government responsibilities. It would also be fiscally irresponsible.''

All it would have taken to move the FY 2003 bills was some degree of cooperation between the House and Senate leadership, but the White House thwarted any chance of a compromise being reached. That's right. The White House—the Bush White House—the one that promised to change the tone in Washington, thwarted any chance of a compromise being reached. They did not want the work to be done. The White House spinners wanted to spin and weave their tangled web.

We ought to be more concerned about how our actions will affect the course of the country than we are about how our actions or inactions will affect the direction of our polls. We ought to be more concerned about the price the people will pay for our actions or inactions than we are about the price our parties will pay at the voting booth. We ought to be more concerned about raising public awareness than we are about raising campaign funding. We ought to be more concerned about doing our jobs than we are about keeping our jobs.

Now, because of the White House's unwillingness to put what is best for the American people ahead of what is best for our political parties, the Congress is forced to pass a continuing resolution to fund the operations of government until the 108th Congress. The Congress will forsake one of its most

important functions—to ensure funding for the operations of the federal government—because is could not reason with this partisan, partisan White House.

Call me old-fashioned, but I remember a time when compromises were crafted by individuals who had differing views on an issue. But with this President, it is my way or the highway.

The Senate must not blindly follow, in the name of party unity or under the yoke of political pressure, a short-sighted path that ultimately undermines our Constitutional processes. He could not stay off of the campaign trail long enough to negotiate and help us pass these bills.

Why isn't the Administration up here working in a bipartisan and flexible fashion with the leadership of the House and Senate Appropriations Committees to facilitate the processing of the appropriations bills that fund domestic programs so that the necessary funding can be provided to the veterans, the FBI, the education programs, the homeland security programs at the Federal, State, and local levels?

Why the giant stall, the big freeze, the cold shoulder? This Administration is setting quite a track record. Unfortunately for the American people, it is not a record on which to look back with pride. It is a record that rejects reasonableness in favor of stubbornness. It is a record that rejects progress in favor of partisanship. It is a record that puts politics ahead of the American people.

I, for one, can not forget what is important to America. I recognize, as do many members of this body, the critical nature of these appropriations bills to the future progress and security of this nation. I recognize the importance of these appropriations bills to the farmers, to the teachers and their students, and to the veterans. I recognize the importance of these bills to future breakthroughs in medical research and cancer treatments. I recognize the importance of these bills to our nation's energy independence and to our transportation network.

I can only pray that the Creator will see fit to protect us from the plots of twisted souls who lurk in the shadows, and I can only hope that in January, either our shame or our fear or both will compel us to act.

I have very strong feelings of gratitude for my colleague, Senator STEVENS, the ranking member, who has worked so closely with me. And I am especially appreciative for all of the cooperation and bipartisanship that has been shown by the members of this committee.

We have a committee of 29 members—15 Democrats, 14 Republicans. On all of these measures, we have reported the bills on a bipartisan basis without any partisan differences within the committee.

So I have many reasons to thank the ranking member, Mr. TED STEVENS, former chairman of the committee. I want to take this opportunity to thank him, and to also thank the other members of the committee.

I also want to thank staff on both sides of the committee. We have excellent staff that works with the Members. And I can only express my very deepest appreciation to the staff and to the membership.

I urge the Members of the Senate to vote as they see fit on this continuing resolution. I shall support it, although I am not entirely pleased that we have been forced to engage in this exercise in passing continuing resolutions. But be that as it may, we do have to fund the operations of the Government. So I shall vote for the continuing resolution.

The House has not taken up an appropriations bill for 8 weeks. When I came to the floor on September 17 and warned Members that the White House was leading an effort to stall the appropriations process, that process has been stalled. We sent two appropriations bills to the President. That is it. Eleven appropriations bill out of the 13 have not be sent to the President's desk. This is because the House Republican leadership has put the brakes on and has simply refused to let the Appropriations Committee in the House move the bills forward. The leadership on the House side has simply refused to have that body act on the appropriations bills that had been reported by the Appropriations Committee in the House.

That is most unfortunate.

I yield the floor in the event that my distinguished counterpart, Mr. STEVENS, wishes to say whatever he wishes. He may have the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank you. I thank the distinguished chairman of our committee.

The pendulum of politics is swinging. When we return in January, I will become, once again, the chairman of our committee, and I look forward to working with my great friend from West Virginia in the manner I have tried to work with him as he has been chairman.

During the recent days, I have had the privilege of meeting with the President of the United States and the Office of Management and Budget Director, and with Congressman BILL YOUNG. We discussed the process by which we might try to finish with the appropriations for fiscal year 2003 so that we might be ready to handle the 2004 requests when they come following the State of the Union message that the President will deliver to us on January 20.

I look forward to working with Senator BYRD in that regard. This continuing resolution is absolutely necessary to give us the opportunity to move forward, and sometime in the first week that we are back in January we can decide how quickly we want to finish this appropriations process.

For myself, I am sure Senator BYRD and I will do our best to work in the Senate's best interest and to see to it that we finish these bills so that we can turn to the new task of dealing with the new budget requests which this time will include a new Department of Homeland Security. It will be a most interesting transition. And it is going to be a difficult problem for us in reorganizing the appropriations process to handle this new Department—whether or not we will create a new subcommittee or divide the work of the existing subcommittees to handle the new Homeland Security Department, that will have to be determined in the future.

I will certainly consult with Senator BYRD on all of those details.

For now, I urge Members to approve this continuing resolution and to understand the process. This is something the Senate is compelled to do in order to take us into a new Congress so that we can finish the work on the fiscal year appropriations for 2003. I hope everyone will understand the process and will give us their understanding even further when they return in January.

If the Senator is willing to yield back his time, I will be glad to yield back. We have no request for time on this side.

Mr. BYRD. Mr. President, I also want to take this opportunity to thank Chairman BILL YOUNG, the chairman of the House Appropriations Committee. I enjoy working with Chairman YOUNG. He has always been very cooperative and very gracious. He is a very courteous Member of that body, and is always very kind and considerate of me as I have labored to act as the chairman of the Appropriations Committee in the Senate upon more than one occasion.

I also thank DAVE OBEY, the ranking member on the House Appropriations Committee. DAVE OBEY brings a great deal of experience and knowledge and is a very articulate and forceful member of the House Appropriations Committee.

I enjoy working with DAVE OBEY, as I enjoy working with BILL YOUNG.

It has been a pleasure to work with the other members of the House Appropriations Committee on both sides—Republicans and Democrats. They have always been very nice to me.

This year I will relinquish my responsibilities as chairman and will begin work with my former chairman, Mr. STEVENS, and the other members of the committee as we go forward into the new year.

I believe we will have difficult times ahead. But I have always been able to work with Senator STEVENS. He has always been very nice to me, and very considerate, as has been his staff.

While I hesitate to feel that we must probably look forward to a more difficult year in the future than we have in the past, I can only say that I hope Senator STEVENS and our colleagues on

both sides of the aisle in that committee enjoy a wonderful Thanksgiving, a lovely Christmas, and a Happy New Year.

And may God look down upon us and help us in our struggles, as we will continue to do our best, with limited resources, in the forthcoming year.

Mr. President, I yield the floor.

The PRESIDING OFFICER. If all time has been yielded back, the clerk will read the joint resolution for the third time.

The joint resolution was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. SHELBY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Missouri (Mrs. CARNAHAN). the Senator from Georgia (Mr. CLELAND), and the Senator from New York (Mr. SCHUMER) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. T. HUTCHINSON), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 92, nays 2, as follows:

[Rollcall Vote No. 253]

YEAS—92

Akaka	Domenici	Lugar
Allard	Dorgan	McCain
Allen	Durbin	McConnell
Barkley	Edwards	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murray
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Nelson (FL)
Bingaman	Fitzgerald	Nickles
Bond	Frist	Reed
Boxer	Graham	Reid
Breaux	Gramm	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sarbanes
Byrd	Harkin	Sessions
Campbell	Hatch	Shelby
Cantwell	Hollings	Smith (NH)
Carper	Hutchison	Smith (OR)
Chafee	Inhofe	Snowe
Clinton	Inouye	Specter
Cochran	Jeffords	Stabenow
Collins	Johnson	Stevens
Conrad	Kennedy	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden
Dodd	Lott	

NAYS—2

Kerry	Lincoln

NOT VOTING—6

Carnahan	Helms	Murkowski
Cleland	Hutchinson	Schumer

The joint resolution (H.J. Res. 124) was passed.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I ask unanimous consent to proceed as in morning business for 5 minutes.

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

TRIBUTE TO SENATOR PAUL WELLSTONE

Mr. SARBANES. Mr. President, I was unable to be on the floor the day that we paid tribute to our colleague, Senator Paul Wellstone. I would like to take just a few moments this evening.

Like my colleagues, I was deeply saddened over the tragic death in a plane crash of our colleague, Paul Wellstone, his wife Sheila, his daughter, several members of his staff, and the plane's pilots. His death is a grievous loss to those members of his family who survived, to the people of Minnesota, whom he served so faithfully and honorably, to his colleagues in the Senate, and to the Nation.

Paul Wellstone lived the American dream. His parents came to this country as immigrants. He excelled in school. He earned both his B.A. and his doctorate at the University of North Carolina at Chapel Hill. He went straight from the University of North Carolina to Carleton College in Northfield, MN, as a young professor, where he taught for more than two decades. Minnesota became home to him and his family.

In 1990, the people of his State sent him to the Senate; and in 1996, they voted to send him back for another term.

Paul Wellstone was a person of deeply held convictions, a dedicated fighter for working families. He fought with passion for his principles but was also deeply respectful of those who disagreed with him. He was profoundly committed to the democratic political institutions that he had studied in his youth, that he taught to so many students over the years, and that, by his own direct engagement in our Nation's politics, he brought to life.

We feel a great loss in the death of this courageous fighter for a just and decent America, and we will seek to honor his memory by carrying forward in the spirit in which he lived and gave his life.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I ask unanimous consent to speak in morning business for up to 10 minutes.

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

Mr. REED. Mr. President, I too rise to pay tribute to Paul Wellstone and send condolences and prayers to the Wellstone family, to all of his hardworking and dedicated staff, and to the other families involved.

Paul Wellstone was a passionate, courageous, never wavering fighter for his ideals. He fought vigorously for what he believed in. He fought vigorously for Minnesotans, Americans, and people around the world. And he did so side by side with his wife Sheila, herself and eloquent and forceful advocate for domestic abuse victims and so many others.

He was committed to economic and social justice.

He was indignant about the lives faced by the poor, the downtrodden, the battered, and all the ''little guys.''

He envisioned a better world for everyone, and strove every day to help secure that better world. He was tireless, but never humorless, in this struggle.

He challenged Members of the Senate, the President, and all Americans to envision this better world and to join him in the struggle for that better world.

He fought for all of us, but most especially for our children, for battered women, for working families, for individuals with disabilities, for seniors, for family farmers, for veterans, for Native Americans, and for new immigrants.

He fought to improve education, health care, and the environment. He was a leading voice, a champion, a fighter for these and other important needs of our Nation.

As he said:

> If we don't fight hard enough for the things we stand for, at some point we have to recognize that we don't really stand for them.

His view of politics was insightful and straightforward, just like the way he lived his life. He said:

> Politics is what we create by what we do, what we hope for, and what we dare to imagine.

He believed with all of his heart and soul in the American promise of equal opportunity, that ''every child in America should have the same opportunity to reach his or her full potential regardless of the color of skin, gender or the income level of the child's parents.''

To make that happen, we need to provide every child with the same tools for success. I can still hear him say: ''We cannot realize the goal of leaving no child behind on a tin cup budget.'' He would make this pitch during hearing held by the Health, Education, Labor, and Pensions Committee, on which I was honored to serve with him, on the Floor, education funding rallies, and anywhere and everywhere.

He believed that education funding should come before tax cuts for the wealthy. In the education reform law, that he voted against because he believed that it didn't provide enough resources and that the tests it demanded

would be ''educationally deadening,'' he worked to ensure the highest quality tests possible and to recruit and retain highly qualified teachers, among other important provisions.

He was also a leader in the fight for full funding of the Individuals with Disabilities Education Act. He also long worked to give welfare recipients the chance to get off the rolls and into good paying jobs by allowing them access to postsecondary education.

His legislative efforts to provide mental health parity were born in large part out of his brother Stephen's struggle with mental illness and his family's struggle with the problems of lack of insurance coverage of mental illness treatment.

In an editorial in the Saint Paul Pioneer Press, he said:

> Think of what fairness in treatment for mental illness would mean. Think of the lives saved, the suffering eased. Suicide is linked to untreated mental illness in 90 percent of cases. Americans with mental illness, who are homeless or warehoused in jails, would instead get the humane care they need. Workplace productivity would improve, with less absenteeism and a higher quality of work. Other medical costs would go down. There would be fewer broken families, broken lives and broken dreams.

Paul Wellstone could not have been more right. We must pass mental health parity in his name, and we must pass it as a first order of business in the next Congress of the United States.

He also championed improved health care for children and adolescents, particularly substance abuse and mental health treatment and suicide prevention, included in the Children's Health Act of 2000. He coauthored the law that provides funding for Parkinson's Disease research. He also worked for a real Patients' Bill of Rights and a prescription drug benefit for our seniors.

With his wife Sheila, he led the fight to end domestic violence. He worked for passage of the Violence Against Women Act in both 1994 and 2000, a landmark law that provides help, protection, and improved services to victims of domestic violence.

He long worked to address the needs of children who witness domestic violence. Children who live in homes where domestic violence occurs are at a higher risk of anxiety and depression, and exhibit more aggressive, antisocial, inhibited, and fearful behaviors than other children. They also are at risk for recreating the abusive relationships they have observed, and many, as a consequence, are juvenile offenders.

His legislation on this issue is pending in the Senate version of the Child Abuse Prevention and Treatment Act reauthorization bill.

He fought for passage of the Family and Medical Leave Act, and was working to expand it.

He was a leader in the fight to raise the minimum wage and to extend unemployment insurance.

He believed in equal pay, worker protections, and secure pensions.

He fought to ensure veterans get the benefits and support they deserve.

He worked for cleaner air and water, reduced greenhouse gas emissions, and renewable energy. He led the fight to stop the oil companies from drilling in the Arctic National Wildlife Refuge.

He once again spoke for people with no voice, by championing naturalization for Hmong citizens who aided the U.S. war efforts in Vietnam, as well as by joining me as a cosponsor of the Liberian Immigration Fairness Act.

Paul's efforts were not limited to improving the lives of Americans. As a member of the Foreign Relations Committee, he championed human rights around the globe. He worked with Senator BROWNBACK to enact legislation to address international trafficking in women and children for prostitution and forced labor.

He also coauthored the Torture Victim Protection Act to help rehabilitate tortured survivors in the U.S. and abroad.

And he was a leading advocate and voice for sensible multinational-international approach to foreign policy.

Paul Wellstone demanded bold action to right the wrongs of this world. He fought for many valiant causes, and in doing so, he improved millions of lives. However, his fight is not finished. There is still much to be done. It is a fight we all must continue.

As Paul Wellstone once said, after the 1994 election:

> We don't have time for despair. The fight doesn't change. It just gets harder. But it's the same fight.

In his spirit and the spirit that is the most noble part of this Nation, let us carry on this noble fight.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER (Mr. REED). There is nothing pending. The Senator can ask unanimous consent to speak as in morning business.

CONGRATULATING FORMER PRESIDENT JIMMY CARTER ON RECEIVING 2002 NOBEL PEACE PRIZE

Mr. DODD. Mr. President, I have had this Senate resolution cleared with the majority and the minority sides. It is a resolution commending former President Carter on his upcoming receipt of the Nobel Peace Prize.

I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 360 submitted earlier today by myself and others.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

> A resolution (S. Res. 360) congratulating former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize, and commending him for his lifetime dedication to peace.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I will take a minute or two to explain the purpose in offering this resolution. I think it is rather self-explanatory. I want to thank Senator DASCHLE and Senator LOTT, our respective leaders, along with both the Members of the minority and the majority, for their support of this resolution recognizing former President Jimmy Carter for many things, not the least of which is the recognition by the Nobel Committee in awarding him the Nobel Peace Prize.

Over the past 25 years, few have been as dedicated to improving our country and our world than Jimmy Carter. Throughout his life, former President Carter has tirelessly devoted himself to promoting human rights, relieving human suffering, and promoting peaceful resolutions to a wide array of international conflicts.

Jimmy Carter's herculean efforts for peace during his term as President culminated with the signing of the Camp David accords, and indeed, his leadership and determination played a vital role in helping to achieve what once was considered impossible peace between Israel and Egypt. Although his efforts and dedication to peace did not earn him a nomination for the 1978 Nobel Peace Prize, which was subsequently awarded to then President of Egypt Anwar Sadat and Israeli Prime Minister Menachem Begin, former President Carter's indispensable role in this lasting peace is and will always be a matter of historical record.

Although many public servants retire from the public eye after their terms are completed, since leaving public office, President Carter has used his status and abundant talents honorably and effectively for the benefit of humanity. In 1982, he founded the Carter Center, a highly-respected research organization that seeks to cultivate peace, democracy, and human rights, and helps fight famine and disease. In 1984, he began his affiliation with Habitat for Humanity by leading efforts to restore a residential building in New York, and his annual participation with Habitat ever since further demonstrates his strong commitment to all manners of public service and to the betterment of society. He has been an inspiration to all who want to find ways to serve this country and humanity generally.

In 1999, Jimmy Carter was awarded the Presidential Medal of Freedom, the highest award a United States civilian can receive. In 2002, at the invitation of Fidel Castro, he made a historic visit to Cuba in order to encourage the free exchange of ideas between Americans and Cubans. I believe his visit, the first by an American President since 1928, will help to encourage democracy and build bridges between our citizens and our nations.

Indeed, whether he is working to promote strategic arms reduction or helping resolve inner-city social problems,

whether he is brokering a peace between warring factions in Ethiopia or promoting peace, democracy and human rights in countries such as North Korea, East Timor, and Haiti, whether he is negotiating a cease-fire in Bosnia or working to ensure free and fair elections in countries throughout the world, Jimmy Carter is one of the pre-eminent figures of the last 50 years and a wonderful embodiment of the best of American ideals.

Prior to this year, Jimmy Carter had been nominated 10 times for the Nobel Peace Prize. I am extremely pleased that in October of this year he finally received this well-deserved and long-overdue tribute to his lifelong efforts. There is nobody more deserving of this highest of honors. I salute the decision of the Nobel Committee.

I again express my gratitude to all of our colleagues in the closing hours of this 107th Congress. This resolution recognizes the contributions of Jimmy Carter, and I join with others in congratulating him on this well-deserved, long overdue honor of the Nobel Peace Prize. Our congratulations to his beloved wife Rosalynn and his family for all they have contributed to the well-being of our Nation and to the world in which we live.

I inquire of the Chair as to whether or not the fourth whereas clause on page 2 has been stricken?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 360) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 360), with its preamble, reads as follows:

S. RES. 360

Whereas in 1978, President Carter personally negotiated with Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin to reach the Camp David Accords, the cornerstone of all subsequent peace efforts in the Middle East;

Whereas President Carter completed negotiations on the Strategic Arms Limitation Talks II (SALT II) and continued to make strategic arms control a focus of United States security policy;

Whereas President Carter emphasized the importance of human rights as a key element of United States foreign policy;

Whereas former President Carter and his wife Rosalynn established the Carter Center in 1982;

Whereas the Carter Center has taken an active and vital role in world affairs, always seeking to improve human rights, promote democracy, resolve conflicts, and enhance the lives of the people of the world;

Whereas former President Carter has made countless trips abroad to promote peace, democracy, and human rights, including visits to East Timor, North Korea, Cuba, Haiti, Nicaragua, and Mexico, among many others;

Whereas former President Carter has made the promotion of peace, democracy, and human rights his life's work: Now, therefore be it

Resolved, That the Senate recognizes and congratulates former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize and commends him for his tireless work for and dedication to peace.

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

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

The legislative clerk proceeded to call the roll.

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

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

EXPRESSING APPRECIATION TO THE PRESIDING OFFICER

Mr. REID. Mr. President, first, I express my appreciation to the Presiding Officer for being so patient these many hours until we arrived at this point. Thank you very much.

MORNING BUSINESS

Mr. REID. Mr. 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 beyond 5 minutes each.

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

TRIBUTES TO DEPARTING SENATORS

FRED THOMPSON

Mr. STEVENS. Mr. President, since 1994, Senator THOMPSON has represented the people of Tennessee in this body. During that time, I have been fortunate to call him both a colleague and a friend.

In the last 8 years, Senator THOMPSON has fought hard for issues that are vital to Tennessee. He has made sure that his State has the infrastructure it needs and the resources it deserves. He has protected Tennessee's farmers and its workers.

Three years ago Senator THOMPSON founded the Smoky Mountains National Park Congressional Caucus. My own State of Alaska has many national parks so I understand the challenges that Senator THOMPSON faced. His commitment to eliminating the National Parks Service backlog has been admirable.

Senator THOMPSON has also served the best interests of our Nation. Our work on the governmental affairs committee reflects his dedication. As chairman of that committee he has worked to make the government smaller, more efficient, and more accountable. It has been a pleasure to work with him as we worked to create the department of homeland security.

The Senate and the people of Tennessee will miss Senator THOMPSON'S commitment and dedication. I am grateful for his service and wish him future success.

PHIL GRAMM

Mr. President, for 24 years the people of Texas have had an impassioned advocate and dedicated public servant in PHIL GRAMM.

Over the course of his career, Senator GRAMM has established an impressive legislative legacy. He played a role in the fight to cut federal taxes, institute international free-trade incentives, reform the welfare system, set mandatory federal prison sentences for drug crimes, and support our armed forces. The Gramm-Leach Bliley Financial Services Modernization Act and the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act were ground-breaking legislative achievements. Through these and other efforts, Senator GRAMM has helped lay the foundation for a new era of national prosperity.

Senator GRAMM has been called a man of ''frank opinions and unwavering convictions.'' Since he came to the Senate in 1984 I have been honored to call him my friend and colleague. We will miss his leadership and his voice in the Senate. I am grateful for his years of service and I wish him success in his future endeavors.

TIM HUTCHINSON

Mr. President, Senator HUTCHINSON has been a committed advocate for the people of Arkansas and an important voice in the Senate. His strong leadership led me to personnally support his candidacy and I will greatly miss his presence here in Washington.

I believe Senator HUTCHINSON leaves behind an important legacy. As a veteran of World War II, I am particularly grateful for Senator HUTCHINSON'S work on the Veterans' Affairs Committee. As chairman of the Veterans' Affairs Subcommittee on hospitals and Health Care, Senator HUTCHINSON really watched over the VA's 173 medical centers. Our Nations's Veterans gave so much to ensure our liberty and freedom. I thank Senator HUTCHINSON for making sure that we fulfill our promises to them and reward their service. It has been said that: ''The final test of a leader is that he leaves behind in other people the convictions and the will to carry on.''

We are thankful for Senator HUTCHINSON'S service and convictions. I wish him much success.

FRANK MURKOWSKI

Mr. President, Alaska's recent elections have changed our state's congressional delegation for the first time in 22 years. As my Senate colleague of 22 years prepares to be sworn in as Alaska's tenth governor, I recall the battles we have fought together on behalf of our state, and I welcome the opportunity to work with him on tomorrow's challenges.

Senator MURKOWSKI has established an impressive record of achievement during his time in the Senate. Since 1981, he has represented the citizens of Alaska and served the nation admirably.

Throughout his career, Senator MURKOWSKI has been a staunch defender of Alaska's miners, loggers, and fishermen. In 1995, he authored and helped pass through both Houses of Congress legislation that would have opened ANWR to oil and gas exploration. He has helped broker an agreement among major gas transmission companies that could result in the construction of the natural gas pipeline; that pipeline would bring valuable energy resources to the lower 48.

Senator MURKOWSKI was a driving force behind the passage of an omnibus parks bill that created or improved more than 100 natural parks, forests, preserves and historic sites nationwide. He fought to increase funding for Alaska's Medicare recipients. In 2001, he helped win passage of major education reform, bringing us closer to the nation's goal of providing every child with a quality education.

Senator MURKOWSKI'S wife Nancy has been an integral part of this success.

When FRANK and Nancy first arrived in Washington, Nancy worked hard to balance their family life with their new Senate responsibilities.

In addition to being a committed partner, Nancy has been a devoted public servant. She has been active in our Alaska State Society and has traveled extensively with Frank. She has also been a leader in women's health issues. Through the private charity she runs with FRANK, Nancy has raised more than $2.3 million for breast and cervical cancer treatment. She cofounded the breast cancer detection center in Fairbanks. Annually she organizes and runs events at Waterfall, near Ketchikan and at Chilkoot Charlie's in Anchorage to raise funds for breast cancer clinics and mobile detection units for rural areas throughout Alaska. Our state is fortunate to have Nancy Murkowski as its next first lady.

Those of us in the Senate will miss the Murkowskis. We will miss FRANK's daily leadership on important issues and his commitment to public service. We take comfort in knowing that Alaska will have his proven leadership in the governor's office.

Alaska and the Nation face unique challenges and opportunities in the coming months and years. In the future, the vision and leadership Senator MURKOWSKI has demonstrated during his tenure in the Senate will enable Alaska to meet those challenges and leverage those opportunities.

Congressman YOUNG and I look forward to working with Governor Murkowski; we know he will support our work in the Nation's capital. We will work together in the future as we have in the past.

It has been an honor to serve with Senator MURKOWSKI. For 22 years we have worked closely on issues that are of vital importance to Alaska and the Nation. His career has been one of distinguished service. I look forward to working with my dear friend and colleague in the future.

ROBERT TORRICELLI

Mr. LEVIN. Mr. President, I will miss my friend and colleague ROBERT TORRICELLI, the senior Senator from the State of New Jersey when he leaves the Senate at the end of the 107th Congress.

BOB TORRICELLI first served from 1982–1996 in the U.S. House of Representatives. In 1996, he joined us in the U.S. Senate, and since getting here, has been a committed advocate for the people of New Jersey. He has worked tirelessly to protect New Jersey's natural resources, to improve air quality, and to protect drinking water. He has also worked hard to provide a comprehensive prescription drug benefit for seniors, and make college more affordable for parents and students alike.

I have worked with Senator TORRICELLI in his tireless and ongoing efforts to close the gun show loophole and to pass commonsense gun safety legislation. That is a battle that I want to assure him many of us that he leaves behind in the Senate will continue to wage.

BOB TORRICELLI served as an effective chairman of the Democratic Senatorial Campaign Committee and has earned a reputation as one of the most eloquent orators in the U.S. Senate. His books, ''In Our Own Words: Extraordinary Speeches of the American Century'' and ''Quotations for Public Speakers: A Historical, Literary, and Political Anthology'' have become valuable resources for all of his colleagues in public life.

I know my colleagues will join me in thanking Senator ROBERT TORRICELLI for his years of service in the Congress and wish him the best.

JESSE HELMS

Mr. President, I recognize the service of JESSE HELMS.

Before coming to the Senate, JESSE HELMS served his country in the U.S. Navy during World War II. He was a Senate staffer, broadcast executive, radio personality, and banking executive.

Senator HELMS, throughout his career, has been a tireless voice for his conservative beliefs. Whether one agrees with Senator HELMS' views or not, no one can deny the imprint he has made on the deliberations and actions of the United States Senate. JESSE HELMS has always had the knack for carefully crafting legislative language which would put his supporters and opponents clearly on the record on the most difficult issues of conscience.

In his capacity as chairman of the Senate Foreign Relations Committee JESSE HELMS was a powerful force in reorganizing the Department of State.

In the United States Senate we are called upon to work with colleagues of many differing points of view. While a fierce battler for his conservative convictions, JESSE HELMS was often willing to reach across party lines to work with Democrats on issues like adoption and increased funding for AIDS research.

While JESSE HELMS and I have frequently disagreed, I respect the straight forwardness which he brought to the public policy debate. And, JESSE HELMS was always a gracious gentleman. As this Congress comes to an end, I know that I am joined by my Senate colleagues in wishing JESSE HELMS and his wife, Dorothy , and their three children, the very best in the years ahead.

PHIL GRAMM

Mr. President, at the end of this session of Congress, Senator PHIL GRAMM, the senior Senator from Texas will leave the Senate. For 18 years, Senator GRAMM has been a leader among the Republicans and a strong voice in the Senate.

PHIL GRAMM is a hard worker and effective advocate. Before coming to the Senate, Senator GRAMM was an economics professor at Texas A&M University and member of the U.S. House of Representatives from 1978 until 1984. After being elected to the U.S. Senate in 1984, Senator GRAMM quickly became recognized as one of its most articulate members. As a member of the Banking, Housing, and Urban Affairs, the Finance Committee, and the Budget Committee, he has applied his boundless energies and extensive knowledge of the Senate rules and precedents to his efforts to reduce federal taxes.

While PHIL GRAMM and I disagree on many issues, I deeply respect his willingness to stand up and fight for his convictions and the good humor with which he approaches those battles. For example, on the issue of federal prisoner industries reform, Senator GRAMM and I have locked horns on several occasions, but he has always been a worthy and agreeable adversary.

I know my Senate colleagues will join me in wishing him every success as the vice chairman of UBS Warburg and in wishing our best to Wendy, his wife, and their two children.

FRED THOMPSON

Mr. President, I am pleased to join my colleagues in paying tribute to Senator FRED THOMPSON.

Senator THOMPSON joined the U.S. Senate in 1994 after a successful career in law and even some starring roles on the silver screen. But he was no stranger to this body, even then, having previously served as Minority Counsel to the Senate Watergate Committee in 1973 and 1974 at the age of 30. Once he joined as a Senator, he rolled up his sleeves and got to work on the Senate Governmental Affairs Committee seeking to make our government more sensible, more responsive, and more cost effective.

In 1997, he became the Chairman of the Committee and has served in that capacity during the 105th, 106th and 107th Congresses. Over the years, Senator THOMPSON helped oversee some dramatic investigations, including the campaign finance investigation in the 105th Congress and the Enron investigation this past year. He also worked

on many less well known issues, including one close to my heart the effort to improve the way the Federal Government issues regulations.

For several Congresses, Senator THOMPSON and I teamed together on regulatory reform issues, including a major regulatory reform bill. This legislation would have required federal agencies to consider cost-benefit analysis when issuing major regulations and state publicly whether the agency found that the benefits of a regulation justified the costs. If they did not, then the agency would have to explain why it was issuing the regulation despite that finding. We also required federal agencies to conduct risk assessments where appropriate. We had a heck of a battle on that legislation, and in the end we failed to pass it. But the fight was worth it; I believe we were right; and it was great to have Senator THOMPSON fighting with me at my side to bring common sense to our regulatory process.

During his years at the Senate, Senator THOMPSON has made his mark as a legislator by supporting bipartisan efforts to enact reforms in the areas of campaign finance, sensible government regulation, and corporate accountability.

While he will no longer be ''In the Line of Fire,'' Senator THOMPSON's legacy in the Senate will ''Die Hard.'' I hope his future roles will be as lively as those he played here for the last eight years. It is a pleasure to join all of my colleagues today in honoring and thanking him for his years of public service to his country.

JESSE HELMS

Mr. SESSIONS. Mr. President, I rise today to pay tribute to a great American, a fellow Senator, a fellow conservative, and friend—Senator JESSE HELMS.

I speak today with mixed emotions. I am happy to see that after a long and distinguished career he will have more time to spend with his beloved wife of 60 years, Dot . . . as well as enjoying time with his children and grandchildren. But I also know that this kind of man is impossible to replace.

In the words of The Weekly Standard executive editor Fred Barnes:

> Helms is an ideologue, and his unflinching devotion to conservative principles has made him a powerful figure. He's oblivious to the buzz, the chatter, and gossip of the press, polls and the permanent establishment. He's totally inner directed. He cares little for details or process. But when something clashes with his conservative views . . . he steps up, no matter how unpopular that makes him. He wins some, loses some, but is always a player to be reckoned with, even when he's acting alone.

I recall one such occasion where Senator HELMS acted alone in his outspoken criticism of the United Nations. He refused to approve payment of U.N. dues until this lavish, bloated, and unwieldy bureaucracy was reformed. He was highly criticized by almost every member of the mainstream media, chastised by activists, and mocked by others. He knew there were great problems at the United Nations and would not give until it was improved and it should be told that, in the end, the United Nations gave in. Reforms that will make the United Nations a better, more honest and viable organization, were passed.

It seems to be one of the seldom mentioned side notes of Senator HELMS' career in public service he often wins even when he seems to have lost. For instance, even though he was unable to block the Chemical Weapons Convention, he did win 28 of the 33 concessions he sought.

Senator HELMS' legislative career will not only be remembered as that of a foreign policy figure though. I, for one, as an Eagle Scout, will always remember his fights to defend the independence of the Boy Scouts.

Some of the best insight into JESSE HELMS as a person comes from his domestic policy stands. One of the most telling stories of the real personality of JESSE HELMS and one of the most moving as well was shared by Senator NICKLES. In the midst of a debate on a 5-cent-per-gallon Federal gas tax hike, in which they were vastly outnumbered, they were seeking guidance. Senator HELMS suggested that they pray together, and he called the Reverend Billy Graham and asked that he pray with them for guidance.

That to me speaks volumes as to what truly guides Senator HELMS as a person. He was not using his faith for a photo op, a quick sound-bite, a political tag line, or other earthly gains. This was simply a man who instinctively turns to the God for guidance.

In the article I mentioned earlier, Fred Barnes concludes by asking if JESSE HELMS can be replaced. His conclusion is similar to mine. That is a task that is ''probably more than can be hoped for''. A person as unique as JESSE HELMS does not come along often. His presence will truly be missed both on and off the Senate Floor.

Senator HELMS is a provincial patriot. He has never been a part of the urbane crowd, the radical chic crowd. He knows it and they know it. It galled them that he could not be intimidated by an editorial in the New York Times or some such organization. He is a man of faith, a Baptist. He comes from the soil of North Carolina and is proud of it. He prefers the affection and commendation of those in his province over those in the great salons where the ''masters of the universe'' operate. In fact, he respects the people of his beloved state and deeply shares their values. That's what he fought for every day. The cynical, rootless left, the politically correct, those without principles, those who do not comprehend the greatness of America, were not for him.

Indeed, he saw them as the problem. And, at their core, these folks understood. They knew his disagreement with their actions was deep and honest. Try as they might, his opposition would not go away. Many hated him because of it.

But, JESSE HELMS does not hate. He absolutely does not. He only wants to do the right thing for America. Because he values America over politics, and because he is courageous in his stand for principle, he often could not be moved. The left has never understood this. Some thought he hated them personally. He does not. He loves them and he wants a better life for all Americans.

The truth is that Senator JESSE HELMS is a most kind and considerate person. His soft spoken ways are known by all. His modesty and an assuming manner are plain for all to see. His wonderful wife, Dot, shares those same qualities and is loved by all who know her.

He is a true Christian gentleman in the Southern style. Courtly, gracious, quick of wit and firm in friendships, he is a most remarkable person. Widely read, highly literate and a master of the language, few could turn a phrase better than JESSE. When he has been wrong or slow to understand, he has admitted it. His conversion to advocacy for a much stronger fight against AIDS in Africa is a very recent example.

Finally, the career of Senator HELMS cannot be discussed without remarking on the critical role he played in enabling the focus of democracy, free enterprise, and faith to triumph over the godless, totalitarian forces of communism. He was a constant cold warrior. He saw the evil in the evil empire, and his drive to overcome it never slacked. He was relentless, even when undergoing attacks from the so-called opinion leaders of America. It certainly was not those opinion leaders and pundits who won the war. They blew hot and cold mostly cold on American policies. But the people in the provinces knew, they knew there could be no compromise with communism, and fortunately those people had a strong, able and true voice in JESSE HELMS. He stayed the course, the Soviet Union collapsed. There were many close calls and many highlights in that Cold War. One of those critical moments came when Senator HELMS came to believe in Ronald Reagan's view of the role of the United States in this struggle. JESSE worked hard and produced a great victory in North Carolina that gave him the Republican nomination. Together they persevered and the evil empire collapsed and the victory was won.

Senator HELMS, you played a critical role in this struggle for freedom and you deserve great credit for your courage and constancy.

America and freedom are in your debt. We are much obliged for your service.

FRED THOMPSON

Mr. COCHRAN. Mr. President, the retirement of the distinguished Senator from Tennessee (Mr. THOMPSON) will leave a major void in the heart and soul of this body. Rarely have we seen

the quality of the work product of a new Senator approach the level of excellence and importance as we have in the performance and contributions of FRED THOMPSON.

He has stood head and shoulders above the crowd, literally and figuratively. It was a rare and most enjoyable privilege for me to serve on the Governmental Affairs Committee when he was the chairman.

He assumed the awesome responsibility of leading the committee in its investigation of the election law abuses of the 1996 Presidential election. He was a superb chairman, fair to all, but thorough and diligent in his quest for the truth. He expended an enormous amount of time and energy in that undertaking, and he made every effort to keep to the subject and learn the facts. During it all, he endured criticism, skepticism and sometimes ostracism as he labored to discharge the duties of his chairmanship.

I have no greater respect for any Senator than I have for the Senator from Tennessee. He has served well and reflected great credit on the United States Senate and the State of Tennessee. We will miss him greatly.

BOB SMITH

Mr. President, I have enjoyed serving with BOB SMITH in the U.S. Senate. For the last 2 years, we have sat side by side in the Senate. He has occupied the desk that was used in the Senate by Daniel Webster, who was born in his State of New Hampshire, although he represented Massachusetts as a Senator.

During votes and deliberations of the Senate we have had opportunities to discuss a wide range of subjects from fishing in the deep south to experiences in the U.S. Navy, as well as the issues under consideration by the Senate.

I have grown to know and appreciate BOB SMITH. I like him, and I respect him. He is a person who has strongly held views, and he is not afraid to express then, and to fight for them.

He has been admired on both sides of the aisle for his efforts to protect the environment. He has been a dutiful and diligent Chairman of the Environment and Public Works Committee.

As a member of the Armed Services Committee, he has been an effective supporter of a strong national defense. His leadership has been deeply appreciated by me on the issue of missile defense. He worked effectively to help garner the votes to pass the National Missile Defense Act of 1999 which I authored. He was a cosponsor of that bill and a very enthusiastic proponent of its passage, and its implementation by the administration. We met regularly with Defense Department officials to urge cooperation in the effort to develop and deploy, as soon as possible, a system, or systems, to defend the citizens of our country against ballistic missile attack. He mastered the esoteric subject matter associated with this issue and was an important force in the shaping and carrying out of this new national policy.

I will miss BOB SMITH. I wish for him and his family much happiness in the years ahead.

PHIL GRAMM

Mrs. HUTCHISON. Mr. President, it is an honor to pay tribute today to my dear fried and colleague, the senior Senator from Texas, PHIL GRAMM. Perhaps more than anyone in the Senate, I will miss PHIL's leadership. In the Senate there are three kinds of relationships between Senators from the same State: One, they do not like each other. Two, a professional relationship: they get along OK, work hard together for their State, but are not really close. Three, they are good friends who have a great partnership for their State.

PHIL and I have No. 3. I recently noted that his retirement is like sending an older sibling off to college: Your best friend will not be upstairs anymore, and there is nobody to stick up for you when you get in a fight. But then again, you'll get the big room, and you will not have to share the spotlight anymore.

When I first came to the Senate after a special election, I walked into an office with no staff, but PHIL had sent his own staff to start answering the phones, and detailed one of his senior staff to help set up my office. That support was invaluable in those early days.

PHIL's story is one of those ''only in America'' success stories. Born at Ft. Benning, GA, the son of a soldier, his father died when PHIL was a young teenager. He and his two brothers were raised by their mother in a modest neighborhood in Columbus, Georgia.

His mother worked at two jobs to take care of the family, as a practical nurse and also in a cotton mill for $28 a week. PHIL has often said his mother had decided before he was born that he would go to college.

But after failing the 3rd, 7th and 9th grades, his mother recognized it was time for drastic action for her dream to be realized. She pooled the family's limited resources and sent PHIL off to the Georgia Military Academy near Atlanta. Mrs. Gramm knew PHIL had a good mind but needed encouragement and direction

His life has been a testament to his mother's sacrifice ever since. A PhD in Economics from the University of Georgia led him to another life-changing experience when he accepted a teaching position at Texas A&M. If the Georgia Military Academy gave him the academic foundation to achieve, Texas A&M nurtured his natural talent to teach and to entertain. He was a sensation at A&M. PHIL managed to make even the most complex economics courses exciting. It was also at A&M that PHIL met and married a fellow economics professor, Wendy, who has been a partner and inspiration to PHIL throughout his career.

While it is one thing to test your economic principles and convictions in the classroom, it is quite another to have the courage to place your views in front of the voters. After a losing campaign for the Senate in 1976, he ran for Congress 2 years later and won. His campaign theme—''common sense; uncommon courage''—described him perfectly. Particularly after he decided to switch parties, from Democrat to Republican. He resigned from his seat, to give his constituents a choice to vote on his switch. He won back his seat, becoming the only member of Congress in the 20th century to do this. And after serving three terms in the House, PHIL set his sights on the Senate again, and won this time in 1984.

He has one of the sharpest minds in Congress. His Southern drawl and easy-going nature may fool some, but we know behind that accent is a razor-sharp mind. PHIL has become one of the Senate's most important leaders. He has mastered the Senate, and is one of our body's intellectual and philosophical giants. He is a man of great character. He does not stand on ceremony; he stands on conviction. He is never been swayed by popular opinion, in fact, he has often stood his ground despite popular opinion. His tenacity and his passion are unrivaled. And even in his last days in the Senate, he's not taking a rest from the trenches, he has been leading the debate on the Department of Homeland Security, perhaps one of the most important decisions of our time. If there is a tough fight to be had, you can be sure PHIL GRAMM will lead the charge. If there is something difficult that needs to be done, you can be sure PHIL will find a way to do it.

Of course, in addition to his brilliant mind, PHIL will be remembered for his colorful sense of humor and witty anecdotes. For example, who could get away with saying things like: During GRAMM's bid for the Presidency, Larry King asked PHIL if he would ever run with a woman? ''Sophia Loren is not a U.S. citizen,'' answered GRAMM. ''People of New Hampshire talk funny and therefore they think I talk funny.'' On campaign reform, ''Our problem is not bad money corrupting good men; our problem is bad men corrupting good money.'' ''It's always dangerous to send your wife ahead in your place, because then no one cares if you show up.''

While he will certainly be remembered for his originality and humor, he is second to none as an effective legislator. PHIL has always maintained his focus on fiscal responsibility, helping us get back to a balanced budget. He is the first person to actually do something to eliminate the national debt, so that our children and grandchildren will not be saddled with our bills. The Gramm-Rudman-Hollings Budget Act was a masterpiece. PHIL thought of it and engineered its passage, proving it is possible to be both smart and effective. As chairman of the Senate Banking Committee, PHIL crafted the Financial Services Modernization Act, one of the most important pieces of financial legislation in modern years.

When you are in a fight for survival, the most important decision you make is who you want in the foxhole with you. When I have ever had a tough fight, PHIL was my first call. For two reasons: I want him on my side, and I sure do not want him on the other side. I can say without reservation that PHIL GRAMM is truly irreplaceable. What I admire most about him is his courage. PHIL and Wendy have been good friends to Ray and me. We are friends in the Senate, and friends at home. PHIL, I will miss you. I wish you well and look forward to having you as a constituent.

CHAPLAIN OGILVIE ON HIS SERVICE TO THE UNITED STATES SENATE

Mr. THURMOND. Mr. President, I rise today to pay tribute to my good friend, Dr. Lloyd John Ogilvie, for his 8 years of service as the U.S. Senate Chaplain.

Dr. Lloyd John Ogilvie was born in Kenosha, WI, and graduated from the Garrett Theological Seminary and the University of Edinburgh, Scotland. After serving at churches in Illinois and Pennsylvania, he was a pastor of the First Presbyterian Church in Hollywood, CA, for over 20 years. Since 1995, Chaplain Ogilvie has served as the 61st Chaplain of the Senate.

This great Nation was founded on faith in God and has been supported throughout its history by the faith and prayers of its citizens. Chaplain Ogilvie has taken part in this great tradition by his undying devotion to the Senate. Over the past 8 years, Chaplain Ogilvie has provided the Senate family with kind words and open arms. From his weekly prayer groups to his moving opening prayers, Chaplain Ogilvie has been a consistent source of inspiration and strength for the Senate family.

As our Nation faced the horrific attacks on September 11, 2001, Chaplain Ogilvie helped our Senate leaders come together to help heal a wounded Nation. Today, as we continue to face possible attacks on our land, Chaplain Ogilvie provides us with the strength to continue working to uphold the ideals of this great Nation. On a more personal level, I thank Chaplain Ogilvie for the support he offered my staff and I when we lost our beloved Holly Richardson. His comforting sentiments and lending ear certainly offered us hope and a renewal of our faith. We are all thankful for his tremendous service, and he will be greatly missed by all those in the Senate.

On behalf of myself, my colleagues, and our Nation, I express my sincere gratitude to Dr. Lloyd John Ogilvie for his service to the Senate. I wish his wife Mary Jane the best for a speedy return to good health, and the best of luck to his children and grandchildren. I thank Dr. Ogilvie for all his good works and for bringing the word of the Lord to so many people.

TRIBUTE TO DR. GERALYN M. JACOBS

Mr. DASCHLE. Mr. President, I would like to take this opportunity to recognize Dr. Geralyn M. Jacobs of Vermillion, SD who has been named the South Dakota Professor of the Year by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education. This award is given to professors who demonstrate a high level of dedication to teaching and a commitment to students, and who use innovative instructional methods. Dr. Jacobs' dedication to early childhood education and academic accomplishments make her an outstanding recipient of this award.

Since 1995, Dr. Jacobs has been a professor at the University of South Dakota. In addition to her teaching responsibilities as an Associate Professor of Early Childhood Education in the School of Education, she serves as President of the South Dakota Association for the Education of Young Children and is active in several professional, campus and community organizations. She co-produced a CD ROM, ''Inclusion: Celebrating Children's Successes,'' that provides resources for teachers working with children with special needs and she often leads workshops and classes for teachers in South Dakota. Dr. Jacobs brings 16 years of experience working with school-age children to her college classrooms.

Through her tireless efforts at the University of South Dakota and in many area communities, Dr. Jacobs has an invaluable impact on many teachers and their students. Recent brain research has shown us that early childhood educators can have a tremendous impact on the development of young minds, and I would like to thank Geralyn Jacobs for her contributions to South Dakota schools and congratulate her on this well-earned recognition.

TRIBUTE TO THURSTON ERIC WOMBLE

Mr. LOTT. Mr. President, I take this opportunity to recognize and say farewell to an outstanding staff member and friend, Eric Womble. For the past 7 years, Eric has served as my national security adviser and military legislative assistant, and as one of my most able counselors. As Eric moves on to new challenges in the private sector, it is my privilege to commend him for his service.

The son of Thurston and Olive Womble, Eric was born at Bethesda Naval Hospital in Maryland and was raised in Mobile, AL. He received his undergraduate degree in 1979 from the United States Naval Academy and was designated a Naval Flight Officer in 1980. Before retiring from the United States Navy in 1997, he served in many assignments, including: Patrol Squadron Twenty–Four, VP–24; the Joint Chiefs of Staff Intern Program in Washington, D.C.; the Program Resource Appraisal Division in the Office of the Chief of Naval Operations, OP–81; Flag Secretary to Commander Seventh Fleet in Yokosuka, Japan; Fleet Replacement Instructor in Patrol Squadron Thirty, VP–30; Operations Officer in Patrol Squadron Forty–Nine, VP–49; Executive Assistant to the Chief of Naval Research; and in the Department of Defense's Congressional Fellows Program.

During his military career, Eric was awarded the Legion of Merit, Meritorious Services Medal with a gold star, Navy Commendation Medal with three gold stars, Joint Service Achievement Medal, and Meritorious Unit Commendation with bronze star. He also earned an MBA from Marymount University of Virginia and served as a White House Social Aid for President Ronald Reagan.

When Eric came to work for me seven years ago, I assigned him the task of helping me implement an innovative plan to create new jobs in Mississippi by growing the research and technology base at our universities and in our industrial community. Eric's efforts helped Mississippi universities and businesses grow their research and technology programs by approximately 200 percent from 1996 to 2002. This growth in research and technology was a major factor in attracting several Fortune 500 companies, including Nissan Motor Company, Lockheed Martin Corporation, The Boeing Company and Alliant TechSystems. Mississippi also has become home to several new military commands including Special Boat Unit Twenty–Two, the Navy's Southeast Region Human Resource Office, and the Air National Guard's first C–17 squadron. This prescription for growth, which Eric helped me pursue for seven years, also helped several existing entities in Mississippi, including Northrop Grumman Ship Systems, Raytheon Aerospace Company, and the Meteorology and Oceanography command to prosper and create more jobs.

When our military was suffering from extremely low retention and recruiting in the mid-1990's, Eric helped me craft legislation that helped reverse these troubling trends. During his tenure on my staff, the Congress passed the largest pay raise for our military men and women since 1981, repealed the REDUX retirement system, reset the future pay raise formula to Employment Compensation Index plus one-half percent, implemented dual compensation exemption for military officers, reset the pay caps for our Flag and General officers, created the TRICARE For Life military health care system, and targeted millions of dollars in pay raises to our mid-career enlisted military personnel and officers. Eric also assisted me in improving the quality of medical care to our military veterans by helping me craft legislation to establish a Medicare Subvention Demonstration program and a prescription drug program.

During the Clinton administration, Eric was instrumental in my efforts to bolster our Nation's armed forces by getting $48 billion in additional funds for our military through supplemental and congressionally added funds. He also helped me gain $823 million in military construction funding from 1996 to 2003 to revitalize Mississippi's most critical military bases.

In particular, I should note that Eric's naval experience was significant in helping me bolster the naval shipbuilding industry on the Mississippi Gulf Coast. He was instrumental in bringing together the Navy, the Office of Secretary of Defense, industry, and the Congress to ensure a robust naval shipbuilding program. His work was reflected in the development of the LHD, LHA(R), LPD–17, DD(X), DDG–51, and the Littoral Combat Ship programs.

I know that the citizens of Mississippi benefited from Eric's relentless pursuit of military and economic development projects that will impact the State for years to come. The country, too, should be proud to have had such a champion of strong military ideals fighting to preserve our nation's military power and to properly support our men and women in uniform. As a result of his outstanding performance, Eric was recently awarded the Mississippi Distinguished Civilian Service Medal and the Department of the Navy's Superior Public Service Award.

As Eric moves onto a new and exciting position as Vice President for Programs at Northrop Grumman Corporation, I wish him, his wife Wendy, and their children, Melissa and Matthew, every success. Eric has served our country for more than 27 years, and as he embarks upon his new journey, I wish to take this opportunity to thank him for his service and to wish him nothing but the best in his new career.

TRIBUTE TO JOSEPH VINCENT TREBAT

Mr. REID. Mr. President, the adjournment of the 107th Congress means we shall soon be bidding goodbye to the year 2002. The weeks ahead will be filled with reviews of the headlines and history of 2002. Unfortunately, 2002 marks the passing of an even greater number of individuals who made up what some refer to as the ''Greatest Generation.'' The men and women who sacrificed much and rose to meet the awesome challenges confronting our great nation in the aftermath of World War II are dying off in greater numbers each year.

Today, I wish to recognize the life of one such individual who embodied the self sacrifice, uniquely American optimism, and genuine goodness of this generation—Joseph Vincent Trebat of Mount Prospect, IL. Joseph Trebat passed on to eternal life on August 14th but left behind a legion of family and friends whose lives have been infinitely enriched because of his life.

Joseph Trebat, ''Dad'' to his six children, ''Papa'' to his twenty-one grandchildren and two great grandchildren and ''Joe'' to his beautiful bride of 66 years, Lauretta, will be sorely missed. It is often said of men like Joe that he lived a good life. For Joe, however, it is more important to add that his was a life well led.

Joe's life was truly an American life. The son of Slovak immigrants, Joe grew up in Chicago and was by all accounts a self-made man. He worked his way through college and spent 50 years at the same company. He brought the same dedication to his family. His priorities never changed—work hard, enjoy life and provide a better future for his wife and children. The lives led by his six children: Mary Ann, Tom, Patty, Dottie, Joe and Kathy, evidence Joe's greatest success in life. To meet Lauretta, or ''Stella'' as Joe lovingly referred to her, is to understand what it means to be in the company of a kind and happy person. Joe may have been born Slovak but his marriage to Lauretta demonstrated he was blessed with the luck of the Irish.

Joe's naturally twinkling eyes could bring cheer to anyone. Those who enjoyed his company, whether joining Joe on the back porch of his house on Wa Pella, playing golf in one of the Trebat Golf Opens or cheering on his beloved Notre Dame, knew they could count on no shortage of laughter and fun. With its number one fan rooting for them from heaven it is no wonder that Notre Dame is experiencing such a winning football season in 2002.

Joe was a gentle giant who will be missed by all. A man for others who's strong faith and love of family was always steadfast and never wavering. When we talk of the ''Greatest Generation'' it is men like Joe who come to mind. While he will always be missed, he will forever be a model for future generations.

WE NEED A PLAN TO STOP AIDS

Mr. LEAHY. Mr. President, several months ago the Appropriations Committee reported out the fiscal year 2003 Foreign Operations Appropriations bill, and the Senate passed the Homeland Security Supplemental Conference Report.

Those two bills contain a total of $950 million for international programs to combat AIDS, including $300 million for the Global Fund to Fight AIDS, TB and Malaria. We provided $250 million for the Global Fund last year, although $50 million has not yet been disbursed.

That sounds like a lot of money. It is far more than what we were spending on international AIDS programs just two or three years ago. But think about it another way. The amount we expect to provide in 2002 and 2003 to combat AIDS, which threatens the lives of each of the world's 6 billion people—is less than what my own State of Vermont, with a population of only 600,000 people, will spend on health care during that same period.

So while the United States is doing more than ever to combat AIDS, and we can point to successes in several countries—Uganda, Thailand and Brazil, for example, the reality is that the AIDS pandemic is out of control.

It is spreading faster, not slower. 40 million people are infected. Almost nobody is receiving treatment. 25 million people have died from AIDS-related causes, and at the current rate that number is expected to exceed 65 million by the year 2020.

By any measure, AIDS is a plague of biblical proportions. Over 6 centuries ago, the Bubonic Plague started at a small trading post in the Crimea and quickly spread from port to port. By the time it ran its course, a third of Europe was dead.

It is still remembered as the worst epidemic in the history of the world. No longer. AIDS is making the Bubonic Plague look like a mild case of the flu.

The reality is that despite everything we have done and are doing, we are failing miserably to control this pandemic. Until we develop a strategy that matches the challenge, and until we start thinking in terms of billions, not millions, of dollars, we will continue to fail.

The alternative is unthinkable, but it is by no means impossible—100 million deaths. 200 million. 400 million. This virus spreads exponentially, and so does the cost of controlling it.

When I think about AIDS, I think back to 1990, when Ryan White was alive, and Magic Johnson didn't know he was HIV positive. Even though hundreds of thousands of Americans had already died of the disease, we had gone a decade with two Presidents who refused even to speak the word ''AIDS'' in public.

In the spring of 1990, we learned that in some African villages, one of every 10 people was infected.

That year, my wife Marcelle and I traveled to Kenya, Uganda and South Africa to see the impact of AIDS first hand. During one visit to Kampala, we met people infected with HIV who were teaching others to protect themselves from the virus.

Those brave people were HIV-positive and knew their time was short. Yet they devoted the time they had left to helping others to live.

When I came home, I gave a speech and said that if we failed to act, by the year 2000 ten million people would die of AIDS.

I was wrong. The number of people who died from this disease during the next 10 years was not 10 million, it was 22 million, and now it is 25 million.

Imagine waking up tomorrow morning and learning that every single man, woman, and child—every single person—in Miami, Minneapolis, Atlanta, Denver, Boston, Seattle, Washington, D.C., New York City, Los Angeles, Chicago, Houston, Philadelphia, San Diego, Detroit, and Dallas combined had a virus for which there was no cure.

That is the reality in Africa today. Every hour, AIDS buries another 250 Africans.

Within the next decade, at the current rate, more than 40 million children in Africa will lose one or both parents to AIDS.

Many of these children will end up on the streets, turning to crime, drugs or prostitution, driving the rates of HIV even higher, perpetuating this vicious cycle.

Progress that has taken decades to achieve is being wiped out. In many African communities, AIDS is doubling infant mortality, tripling child mortality, and slashing life expectancy by as much as a third or a half.

We have always known that improving public health makes it easier to meet other needs—whether it is better education, stronger economies, or more stable societies. The converse is also true. AIDS will defeat these efforts for social and economic development in Africa unless we defeat AIDS first.

This is an enormous challenge for Africa, but it is an even greater challenge for the world.

Every day, another 12,000 people are infected, and millions more continue to suffer needlessly.

In the Caribbean, AIDS is now the leading cause of death among people between the ages of 15 and 44.

In Eastern Europe and Central Asia, the number of new infections has risen faster than anywhere.

In India, the infection rate is skyrocketing. In China, only 4 percent of the Chinese population knows how AIDS is transmitted, and according to public health experts it is spreading far faster than the government has acknowledged.

It is a grim picture, but there is a great deal we can do. We do not have a cure for AIDS and there is no vaccine in sight, but we know how to protect ourselves from the HIV virus. We can provide basic care to the sick, and mobilize communities to support the growing number of AIDS orphans.

We know how, for pennies a day, to treat the half of all AIDS patients who will otherwise die from the pneumonia, tuberculosis, or meningitis that prey upon weak immune systems. We have to get these drugs, as well as retroviral drugs which have been available in wealthy countries for years, to people in poor countries who need them.

We know how to reduce the transmission of AIDS from mothers to children.

We know all these things, but even so, we are failing. The disease is spreading out of control. What we lack, even after all these years, is a global plan.

This administration, like the one before it and the one before that, has no plan for how to mount a global campaign to effectively combat the most deadly virus the world has ever faced. There is no strategy for dealing with 40 million AIDS orphans, no strategy for getting treatment to the 40 million people infected today, or the 50 million who will be infected in another 3 years, no strategy for expanding education and prevention programs on the scale that is called for.

It is not enough to point to a few success stories, as important as they are. We have to look at the big picture. Despite everything we have done and are doing, we have failed miserably. This deadly pandemic is out of control, and the amount of money being spent is a pittance of what is needed.

If we are going to conquer—or at least control—this disease, we need to think differently about it. It sounds cliche and it has probably been said many times before, but we need the health equivalent of the Manhattan Project, or putting a man on the moon. We need to increase our investment not linearly, but exponentially. Where we are spending millions, we need to spend billions.

According to public health experts, the world must increase funding on AIDS by at least a factor of five to at least $10 billion per year.

And $10 billion is a lot of money, but put it in perspective: It is about the same amount as the U.S. Government spends each year on office supplies. It is less than 1 percent of our Federal budget.

Unless we start treating AIDS as a global health catastrophe, not just someone else's problem, we will face a far worse, and far more costly, crisis in the future.

How do we begin?

The Global Fund to Fight AIDS, TB and Malaria is the funding mechanism the world has created, with strong support from the United States. It is not a substitute for other effective international health programs, like those run by USAID, but we know that USAID cannot do this alone. We need a multilateral approach, and the Global Fund is that approach.

Congress has appropriated $250 million for the Fund so far. Some have argued that we should wait to see how the Fund performs, before we do more. I understand that caution. We have seen how other global funds failed to meet expectations. It would make sense to wait, if we were not talking about the worst health crisis in human history.

We simply cannot wait to see if the Global Fund is going to succeed, because we cannot afford to let it fail. We must do whatever is necessary to make sure it does not fail. That means spending a lot more than $250 million. The Administration needs to approach the Global Fund as it has al-Qaida failure is not an option.

That said, money is not the only issue. The Fund must not allow itself to be turned into a tool controlled by the governments of AIDS-affected countries. Unless there are reasonable checks and balances on the proposed and actual uses of these funds, there will be a high risk that the fund will turn into a major source of patronage and income-supplementation for the elites.

To assure this, nongovernmental organizations and other civil society groups must have a strong and clear voice in the global governance, national oversight, and local implementation of Fund-sponsored activities. To date, this has been respected more in rhetoric than in reality, and many local groups have been deeply disappointed with the nearly total government control of access to Fund resources and even the proposal process in many countries.

The Fund would probably respond that this is being addressed, but the message I am hearing from the field is that this is a closed and tightly controlled resource pool in most places. To its credit, the Bush administration has been one of the strongest supporters of a larger role and voice for NGOs, and some of the developing country governments represented on the fund's Board have been the most resistant.

The fund is one important vehicle for getting critical programs going in highly affected countries, but we should not confuse this with a comprehensive global approach. There are still critical needs for direct bilateral assistance, particularly when that assistance is often channeled, as it is with USAID funds, to service NGOs, as well as an overall coordination and policy role for UNAIDS, and a technical role for the World Health Organization. Responding to AIDS and the Global Fund are not fully synonymous.

The world faces immense challenges from global warming, to the threat of nuclear, chemical and biological weapons, to poverty on a vast scale. We cannot ignore any of these challenges, because they all bear on the security of future generations of Americans.

But when those same future generations look back at this time and place, I believe they will judge us, more than anything, on how we responded to AIDS. It is the most urgent, the most compelling, moral issue of our time.

I urge the President, who has shown real leadership in focusing our country and the world on combating terrorism, to think differently about AIDS. It cannot be just another problem we deal with in the normal course of business. As serious a threat as international terrorism is and we are spending many billions of dollars to protect ourselves from terrorists, measured by the number of victims it pales compared to AIDS.

The administration needs to get serious. Earlier this year, the White House opposed efforts by the Congress, including by some Republicans, to provide $500 million in emergency funding to combat AIDS. Because of the White House's objection, Senator DURBIN's amendment was defeated.

Subsequently, the President refused to designate $200 million for HIV/AIDS, in the Homeland Security Supplemental, including $100 million for the Global Fund, as an emergency. As a result, those funds are not available.

If AIDS is not an emergency, nothing is. Over two decades have passed since AIDS was first identified, yet we still

do not have a plan. A hundred million dollars here or there isn't a strategy. Even $10 billion isn't a strategy. The Administration needs to spell out in clear terms a plan for dealing with each component of the AIDS crisis care for orphans, treatment for the infected, and prevention. It needs to do this on a country scale and a global scale, and it needs to commit our share of the funds to implement it.

It won't be cheap. The Manhattan Project wasn't cheap either, but that is what we need. It will cost far, far more if we waste another ten years.

The Congress has showed over and over that it is ready. The administration needs to lead.

CONTINUING THE FIGHT AGAINST THE HIV/AIDS PANDEMIC

Mr. BIDEN. Mr. President, it is with mixed feelings that I rise to speak on the HIV/AIDS bill that the Senate passed by unanimous consent tonight. This is the second time this year that the Senate passed a bill to combat the spread of HIV/AIDS overseas. As you recall, in July we unanimously passed a comprehensive bill to fight the deadly disease. The bill contained new authorities for the Department of Health and Human Services, authorized money for a contribution to the Global Fund for AIDS, Tuberculosis and Malaria, authorized the Secretary of the Treasury to enter into negotiations to improve the Heavily Indebted Poor Countries Initiative, and authorized funds for our bilateral assistance programs at the Agency for International Development.

The funding levels and authorities provided in the bill the Senate passed in July reflected an understanding of the enormity of the problem, what it will take to address it, and the Senate's dedication to doing so. Unfortunately, our colleagues in the House of Representatives had neither the understanding nor the will to consider all of the provisions in the bill.

Instead, the Republican led House slow rolled conversations and negotiations on the bill for so long that four months later we were still unable to come to an agreement on the original provisions in the Senate passed bill. What we are left with is a stripped down version of what the Senate passed. Our original bill authorized $2.172 billion in fiscal year 2003 and $2.576 billion in fiscal year 2004. The House insisted that we slash the title containing Health and Human Services authorities. The only version of the bill they would agree to authorizes a billion dollars less in fiscal year 2003 to fight HIV/AIDS overseas.

The Senate provided $1 billion for the Global Fund to Combat AIDS, tuberculosis and malaria this fiscal year, giving a clear indication that we believe that the Fund is an important mechanism through which to meet the resource needs of countries highly affected by the disease. The compromise with the House authorizes $250 million less in fiscal year 2003.

The Senate legislation included a bill I introduced in April which authorizes the Secretary of the Treasury to move forward with negotiations for deeper debt relief for poor countries—especially those facing a health crisis like HIV/AIDS. More debt relief provides poor countries more resources to devote to healthcare. The House insisted that we eliminate even Sense of Congress language about debt relief from the bill despite the fact that it is now clear—and the World Bank itself has recently announced—that unless the current debt relief program is enhanced, the debt levels of those poor countries will remain too high. How can we expect to developing nations struggling under crippling debt to adequately meet the needs engendered by a severe health emergency such as HIV/AIDS? We cannot.

I am bitterly disappointed in the decisions made by our House colleagues on the issues I have outlined above. Time and time again we have been given information about the human consequences of the spread of the disease. Three million people died of AIDS in 2001, according to the Joint United Nations Program on HIV/AIDS. Over half a million of them were children. Over a million of them were women, who are the primary care givers in any society. There are currently over 40 million people living with AIDS.

Time and time again, we have been alerted to the security implications of the spread of HIV. In January of 2000 the National Intelligence Council issued an estimate entitled the Global Infectious Disease Threat and Its Implications for the United States in which it states:

> The persistent infectious disease burden is likely to aggravate and in some cases, may even provoke economic decay, social fragmentation, and political destablization in the hardest hit countries in the developing and former communist worlds. . . . Some of the hardest hit countries in Sub-Saharan Africa—and possibly later in South and Southeast Asia—will face a demographic upheaval as HIV/AIDS and associated diseases reduce human life expectancy by as much as 30 years and kill as many as a quarter of their populations over a decade or less, producing a huge orphan cohort.

That same month the United Nations Security Council convened the first ever session on a health issue to discuss the security implications of HIV/AIDS.

On October 1 of this year, the National Intelligence Council released another report, The Next Wave of HIV/AIDS: Nigeria, Ethiopia, Russia, India and China, which details the impact that HIV/AIDS is expected to have on those countries through the year 2010. The findings in the report were grim:

International efforts to combat HIV/AIDS to date have not checked the spread of the disease in these countries.

None of these five countries will be able to halt rising infection rates unless they channel more resources into education and health services—resources that these countries do not have.

Vaccines are currently being developed and tested, however even if a vaccine is developed soon it will be ineffective against the HIV/sub-types common in Ethiopia, Russia, China, India and Nigeria.

A vaccine that is 75 percent effective would have to be given to 50 percent of the population in order stop the spread of HIV, according to some experts.

Given the security threat and humanitarian concerns that HIV/AIDS poses throughout the world, I wish that my House colleagues had dealt with all of the provisions in the Senate passed bill in a serious and constructive way. We need to use all of the resources at our disposal to deal with this threat because make no mistake, the threat is very real.

There is no question that we are left with a bill that is significantly more parochial. However, I will say that there are some very good things in the legislation. First, we are able to keep the fiscal year 2004 authorization levels that were in the original Senate bill. $1.2 billion for the Global Fund to fight HIV/AIDS, Tuberculosis and Malaria in fiscal year 2004 is a much more realistic contribution, than the 2003 level.

Second, the bill contains a provision which requires the administration to produce a report which outlines a comprehensive integrated strategy to combat the global HIV/AIDS pandemic. A scattershot approach will not stop the disease from spreading. In addition to being well funded, our programs must be well thought out.

This bill establishes the position of Special Coordinator for HIV/AIDS at the State Department, which I think is critical. As there are several agencies involved in providing assistance to fight the spread of HIV/AIDS overseas. In order to avoid duplication and omissions, it is imperative that there be an office which coordinates and oversees all the activities being carried out.

Finally, the bill contains a section which asks the Agency for International Development to develop a plan to empower women to prevent the spread of HIV/AIDS. The plan is to include education for women and girls, and to provide access to programs which focus on economic independence for women such as micro-finance loans. In addition, this section authorizes money for product development of topical microbicides, medications which kill the HIV virus, that women can use to protect themselves without having to obtain the consent of an partner unwilling to use preventative measures.

HIV/AIDS is the worst plague mankind has ever known. No corner of the globe is safe. It has hit hardest in the areas of the world with the least resources with which to respond. I would argue that we should help these nations on purely humanitarian grounds. To those for whom self-interest is a

stronger motivating factor, let me say this: the spread of HIV/AIDS poses very grave threats to economic growth and security in countries whose stability has a direct impact on our own. If we do not help address the threat now, it may well be to our detriment tomorrow. I urge the House to take up and pass the measure on which the Senate has just completed action.

The fight is not over. Next year, I plan to reintroduce legislation to improve the Heavily Indebted Poor Countries Initiative so that countries dealing with the AIDS epidemic are better able to respond. I hope that my colleagues will support these efforts. It is also my sincere hope that the Senate will revisit the provisions that we dropped in order to reach compromise with our House colleagues. Failure to do so would be unwise.

THE SMALL BUSINESS DROUGHT RELIEF ACT

Mr. KERRY. Mr. President, as the Senate and the House prepare to bring the 107th session to a close, we leave some important small business legislation unfinished. Regrettably, that includes passage of the Small Business Drought Relief Act because of serial holds from Republicans since August 1–3 and a half months. This emergency legislation passed our committee with unanimous support, and yet Senators with no jurisdiction in small business, instigated by an administration that claims to support small business, obstructed passage.

The committee reached out to those Senate members and their staffs time and again, and there was no cooperation. Sixteen Governors—Governor Hodges of South Carolina, Governor Easley of North Carolina, Governor Barnes of Georgia, Governor Foster of Louisiana, Governor Musgrove of Mississippi, Governor Perry of Texas, Governor Wise of West Virginia, Governor Patton of Kentucky, Governor Glendening of Maryland, Governor Holden of Missouri, Governor Keating of Oklahoma, Governor Sundquist of Tennessee, Governor Warner of Virginia, Governor Siegel man of Alabama, Governor Huckabee of Arkansas, and Governor Guinn of Nevada—reached out to the Congress asking for us to pass this bill, and they got no cooperation. The committee was ultimately able to overcome tremendous differences between CBO's cost estimate and OMB's cost estimate to reach agreement with the Office of Management and Budget on passing this emergency legislation last week, but not even that moved the Republican leadership to cooperate.

So we go home tonight, and our small businesses—main street America—needlessly struggle to make ends meet, keep their doors open and employees on the payroll, because of partisan politics.

For those who don't remember, this is emergency legislation to help small non-farm-related businesses across this Nation that are in dire straits because of drought conditions in their State. Just like the farmers and ranchers, the owners of rafting businesses, marinas, and bait and tackle shops lose a lot of business because of drought.

Right now these small businesses can't get help through the SBA's disaster loan program because of something taxpayers hate about government—bureaucracy. SBA denies these businesses access to disaster loans because its lawyers say drought is not a sudden event and therefore it is not a disaster by definition. Contrary to the Agency's position that drought is not a disaster, as of July 16, 2002, the day we introduced this bill, the SBA had in effect drought disaster declarations in 36 States. Unfortunately, the assistance was limited to farm-related small businesses.

The 36 States include: Arizona, California, Colorado, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

The situation has only gotten worse judging by SBA's own numbers. Since the bill was introduced, the SBA has declared disasters in two more States and the District of Columbia. Instead of rising to the occasion and using their statutory authority to help the small businesses in these areas, they continue to deny them access to disaster loans, hiding behind a legal opinion—a legal opinion that they will not provide to the committee.

To make sure the facts of this legislation are accurate, let the record show that this bill does not expand the SBA disaster loan program. SBA already has this authority, and this bill simply restates and clarifies that authority to ensure that the law is applied fairly. Let the record show that SBA, contrary to its claims, has the expertise to determine when a drought is a disaster. First, the SBA already declares drought disasters and does so mainly by working with the U.S. Secretary of Agriculture. Second, in addition to working with the Secretary of Agriculture, there are existing SBA guidelines for declaring disasters, and those guidelines apply to drought too. For example, the Governor of a State can request a declaration from the Administrator of the SBA after certifying that more than five small businesses have suffered economic injury because of a disaster. Last, let the record show that this legislation is modest in cost. CBO estimated that this bill would cost $5 million per year for 5 years, far less than OMB's estimate of approximately $100 million per year. And last week, as I referenced earlier, we were able to reach an agreement with OMB that capped the cost at $9 million for fiscal year 2003, enough to cover the cost of the bill as passed by the committee and the Bond/Enzi/Burns/Crapo amendment. Unfortunately, even OMB's concurrence and the support of many Senators and Governors did not persuade the remaining Senator blocking passage of the bill to put aside his differences for the sake of small businesses and permit it to pass.

I thank the many supporters of this bill. My 22 colleagues who are cosponsors—Senators BOND, HOLLINGS, LANDRIEU, BAUCUS, BINGAMAN, DASCHLE, JOHNSON, EDWARDS, CARNAHAN CLELAND, ENZI, LIEBERMAN, HARKIN, ENSIGN, REID, HELMS, ALLEN, BENNETT, TORRICELLI, LEVIN, CRAPO and THURMOND. All the Governors who put small businesses first and politics last. Mr. Donald Wilhite, director of the National Drought Mitigation Center at the University of Nebraska in Lincoln, for all his assistance to my staff in understanding the scope of drought in this country and for writing in support of the legislation. National Small Business United, for always being there to stand up for small businesses. The many small business owners and small business advocates, such as Wildlife Action, in South Carolina, who took the time to write me regarding the drought and their problems with the SBA. And last, but certainly not least, from my home State, I thank Bob Durand of the Massachusetts Emergency Management Association for his help and support. We will take this fight up again in the next Congress.

Mr. President, I ask unanimous consent that several letters of support and my remarks be included in the RECORD.

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

SOUTHERN GOVERNORS' ASSOCIATION,
Washington, DC, August 19, 2002.

Hon. JOHN KERRY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KERRY: We are deeply concerned that small businesses in states experiencing drought are being devastated by drought conditions that are expected to continue through the end of the summer. We urge you to support legislation that would allow small businesses to protect themselves against the detrimental effects of drought.

Much like other natural disasters, the effects of drought on local economies can be crippling. Farmers and farm-related businesses can turn in times of drought to the U.S. Department of Agriculture. However, non-farm small businesses have nowhere to go, not even the Small Business Administration (SBA), because their disaster loans are not made available for damage due to drought.

To remedy this omission, Sen. John Kerry (D-Mass.) introduced the Small Business Drought Relief Act (S. 2734) on July 16, 2002, to make SBA disaster loans available to those small businesses debilitated by prolonged drought conditions. This bill was passed by the Senate Small Business Committee just eight days later. Also, the companion legislation (H.R. 5197) was introduced by Rep. Jim DeMint (R–S.C.) on July 24, 2002.

Both bills are gaining bipartisan support, and we hope you will cosponsor this important legislation and push for its rapid enactment in the 107th Congress.

As 11 southern states are presently experiencing moderate to exceptional drought conditions this summer, we cannot afford to wait to act. We urge you to cosponsor the Small Business Drought Relief Act and push for its consideration as soon as possible.

Sincerely,

Governors Don Siegelman of Alabama, Mike Huckabee of Arkansas, Roy E. Barnes of Georgia, Paul E. Patton of Kentucky, M.J. ''Mike'' Foster, Jr. of Louisiana, Parris N. Glendening of Maryland, Ronnie Musgrove of Mississippi, Bob Holden of Missouri, Michael F. Easley of North Carolina, Frank Keating of Oklahoma, Jim Hodges of South Carolina, Don Sundquist of Tennessee, Rick Perry of Texas, Mark Warner of Virginia, Bob Wise of West Virginia.

OFFICE OF THE GOVERNOR,
STATE OF SOUTH CAROLINA,
Columbia, SC, July 9, 2002.

Hon. JOHN KERRY,
U.S. Senate, Russell Building,
Washington, DC.

DEAR SENATOR KERRY: The State of South Carolina is in its fifth year of drought status, the worst in over fifty years. Some parts of the state are in extreme drought status and the rest is in severe drought status.

99% of our streams are flowing at less than 10% of their average flow for this time of year. 60% of those same streams are running at lowest flow on record for this date. The levels of South Carolina's lakes have dropped anywhere from five feet to twenty feet. Some lakes have experienced a drop in water level so significant that tourist and recreational use has diminished.

State and national climatologists are not hopeful that we will receive any significant rainfall in the near future. To end our current drought, we would need an extended period of average to above average rainfall.

Droughts, particularly prolonged ones such as we are experiencing now, have extensive economic effects. For farmers who experience the economic effects of such a drought, assistance is available through the USDA. For small businesses, assistance is available only for agriculture related small businesses, i.e. feed and seed stores. For businesses that are based on tourism around Lakes and Rivers, there is currently no assistance available.

We have reports of lake and river tourism dependent businesses experiencing 17% to 80% declines in revenue. The average decline in revenue is probably near 50% across the board.

My staff has contacted Small Business Administration and they are not authorized to offer assistance to these businesses because a drought is not defined as a sudden occurrence. Nonetheless, a drought is an ongoing natural disaster that is causing great economic damage to these small business owners.

I am requesting that you assist us in this situation by proposing that the Small Business and Entrepreneurship Committee take action to at least temporarily amend the SBA authorizing language and allow them to offer assistance to small businesses affected by prolonged drought. This would allow Governors to ask SBA for an administrative declaration of economic injury because of drought. The low interest loans SBA can offer these businesses would allow many of them to weather the drought and remain in business for the long run.

My staff has also been in contact with Senator Hollings' legislative staff. I hope together, we can find an expedient solution to the plight of these small business owners. Short of finding a way to control the weather, this may be our only option to help their dire situation.

Sincerely,

JIM HODGES,
Governor.

DISASTER RELIEF

Mrs. CLINTON. Mr. President, I would like to express my disappointment at the delay in providing crop disaster relief to farmers across the country. Mother Nature has not been kind this year, dealing farmers weather that has devastated their crops and threatened the survival of family farms.

In New York State crop damage has not come solely from drought. Unseasonably high temperatures in the spring followed by frost and hailstorms have devastated specialty crops such as apples, peaches, pears, grapes, strawberries, stone fruits, onions, and cherries.

The unfortunate result of this disastrous weather is that a large percentage of these fruit farmers are bordering on financial ruin. I have met with the farmers and growers of New York, and their stories are heartbreaking as they talk about bankruptcy and selling off their family's farm. Crop disaster relief is truly needed to keep these farms going as well as the rural economies that they support.

In order to provide this much needed assistance, I have worked with my colleagues to pass legislation that would provide financial relief to farmers who have suffered losses due to natural disaster aid. I cosponsored S. 2800, a bill that would provide emergency disaster assistance to agricultural producers. I cosponsored the crop disaster amendment to the Interior appropriations that passed with 79 votes. And I support Senator BAUCUS today in his continued efforts on behalf of this Nation's farmers and our rural communities.

This year has been a true disaster for so many farmers. On behalf of farmers and growers from the State of New York, I will continue to support crop disaster relief, particularly for specialty crop producers. I urge my colleagues to support these efforts to provide assistance.

Mr. ENZI. Mr. President, I have heard my colleagues on the Senate floor today talking about drought and the desperate need for drought assistance. Throughout this session, I have been a fervent advocate of drought assistance for producers in Wyoming. I am speaking today because the need for assistance persists.

Today's discussion has focused on farmers. They need help. Farmers missed out on the emergency livestock programs provided by the administration. Even with crop insurance, farmers are facing serious difficulties.

As this drought has continued for multiple years, crop insurance premiums have increased each time a producer is forced to take a loss. Yield averages, the basis for insurance payments, have been dropping with dismal production each year. Crop yields are so low this year that market prices are actually higher. The farm bill counter cyclical payments that were designed to support prices when markets fell below a certain level have been thwarted by these higher prices. These higher prices are meaningless when the quantities have been so drastically reduced. Therefore, this protection has been rendered useless.

Farmers clearly need help, but I also think it is important to remember that our ranchers aren't safe yet either. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Bob and Nancy Tarver. They are a ranching family from near my home of Gillette, WY.

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

TARVER HEART X RANCH,
Gillette, WY, September 30, 2002.

Congresswoman BARBARA CUBIN,
U.S. Capitol, Washington, DC.

HON. REP. CUBIN: Thank you for the opportunity to share the impact of the past three years of drought to our livestock business in Northeastern Wyoming. The Heart X Ranch consists of my husband, Bob, and two sons, Robert and James. I believe we comprise a true family farm/ranch that is so often referenced as to what congress wishes to save. Our income is derived totally from agriculture and we provide the labor and management for our ranch operation. Bob and I have been in agriculture all of our lives. I was raised on a ranch in Southeastern Montana and Bob is a Wyoming native whose roots are Wyoming ranching. Our oldest son, Robert, is married and his wife, Michelle teaches at Little Powder School. Michelle's teaching has not only contributed to their family living but also the benefits of health insurance for their family. They have two sons, Tayler 6 years and Wyatt 3 years old. James is engaged to be married.

My husband and I had a dream when we married to buy a ranch. We have managed to buy a small place and lease the majority of acres that we operate on. Along with our sons we run cow-calf and a yearling operation. We are ultra conservative and run our outfit as economically as possible. . . as our fleet of 1978 ranch pickups exemplify.

The cost of drought to a ranching operation is staggering. Explanation and computations of drought cost are detailed in Attachment A. Summarizing the examples of additional cost for this year is as follows:

Hay: $120.00 per cow; Cake: $21.00 per cow; Lick & Liquid feed: $29.40 per cow; Heifer calf-feed lot: $18.75 per cow; Pounds & dollars lost due to drought: $185.00 per cow; $374.15.

The additional expenses that I have covered are the reality of drought.

This is our third year of drought. The above are additional cost for this year alone!

I am most grateful for the Feed Program—$23 per head, Livestock Compensation Program—$18 per head, and the Nap program—$1.00 per acre (depends on% loss, and if acres are eligible) it is very evident from these numbers to see the critical need for these programs and also the Disaster Program for Livestock Assistance and Crop Disaster. Drought is a natural disaster and the economic consequences are devastating to agriculture. The necessity to have the Disaster Programs for 2001 and 2002 are vital to save

the drought areas of American ranching and farming.

I believe with my whole heart and soul that to keep America strong we need our farms and ranches providing the American consumers the safest and best products in the world.

It is very humbling to share this information. However, I am very proud to be a rancher and I am overwhelmed by not only the financial devastation but also the mental pressures of trying to save a viable family ranching operation from the ravages of an unforgiving drought.

The drought in Wyoming has been compared to the 1930's. It is heartbreaking to think that in America, commonly thought of as the land of opportunity, the only ones that will be left following the drought are the very wealthy and the hobby rancher.

Thank you for your dedicated and persistent efforts to help us in agriculture to survive the drought.

Sincerely,

NANCY TARVER.

SCHEDULE A.—ADDITIONAL COST OF DROUGHT 2002

1. We normally produce 1200–2000 ton of hay per year. 2000, 2001, and 2002 we produced only 150 ton per year. We have been faced with purchasing hay because of very little hay produced. Hay prices have jumped because of the far-reaching drought conditions. The demand exceeds the supply. Cow alfalfa hay prices (depending on your location/freight) have ranged from $110 to $130 per ton for cow grass alfalfa hay. The cost for our operation to replace the hay we did not grow because of the drought is $80.00 per ton. [Using purchased hay costing $115 per ton-$35 (cost to put up your own hay) = $80 dollars per ton].

The drought mandates we feed hay for at least 5 months (150 days @ 20 pounds per day = 1½ ton per cow X $80 dollars per ton =$120.00 per cow.

2. Additional cattle cake is needed because of loss of natural grazing vegetation. Cattle cake is fed along with the hay to balance the nutritional needs of cattle. Because of the drought twice the amount of pounds of cake per cow are fed to meet the nutritional needs. We need wheat mids cake (14 %protein) normal ration 2 pounds. The increase in cake cost is 14 cents a day. The additional expense for cake for 150 days is $21.00 per head.

3. To enhance the limited natural vegetation supplemental feeds (lick tubs or liquid feed) were used for 7 months this year. The additional expense was 14 cents per day per cow—210 dayX.14 cents =$29.40 per cow.

4. Additional Pasture & freight we have not found additional pasture. The cost of moving is substantial: a. $8.00 per head to freight about anywhere; b. $18.00–$25.00 per head to pasture cow calf pairs.

5. We pasture our heifer calves until they are yearlings, keeping some as replacements for our herd and selling the remainder as bred heifers and open yearlings. This year because of the drought the heifers calves will be sent a feed yard for the winter months. The cost to feed the calves a growth ration only is $1.00 per day. If we had the feed we would do this cheaper at home. The additional cost to us will be at least 25 cents per day. 25cents X 150 =$37.50 per heifer calf. For loss computation I have used 50% heifer calves in a herd so this loss would be $18.75 for calculation purposes.

6. Less pounds have caused loss of income. We had to sell steer calves and the small heifer calves starting August 15, normally we sell calves the end of October. Our steer calves in August weighted an average of 420 pounds compared to 600 pounds last October. A 180-pound per steer calf loss is devastating. Unfortunately there was a 20% drop in calf prices, which compounded the pound loss. Steer calf income took a 31% drop in 2002 for our ranch operation—$420 dollars compared to $605 dollars the previous year. $185 per cow loss in steer calf dollars produced.

7. Liquidation of the cowherd. Foundation stock cow sales are giving up a lifetime commitment and are so very costly. Herd genetics are a ranchers pride and also our profit. It takes years to build a quality herd of cattle that does well in our area and on our range. We would find buying back quality cows that fit our ranching operation near impossible and certainly cost prohibitive. The dollar value of this cannot be measured.

Mr. ENZI. Mr. President, I won't read the entire letter, but I would like to highlight a few points that Bob and Nancy make. They are very thankful for the assistance given through the Livestock Feed Assistance Program and the Livestock Compensation Program. These programs together provide about $41 of assistance per cow. With this assistance, they have purchased additional feed to supply their needs for the winter. The Tarvers point out in their letter, however, that they have lost about $374 per cow in 2002 due to drought. This loss has occurred primarily through reduced forage growth in pastures, increased hay costs and lower cattle weights. The drought assistance provided so far has been short term. If we are going to save our family ranchers, we must do more.

The Senate has consistently supported providing real relief to our producers. In September we voted on an emergency agricultural amendment I cosponsored. That amendment would have provided almost $6 billion on both farmers and livestock producers endangered by the drought across America. After it was passed 79–16, the amendment was stalled along with the Interior Appropriations bill. This was not the first time the Senate has shown strong support for disaster relief only to have it snatched away. Senator BAUCUS and I successfully added an agricultural disaster assistance package to the farm bill with a steady 69–30 vote. The assistance package was removed from the conference report by the House.

We are not following through on our promises. The time has come to fulfill our words with action. If we have missed our final opportunity in this Congress, I urge my colleagues to pass emergency agricultural assistance as a top priority when we begin the 108th session. Thank you.

HELMS-LEAHY SMALL WEBCASTER SETTLEMENT ACT OF 2002

Mr. HELMS. Mr. President, last week, I introduced the Small Webcaster Settlement Act of 2002, along with the chairman of the Senate Judiciary Committee, Senator LEAHY. Having now been passed by both Houses of Congress, this bill is expected soon to be signed by the President.

The Helms-Leahy bill is the result of a sustained and arduous negotiating process involving numerous stakeholders. Its enactment enables small Internet radio services and the recording industry, if they both choose, to settle their longstanding disputes regarding the amount of royalties webcasters must pay in order to perform sound recordings over the Internet.

This consensus legislation will bring much-needed stability to the emerging webcasting industry by permitting small commercial webcasters to establish with final certainty their financial obligations, thereby enabling entrepreneurs to secure additional venture capital and to avoid bankruptcy in many cases.

Moreover, as enacted, this bill will ensure that privately negotiated settlements will not be enacted into positive law, thereby negatively impacting, either directly or indirectly, any industry or entity that does not or cannot yet settle their liabilities for these royalties.

Finally, this bill will require artists to be paid directly their congressionally mandated share of performance royalties, so that there will no longer be any risk that record companies with disproportionate bargaining leverage will, by contract, squeeze recording artists out of their fair share.

The Digital Millenium Copyright Act, DMCA, required, for the first time, users of music recordings to pay performance royalties to owners of copyrights in sound recordings. The creation of this new performance royalty represented a dramatic reversal of decades of U.S. public policy.

Prior precedent had established that performances of sound recordings on traditional broadcast radio were not deemed to result in liability for performance royalties to sound recording copyright owners because it was those very same performances that introduced songs to the listening public, thereby promoting sales of sound recordings and generating revenue for copyright owners and recording artists.

Notwithstanding this longstanding precedent, the DMCA required Internet radio services to pay sound recording performance royalties and determined that the royalties should be set by a panel or arbitrators, known as the Copyright Arbitration Royalty Panel or CARP.

Unfortunately, the arbitration process has become too lengthy, too technical, and too expensive for many stakeholders. As a result, thousands of small commercial webcasters, broadcasters, noncommercial webcasters, college radio stations and hobbyists have been effectively denied the opportunity to participate in the arbitration proceedings in any meaningful way. Perhaps it was because these smaller interests were not adequately represented in the CARP proceeding that the resultant royalty was so high and the rate structure so inflexible that the

majority of small webcasters feared that it would lead to their demise? As the distinguished chairman of the Senate Judiciary Committee stated at a May 2002 hearing on this subject, Congress did not intend to bankrupt small webcasters when it created this new royalty.

It would be a mistake for someone to construe the Helms-Leahy bill as a criticism of the arbitrators decision. Rather, I consider this legislation to be an indictment of the process, with unintended consequences flowing from the framework that Congress set forth in the DMCA.

It is impossible for arbitrators to appreciate the full implications of their determinations if significant industry participants cannot afford to appear before them or if those with disproportionate control over the outcome refuse to deal in good faith. I understand that Senator LEAHY intends to pursue comprehensive CARP reform in the Judiciary Committee next Congress. Though I will no longer be serving in the U.S. Senate next year, I hope that the chairman and ranking members of both Judiciary Committees will follow through on this commitment, working constructively to quickly remedy the concerns expressed about the current CARP process.

There was not time to fully reform CARP this fall but I considered it essential that Congress move swiftly to ensure that small webcasters not be bankrupted by unfair arbitration outcomes. An equally important goal was to ensure that settlement agreements negotiated by recording companies and small webcasters facing bankruptcy not unfairly impact non-participating third parties—such as larger webcasters and broadcasters, or even the recording companies. Moreover, I consider it critically important to underline that nothing in this bill should be construed as affecting the outcome of any pending litigation.

I commend Chairman SENSENBRENNER for focusing attention on this issue and commencing the process that ultimately led to the passage of this critically-needed legislation. I respect that there was a difference of opinion on the precedential value of H.R. 5469, as originally passed by the House. Nevertheless, beyond dispute is the fact that numerous stakeholders had expressed serious reservations that the original House-passed bill could unintentionally and negatively influence future rate setting proceedings.

The Helms-Leahy bill removes that concern, helps ensure that small webcasters will not be forced into bankruptcy, provides non-commercial webcasters with additional flexibility, and accomplishes several other goals on which the stakeholders and the Judiciary Committee leadership could agree.

The deductibility provision contained in section 5(b) of the bill is one that was viewed as important to several parties. The final provision is intended to encourage competition among agents designated to distribute royalties. While I ultimately agreed to this provision, I wish to make it clear that I would consider it unconscionable if the provision were used to justify higher royalty rates for users of sound recordings.

The ability to deduct these fees is premised on a balance of interests, owners of sound recordings should not be prejudiced by a process that precludes effective legal representation, designated agents should be incentivized to quickly and fairly conclude settlement agreements rather than engage in protracted and expensive legal and arbitration proceedings, and music services and other users of sound recordings should pay a fairly negotiated fee that is not impacted by the costs of litigation, arbitration, and legal expenses incurred by the designated agents.

Users already bear their own litigation, expert fee and legal representation costs for participating in the CARP process and the resources of the Copyright Office are taxed when fair settlements are not reached among the parties.

In my view, the public interest would not be well served if the deductibility provision were interpreted in a manner that had the effect of diluting the payout to copyright owners, reducing the incentives for negotiating settlements, and/or increasing the fees paid by consumers for the use of sound recordings. To avoid these clearly undesirable and unintended outcomes, I believe it would be unwise to take these costs into account in any arbitration or other proceeding to set royalty fees.

I expect this to be the final piece of legislation I author in my career as a United States Senator. I particularly wish to thank Senators LEAHY and HATCH and their superb staffs for their expertise and assistance in ensuring the quick approval of the U.S. Senate. Additionally, I want to recognize the substantial contributions of the Senate and House leadership as well as the leaders of the House Judiciary Committee, for their continued assistance and cooperation as we worked through these difficult issues over the past several weeks.

Finally, I also wish to thank David Whitney, Joe Lanier, Wayne Boyles and David Crotts of my staff, the leaders of the affected industry and artist organizations who assisted me so greatly in negotiating this compromise legislation and a young lady entrepreneur of whom I am extremely proud, Deb Proctor of WCPE–FM in Raleigh, NC who first brought this issue to my attention.

PERFORMANCE GOALS FOR THE MEDICAL DEVICE USER FEE AND MODERNIZATION ACT OF 2002

Mr. KENNEDY. Mr. President, on October 17, 2002, the Senate passed the Medical Device User Fee and Modernization Act of 2002, ''MDUFMA''. Included in Title I of this bill is the authorization of medical device user fees.

Performance goals, existing outside of the statute, accompany the authorization of medical device user fees. These goals represent a realistic projection of what the Food and Drug Administration's Center for Devices and Radiological Health and Center for Biologics Evaluation and Research can accomplish with industry cooperation. The Secretary of Health and Human Services forwarded these goals to the chairmen of the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate, in a document entitled ''MDUFMA PERFORMANCE GOALS AND PROCEDURES.'' According to Section 101 of Title I of MDUFMA, ''the fees authorized by this title will be dedicated to meeting the goals set forth in the CONGRESSIONAL RECORD.''

Today I am submitting for the RECORD this document, which was forwarded to the Committee on Health, Education, Labor and Pensions on November 14, 2002, as well as the letter from Secretary Thompson that accompanied the transmittal of this document.

I ask unanimous consent to print those items.

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

MDUFMA PERFORMANCE GOALS AND PROCEDURES

The performance goals and procedures of the FDA Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER), as agreed to under the medical device user fee program in the Medical Device User Fee and Modernization Act of 2002, are summarized as follows:

I. REVIEW PERFORMANCE GOALS—FISCAL YEAR 2003 THROUGH 2007

All references to ''days'' mean ''FDA days.''

A. ORIGINAL PREMARKET APPROVAL (PMA), PANEL-PMATRACK SUPPLEMENT, AND PREMARKET REPORT SUBMISSIONS

1. The following cycle goals apply to: 75% of submission received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action major deficiency letters will issue within 150 days.

(b) All other first action letters (approval, approvable, approvable pending good manufacturing practices (GMP) inspection, not approvable, or denial) will issue within 180 days.

(c) Second or later action major deficiency letters will issue within 120 days.

(d) Amendments containing a complete response to major deficiency or not approvable letters will be acted on within 180 days.

2. Decision Goals:

(a) 80% of submissions received in fiscal year 2006 will have an FDA decision in 320 days.

(b) 90% of submissions received in fiscal year 2007 will have an FDA decision in 320 days.

3. Subject to the following paragraph, 50% of submissions received in fiscal year 2007 will have an FDA decision in 180 days.

This goal will be re-evaluated following the end of fiscal year 2005. FDA will hold a public meeting to consult with its stakeholders and to determine whether this goal is appropriate for implementation in fiscal year 2007. If FDA determines that the goal is not appropriate, prior to August 1, 2006, the Secretary will send a letter to the Committee on Health, Education, Labor and pensions of the Senate and to the Energy and Commerce Committee, Subcommittee on Health of the House of Representatives stating that the goal will not be implemented and the rationale for its removal.

4. 90% of amendments containing a complete response to an approvable letter received in fiscal years 2003 through 2007 will be acted on within 30 days.

B. EXPEDITED ORIGINAL PMA SUBMISSIONS

1. The following goals apply to PMA submissions where:

(a) FDA has granted the application expedited status;

(b) The applicant has requested and attended a pre-filing review meeting with FDA;

(c) The applicant's manufacturing facilities are prepared for inspection upon submission of the application; and

(d) The application is substantively complete, as defined at the pre-filing review meeting.

2. The following cycle goals apply to: 70% of submissions received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action major deficiency letters will issue within 120 days.

(b) All other first action letters (approval, approvable, approvable pending GMP inspection, not approvable, or denial) will issue within 170 days.

(c) Second or later action major deficiency letters will issue within 100 days.

(d) Amendments containing a complete response to major deficiency or not approvable letters will be acted on within 170 days.

3. Decision Goals:

(a) 70% of submissions received in fiscal year 2005 will have an FDA decision in 300 days.

(b) 80% of submissions received in fiscal year 2006 will have an FDA decision in 300 days.

(c) 90% of submissions received in fiscal year 2007 will have an FDA decision in 300 days.

4. 90% of amendments containing a complete response to an approvable letter received in fiscal years 2003 through 2007 will be acted on within 30 days.

C 180-DAY PMA SUPPLEMENT SUBMISSIONS

1. The following goals apply to: 80% of submissions in fiscal year 2005; 85% of submissions in fiscal year 2006; 90% of submissions in fiscal year 2007.

(a) First action not approvable letters will issue within 120 days.

(b) All other first action letters (approval, approvable, approvable pending GMP inspection, not approvable or denial) will issue within 180 days.

(c) Amendments containing a complete response to a not approvable letter will be acted on within 160 days.

2. Decision Goals:

(a) 80% of submissions received in fiscal year 2005 will have an FDA decision in 180 days.

(b) 80% of submissions received in fiscal year 2006 will have an FDA decision in 180 days.

(c) 90% of submissions received in fiscal year 2007 will have an FDA decision in 180 days.

3. Current performance for real-time review PMA supplement submissions will be maintained.

D. 510(K) SUBMISSIONS

1. The following goals apply to: 70% of submissions received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action additional information letters will issue within 75 days.

(b) Subsequent action letters will issue within 60 days.

2. Decision Goals:

(a) 75% of submissions received in fiscal years 2005 and 2006 will have an FDA decision in 90 days.

3. Subject to the following paragraph, 80% of submissions received in fiscal year 2007 will have an FDA decision in 90 days.

This goal will be re-evaluated following the end of fiscal year 2005. FDA will hold a public meeting to consult with its stakeholders and to determine whether this goal is appropriate for implementation in fiscal year 2007. If FDA determines that the goal is not appropriate, prior to August 1, 2006, the Secretary will send a letter to the Committee on Health, Education, Labor and Pensions of the Senate and to the Energy and Commerce Committee, Subcommittee on Health of the House of Representatives stating that the goal will not be implemented and the rationale for its removal, and that the goal for fiscal year 2006 will be implemented for fiscal year 2007.

E. ORIGINAL BIOLOGICS LICENSING APPLICATIONS (BLAS)

The following goals apply to: 75% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

1. Review and act on standard original BLA submissions within 10 months of receipt.

2. Review and act on priority original BLA submissions within 6 months of receipt.

F. BLA EFFICACY SUPPLEMENTS

The following goals apply to: 75% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

1. Review and act on standard BLA efficacy supplement submissions within 10 months of receipt.

2. Review and act on priority BLA efficacy supplement submissions within 6 months of receipt.

G. ORIGINAL BLA AND BLA EFFICACY SUPPLEMENT RESUBMISSIONS

The following goals apply to: 75% of submissions received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

1. Review and act on Class 1 original BLA and BLA efficacy supplement resubmissions within 2 months of receipt.

2. Review and act on Class 2 original BLA and BLA efficacy supplement resubmissions within 6 months of receipt.

H. BLA MANUFACTURING SUPPLEMENTS REQUIRING PRIOR APPROVAL

The following goal applies to: 75% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

Review and act on BLA manufacturing supplements requiring prior approval within 4 months of receipt.

I. ADDITIONAL EFFORTS RELATED TO PERFORMANCE GOALS

The Agency and the regulated industry agree that the use of both informal and formal meetings (e.g., determination and agreement meetings, informal pre-investigational device exemption (IDE) meetings, pre-PMA meetings, pre-PMA filing meetings) by both parties is critical to ensure high application quality such that the above performance goals can be achieved.

J. MAINTENANCE OF CURRENT PERFORMANCE

It is the intent of the Agency that in review areas where specific performance goals have not been identified, current performance will be maintained.

K. APPLICATION OF USER FEE REVENUES

The Agency intends to apply significant user fee revenues to support reviewer training and hiring and/or outside contracting to achieve the identified performance goals in a responsible and efficient manner.

L. MODULAR PMA REVIEW PROGRAM

The Agency intends to issue guidance regarding the implementation of new section 515(c)(3) of the Federal Food, Drug, and Cosmetic Act. It is the intent of the Agency that once this program is implemented, the Agency will work with its stakeholders to develop appropriate performance goals for this program. Until such time, the Agency intends to review and close complete modules that are submitted well in advance of the PMA submission as expeditiously as possible.

M. ''FOLLOW-ON'' LICENSED DEVICES

The Center for Biologics Evaluation and Research will, if feasible, identify a category of ''follow-on'' licensed devices and collect information to determine whether alternative performance goals for such a category are appropriate.

N. BUNDLING POLICY

The Agency will, in consultation with its stakeholders, consider the issue of bundling for products with multiple related submissions. After such consultation, the Agency will either issue guidance on bundling or publish a notice explaining why it has determined that bundling is inappropriate.

O. ELECTRONIC REVIEW OF APPLICATIONS

The Agency will continue its efforts toward development of electronic receipt and review of applications, as expeditiously as possible, acknowledging that insufficient funding is included in the user fee program for this effort.

P. PREAPPROVAL INSPECTIONS

The Agency will plan to improve the scheduling and timeliness of preapproval inspections. The Agency will monitor the progress of these efforts and provide such information in the annual performance report.

II. ANNUAL STAKEHOLDER MEETING

Beginning in fiscal year 2004, FDA will hold annual public meetings to review and evaluate the implementation of this program in consultation with its stakeholders.

III. DEFINITIONS AND EXPLANATION OF TERMS

A. For original PMA submissions, Panel-Track PMA supplement submissions, expedited original PMA submissions, 180-day supplement submissions, and premarket report submissions, issuance of one of the following letters is considered to be an FDA decision:

1. approval
2. approvable
3. approvable pending GMP inspection
4. not approvable
5. denial

B. For 510(k) submissions, issuance of one of the following letters is considered to be an FDA decision:

1. substantially equivalent (SE)
2. not substantially equivalent (NSE)

C. Submission of an unsolicited major amendment to an original PMA submission, Panel-Track PMA supplement submission, expedited original PMA submission, 180-day supplement submission, or premarket report submission extends the FDA decision goal date by the number of days equal to 75% of the difference between the filing date and the date of receipt of the amendment. The submission of the unsolicited major amendment is also considered an action that satisfies the first or later action goal, as applicable.

D. For BLA (original, efficacy supplement, or manufacturing supplement) submissions, the term ''review and act on'' is understood to mean the issuance of a complete action letter after the complete review of a filed

complete application. The action letter, if it is not an approval, will set forth in detail the specific deficiencies and, where appropriate, the actions necessary to place the application in condition for approval.

E. For original BLA and BLA efficacy supplement resubmissions:

1. Class 1 resubmitted applications are applications resubmitted after a complete response letter that include the following items only (or combinations of these items):

(a) Final printed labeling

(b) Draft labeling

(c) Safety updates submitted in the same format, including tabulations, as the original safety submission with new data and changes highlighted (except when large amounts of new information including important new adverse experiences not previously reported with the product are presented in the resubmission)

(d) Stability updates to support provisional or final dating periods

(e) Commitments to perform Phase 4 studies, including proposals for such studies

(f) Assay validation data

(g) Final release testing on the last 1–2 lots used to support approval

(h) A minor reanalysis of data previously submitted to the application (determined by the agency as fitting the Class 1 category)

(i) Other minor clarifying information (determined by the Agency as fitting the Class 1 category)

(j) Other specific items may be added later as the Agency gains experience with the scheme and will be communicated via guidance documents to industry.

2. Class 2 resubmissions are resubmissions that include any other items, including any item that would require presentation to an advisory committee.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,

Washington, DC, November 14, 2002.

Hon. EDWARD KENNEDY,

U.S. Senate,

Washington, DC.

DEAR MR. CHAIRMAN. As you are aware, the Medical Device User Fee and Modernization Act of 2002 was signed by the President on October 26, 2002. Under Title I, the additional revenues generated from fees paid by the medical device industry will be used to expedite the medical device review process, in accordance with performance goals that were developed by the Food and Drug Administration (FDA) in consultation with the industry.

FDA has worked with various stakeholders, including representatives from consumer, patient, and health provider groups, and the medical device industry to develop legislation and goals that would enhance the success of the device review program. Title I of the Medical Device User Fee and Modernization Act of 2002 reflects the fee mechanisms and other improvements developed in these discussions. The performance goals referenced in Section 101 are specified in the enclosure to this letter, entitled ''Performance Goals and Procedures.'' I believe they represent a realistic projection of what FDA can accomplish with industry cooperation and the additional resources identified in the bill.

This letter and the enclosed goals document pertain only to title I (Fees Related to Medical Devices) of Public Law 107–250, Medical Device User Fee and Modernization Act of 2002. OMB has advised that there is no objection to the presentation of these views from the standpoint of the Administration's program. We appreciate the support of you and your staffs, the assistance of other Members of the Committee, and that of the Appropriations Committees, in the authorization of this vital program.

Sincerely,

TOMMY G. THOMPSON.

LOCAL LAW ENFORCEMENT ACT OF 2001

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

I would like to describe a terrible crime that occurred September 6, 2001in Madison, WI. Two men were arrested on the University of Wisconsin campus for attempting to strangle a gay man. The attackers were part of a visiting group on campus to talk about homosexuality. The attackers approached the victim, told him that it was his time to go to hell, then began choking him.

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.

ELECTRIC ASSISTED LOW-SPEED BICYCLES

Mr. JEFFORDS. Mr. President, I am very pleased that H.R. 727 will soon be on its way to the President for signature.

This bill, which passed the other body by a 401 to 1 margin on March 6, 2002, will help promote the use of electric-assisted low-speed bicycles and will help seniors participate in cycling related activities. For many of our seniors, long-distance bicycle rides or participation in bicycle clubs in areas with extensive hills, can present an unfair challenge.

Simply put, this bill will allow seniors to more fully participate in these events while, at the same time, providing solid exercise for them. I believe that in states, such as my home state of Vermont, our senior citizens may derive benefits from using these low-speed pedal-assisted electric bicycles for help getting up our steep terrain.

Not only will these bikes improve mobility options for seniors, they will also help to reduce congestion on our roads and air pollution when used for commuting purposes. Since these bikes produce no noise or exhaust because they are powered by small batteries rather than gasoline powered engines, they provide an environmentally friendly transportation option to our citizens and should be treated as bicycles and not as motor vehicles.

H.R. 727 states that these low-speed pedal-assisted electric bikes, as defined in very detailed Consumer Product Safety Commission, CPSC, rules—found at 16 CFR 1512—shall be considered bikes and not motor vehicles.

These detailed existing safety standards for bicycles should be applied in every state, as in current law, and as would be required under the bill for these low-speed pedal-assisted electric bikes. The existing safety rules are based on extensive experience and tests done on material strength, stem and fork torque resistance, pedal design and the like and should apply throughout the nation. The existing rules, referenced in H.R. 727, set the requirements for such things as: handlebar stem insertions; pedal construction; chain guards; handlebar stem tests; stem-to-fork clamp tests; bicycle design; handlebar strength; front hub retention; attachment hardware; hand levers for brakes; reflectors; pedal reflectors; seat size; maximum seat height; and the like.

To assure the safety of these bicycles, the bill provides for federal preemption of State law or requirements—as provided in section 1(d) of the bill—regarding those detailed CPSC safety rules. The CPSC would have the authority to issue additional federal rules regarding the construction and physical properties of these low-speed bicycles to ensure safety.

Obviously, local regulation of where these low-power bicycles can be ridden, such as not on sidewalks if that is the state or local rule, or not on high-speed thruways, or whether helmets are required, would still be a local matter. Local or state governments would continue to regulate the use of these and other bikes, who could ride the bikes, and where they could be ridden, but they could not alter the safety rules for the construction of the bikes, or the metals or materials to be used for that construction, which would be in the hands of the CPSC.

H.R. 727 also specifies a 20 mph limit on speed, on a flat surface, for these electric assisted bikes. The bikes covered by this bill look similar to ''regular'' low-weight bicycles and will have similar speeds but require less human leg power and stamina.

It is important to note that this bill does not relate to other devices such as the Segway human transporter which does not meet any of the detailed requirements for a bicycle set forth in the CPSC rules.

I am aware of companies researching such electric bicycle product advancements, such as Wavecrest right here in Northern Virginia, and am excited about the prospects for the future.

I appreciate the strong efforts in the other body of Mr. CLIFF STEARNS, Mr. BILLY TAUZIN, Mr. HOWARD BERMAN, Mr. EARL BLUMENAUER, Mrs. LOIS CAPPS, Mr. DENNIS MOORE, Mr. MICHAEL OXLEY, Mr. CHARLES PICKERING, Mr. JAMES OBERSTAR and many others. In the Senate, I appreciate efforts of Chairman HOLLINGS, ranking member Senator MCCAIN and Senator BURNS, all of the Commerce Committee, in getting this bill to the Senate floor where it passed without opposition.

As I work on the massive reauthorization of our surface transportation

program next year, I intend to work to fund additional bicycle paths and enhance existing paths as use of these paths increases over time.

THE FAILURE TO PASS AN ENERGY BILL

Mr. ROCKEFELLER. Mr. President, it is with a tremendous amount of frustration and disappointment that I come before the Senate to discuss the failure of efforts in the 107th Congress to craft an energy bill. I have been a long-time advocate of a comprehensive national policy that would address the national and economic security aspects of this country's growing demand for energy, as well as the importance of protecting our environment.

I was very proud of the work the Senate had done this year to produce this legislation. Under the leadership of Majority Leader TOM DASCHLE and Senate Energy and Natural Resources Chairman JEFF BINGAMAN, the Senate did what many in Washington thought impossible—we produced balanced and responsible energy legislation combining increased domestic production of conventional fuels, expanded use of alternative and renewable energy sources, and energy conservation and efficiency programs. Unfortunately, in our rush to complete work on a number of pending matters, many Senators chose to not proceed with Conference negotiations, acquiescing in what I would characterize as a strategy to scuttle this worthwhile bill.

Perhaps the thought was that a better bill—or at least one that better met a different set of priorities—could be crafted next year. Candidly, I doubt it. I believe the demise of the Energy bill this year is unfortunate for West Virginia, and for the entire nation. During a nearly year-long debate on the complex components of the energy bill, my position as a senior Majority member of the Senate Finance Committee allowed me to influence the legislation so that its end results would be good for consumers, workers, and industries in my state of West Virginia. I am concerned that a new set of circumstances confronting the 108th Congress will result in a bill that does not serve my state nearly as well.

While the need to grapple with energy issues will not go away, no matter what other factors are to be considered, Congress will be forced to act in a vastly changed budgetary climate. The growing deficit, additional proposed tax cuts, and the need to fund both a war on terrorism and a possible war with Iraq, will inhibit the ability of Congress to make any significant outlays to improve our energy situation.

The 2002 energy bill was a bipartisan effort. Perhaps most significantly for West Virginia, there was general agreement among Senate conferees that the final bill should include meaningful Clean Coal incentives. I worked very hard to see that the Senate-passed bill included incentives for the installation of Clean Coal technologies on smaller existing coal-burning facilities, such as we have in West Virginia. The version passed by the House would have bypassed existing facilities altogether—putting thousands of West Virginia jobs at risk and jeopardizing the health of all West Virginians downwind of these plants. As a member of the House-Senate Conference Committee reconciling the two versions of the energy bill, I was able to ensure that the final legislation included incentives for existing facilities. If the energy bill is considered again in the 108th Congress, I will likely again be a conferee, but my ability to apply pressure to benefit the people and environment of our state will be lessened.

I also worked closely with a number of colleagues from both parties to see that the bill included incentives to capture coal mine methane, a deadly hazard in coal mines, and a potent greenhouse gas when vented to protect the lives of miners. I was proud to join with members from both sides of the aisle to extend credits for the production of oil and natural gas from nonconventional sources. Without this credit, the natural gas industry in the entire Appalachian Basin would likely cease to exist. Likewise, I was pleased to join in a bipartisan effort to promote the use of alternative fuels and alternative fuel vehicles. Similarly, I joined colleagues from across the political spectrum to further research and development and create tax incentives for the production of electricity from renewable sources, and to increase energy efficiency in homes, commercial buildings, and appliances.

In fact, what most frustrates me is that this product of so much bipartisan cooperation is dead because of what may have been a cynical calculation to reconsider later a few issues with which there will never be truly bipartisan agreement.

If the next Congress does revisit the issue of a national energy policy, I am certain that those in charge will put much-needed emphasis on domestic production. At the same time, I have serious doubts that the incoming congressional majorities will toil quite as hard to balance that priority with the equally necessary issue of protecting the environment. In the same vein, while I suspect that there will be new efforts to exploit the Arctic National Wildlife Refuge and on our other public lands, regardless of the minimal amounts of mineral resources that may be recoverable, I am not confident that a new bill's authors will show the same zeal to expand our domestic energy production from clean and abundant renewable resources.

This has been a hard fight, and while not perfect, the legislation we were so close to producing would have been the truly comprehensive and balanced energy policy that I have been calling for since I came to Congress eighteen years ago. Since then, I have continuously urged my colleagues in the Congress, as well as both Republican and Democratic presidential administrations, to work together on a responsible energy policy for this country. The 107th Congress was prepared to deliver a balanced, comprehensive energy plan for the President's signature. Now, for a number of reasons the energy bill is dead, putting the American economy and the American environment at risk. I find this frustrating, short-sighted, and extremely unfortunate.

U.S. LEADERSHIP IN AEROSPACE—TODAY AND TOMORROW

Mr. AKAKA. Mr. President, I rise to discuss a core factor in America's leadership and strength in the new century: aerospace. The aerospace industry dominates the telecommunication and transportation world, while military aerospace expertise has defended the Nation and served as the eyes and ears of our forces overseas.

Congress established an Aerospace Commission last year to study the state of the American aerospace industry in the global economy and national security and to assess the importance of the domestic aerospace industry for the future security of the Nation. It is appropriate that the Aerospace Commission released its report on the future of the aerospace industry this Monday during the final debate on homeland security, an area only beginning to appreciate what aerospace can offer.

The Aerospace Commission reviewed the range of military, civil, and commercial aspects of aviation and space and studied the key components of the aerospace community—government, industry, labor, and academia. The Commission benefited from the broad range of expertise and experience among its Commissioners, including former Astronaut Buzz Aldrin, former Defense Under Secretary John Hamre, and Director of the Hayden Planetarium Dr. Neil Tyson.

The Commission offered several recommendations to correct the weakening of the aerospace sector. Each recommendation addressed a different critical factor that is showing signs of fatigue. I would like to discuss the Commission's recommendations relating to the aerospace workforce and education.

The aerospace industry, like many of our high-tech sectors, has a workforce crisis. According to the Commission report, our Nation has lost over 600,000 scientific and technical aerospace jobs in the past 13 years. These job losses, first due to reduced spending in defense, then due to acquisitions and mergers of aerospace companies, and later to foreign competition in the commercial aerospace market, represent a significant loss of skill and expertise. Many of the talented people

who remain are approaching retirement. How will industry and the Government restore the aerospace workforce and make aerospace a field that attracts new and qualified talent?

Unfortunately, even the Aerospace Commission could not arrive at any short-term solutions to this problem. The solution will only come from the Government's and the private sector's long-term attention and commitment. The Commission stressed that a long-term solution must begin with improved math and science education across the entire education range, from kindergarten to graduate school. Many of the Commission's recommendations in this regard mirror my own work on science and math education and the federal workforce. The Commission found that scholarship and internship programs to encourage more students to study and work in math, science, and engineering are vital if the aerospace community is to have a pool of scientifically and technologically trained applicants.

The Commission stressed that Congress needs to renew its focus on national aerospace needs and priorities. Indeed, some of the Commission's recommendations are unconventional and will require the Senate's attention and deliberation to determine if they are the best solution. The Commission's nine recommendations were:

Given the real and evolving challenges that confront our Nation, Government must commit to increased and sustained investment and must facilitate private investment in the national aerospace sector. The Commission recommends that the United States pioneer new frontiers in aerospace technology, commerce, and exploration.

The Commission concludes that superior mobility afforded by air transportation is a huge national asset and competitive advantage for the United States. The Commission recommends transforming the U.S. air transportation system as a national priority. Specifically, the Commission recommends rapid deployment of a new, highly automated air traffic management system that is robust enough to efficiently, safely, and securely accommodate an evolving variety and growing number of aerospace vehicles and civil and military operations.

The Commission concludes that the Nation will have to be a space-faring nation in order to be the global leader in the 21st century and that America must exploit and explore space to assure national security, economic benefit, and scientific discovery. The Commission recommends that the United States create a space imperative and a partnership between NASA, DOD, and industry to develop aerospace technologies, especially in the areas of propulsion and power.

The Commission concludes that aerospace capabilities and the supporting defense industrial base are fundamental to U.S. economic and national security. The Commission recommends that the Nation adopt a policy that invigorates and sustains the aerospace industrial base. Specifically, the Commission recommends new procurement policies to include prototyping and spiral development to allow the continuous exercise of design and production skills; removing barriers to defense procurement of commercial products and services; and stable funding for core capabilities.

The Commission concludes that the Government needs to create an environment that fosters innovation in the U.S. aerospace industry. The Commission recommends that the Federal Government establish a national aerospace policy and promote aerospace by creating a Government-wide management structure. This would include a White House policy coordinating council, and aerospace management office in OMB, and a joint committee in Congress.

The Commission concludes that U.S. aerospace companies must have access to global consumers, suppliers, and partners in order to achieve economies of scale in production needed to integrate that technology into their products and services. The Commission recommends that U.S. and multilateral regulations and policies be reformed to enable the movement of products and capital across international borders on a fully competitive basis, and establish a level playing field for U.S. industry in the global market place. This would include substantial overhaul of U.S. export control regulation and efforts by the U.S. Government to neutralize foreign government market intervention in areas such as subsidies, tax policy, export financing and standards.

The Commission recommends a new business model for the aerospace sector, designed to promote a healthy and growing U.S. aerospace industry. This model is driven by increased and sustained Government investment and the adoption of innovative Government and industry policies that stimulate the flow of capital into new and established public and private companies.

The Commission recommends the Nation immediately reverse the decline in, and promote the growth of, a scientifically and technologically trained U.S. aerospace workforce. This would include efforts by the administration and Congress to create an interagency task force that develops a national strategy on the aerospace workforce to attract public attention to the importance and opportunities within the aerospace industry; establish lifelong learning as key elements of education reform; and make long-term investment in education and training with major emphasis in math and science.

The Commission concludes that Government policies must be proactive and sustain public investments in long-term research and RDT&E infrastructure to get new breakthroughs in aerospace capabilities. The Commission recommends that the Federal Government significantly increase its investment in basic aerospace research, which enhances U.S. national security, enables breakthrough capabilities, and fosters an efficient, secure, and safe aerospace transportation system.

I was one of the first members of the House Space Caucus and understand the importance aerospace plays in our economy, security, and education. The Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services, which I chair, released a report last year detailing how Federal civilian agencies use data collected by satellites and planes to carry out their missions. My own State of Hawaii is at the forefront of using aerospace technology and research to help Hawaii's fragile ecosystem and agriculture.

I hope that my colleagues will take note of the information and recommendations in the Aerospace Commission report so that we can work together to sustain and strengthen our aerospace community. To quote the report, ''It is imperative that the U.S. aerospace industry remains healthy to preserve the balance of our leadership today and ensure our continued leadership tomorrow.''

INDIAN PROBATE REFORM ACT OF 2002

Mr. INOUYE. Mr. President, I ask unanimous consent that the Congressional Budget Office letter to accompany S. 1340, which was reported out today and a letter from the Department of the Interior, be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, November 4, 2002.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.,

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1340, the Indian Probate Reform Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs), who can be reached at 226–2860, and Cecil McPherson (for the impact on the private sector), who can be reached at 226–2940.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1340—Indian Probate Reform Act of 2002

S. 1340 would amend laws that govern how an individual's interest in Indian allotments (certain parcels of land that are owned by individuals or groups of individuals) is transferred upon the death of the owner. Based on information for the Bureau of Indian Affairs (BIA), CBO estimates that implementing S. 1340 would cost about $1 million in fiscal year 2003, assuming the availability of appropriated funds, to train BIA estate planning assistants and to notify individual allotment interest owners and Indian tribes of the changes in this law. CBO estimates that enacting S. 1340 would not affect direct spending or revenues.

S. 1340 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 1340 would impose new private-sector mandates, but CBO estimates that the total direct costs of those mandates would not exceed the annual threshold established in UMRA ($115 million in 2002, adjusted annually for inflation) for any of the first five years that the mandates are in effect.

By placing new eligibility and distribution requirements on the inheritance of interests in Indian trust and restricted lands, S. 1340 would impose new private-sector mandates on those persons who might otherwise inherit such interests under current law. The loss of inheritance (or a portion of an inheritance) would impose direct costs on people who would otherwise receive an interest in such property. CBO expects that the mandates would affect only a limited number of such people in the near term. At the earliest, mandates in the bill would take effect only upon the death of an owner of land interests. Further, the mandates would only apply to interest in trust or restricted land of someone who died without a will. Although requirements in the bill would affect some

heirs, many such cases would involve only a small fractional interest in land. Thus, CBO estimates that the costs of private-sector mandates in the bill would not exceed the annual threshold established in UMRA in any of the first five years that the mandates are in effect.

The CBO staff contacts for this estimate are Lanette J. Walker (for federal costs), and Cecil McPherson (for the impact on the private sector). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY,

Washington, DC, Jun 24, 2002.

Hon. DANIEL K. INOUYE,

Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter sets forth the views of the Administration on S. 1340, a bill to amend the Indian Land Consolidation Act of 2000 to provide for probate reform with respect to trust or restricted lands. We support the bill.

S. 1340 will provide the American Indian people who own trust and restricted assets with one uniform probate intestate code that can be applied throughout Indian country. The legislation is clearly the product of a lot of hard work by Departmental employees and members of your staff in order to achieve the common goal of reforming the Department's Indian probate program.

During tribal consolidations held in July and August 2000 on the proposed probate regulations, many Tribes recommended and supported a uniform probate intestate code. At the present time, federal statutes provide that the law of the state where the land is located be applied in the distribution of the estate. See 25 U.S.C. §348. As a result of intertribal marriage, it is not uncommon that an Indian decedent owns lands on reservations in several states. The effect of applying up to 33 different state laws to the restricted and trust lands of a decedent results in disparate and unfair treatment of the distribution of the entire estate to the same heirs.

For example, in Nebraska a surviving spouse is entitled to receive the first $50,000 of the estate. Thereafter, the law provides that the surviving spouse receive ½ and children get ½ of the remainder of the estate. Minnesota law provides that a surviving spouse's share is the first $150,000 plus ½ of the balance of the intestate estate if all of the heirs are also heirs of the surviving spouse. In contrast, Wisconsin law provides that a surviving spouse receive 100 percent of the estate unless one or more children are not the children of the surviving spouse, then the surviving spouse receives only ½. New Mexico law differs from the previous examples in that a surviving spouse gets all the community property, then ¼ of the estate if there are descendants of the decedent.

Another area of concern is the inheritance rights of adopted children and the inconsistencies in state laws. Minnesota law provides that an adopted child may inherit from his/her natural parents, while Montana law provides that an adopted child may only inherit from the adopted parents.

The enactment of a uniform intestate code for trust and restricted estates is of great benefit to both the heirs and the Department. The benefit to the heirs is that the same law will be applied to all the trust and restricted estate of the decedent no matter where the real property is located. A uniform intestate probate code will provide for the division of shares of the entire estate and will be the same throughout the United States. The heirs may disclaim their interests or otherwise agree to a settlement to distribute the estate if the children want to give a larger share to their surviving parent. The federal government's cost to update and maintain land records will be reduced. The Department will be able to decide cases and issue orders in a more timely manner. A new body of federal law will be created and decisions will be more consistent across the Nation, resulting in fewer appeals. The necessity of thoroughly researching state laws will no longer exist, it will take less time to issue an order determining heirs. Finally, a uniform intestate code may encourage Indian tribes to adopt their own inheritance codes. The uniform intestate code will serve as a model for Tribes to develop their own tribal probate codes.

The proposed uniform intestate succession facilitates the consolidation of interests to remain in trust or restricted status and complements the provision of Indian Land Consolidation Act to minimize further fractionation of Individual Indian interests in trust and restricted lands. For estate planning purposes, one uniform intestate code will provide a foundation to encourage the execution of wills for disposition of trust or restricted assets. For example, the proposed section for pretermitted spouses and children will necessitate specific estate planning if the decedent marries after the execution of a will but intends to leave nothing to a new spouse. S. 1340 at §232(d). Similarly, if the testator divorces after executing a will and has left property to the former spouse, the devise is revoked by law unless the will provides otherwise. S. 1340 at §232(e)(2).

State probate laws are often amended and likewise affect long term estate planning. A change in state law may also necessitate the execution of a new will. Thus, frequent amendments of state laws frustrate the purposes of promoting estate planning among Indian landowners. There will obviously need to be considerable community education on the new sections of the proposed uniform intestate law that will require more comprehensive estate planning.

We recommend that Senate Bill 1340 include a provision that excepts the application of the uniform intestate code to the Five Civilized Tribes of Oklahoma until such time as the Five Nations bill is enacted. The Five Civilized Tribes are subject to the state district courts of Oklahoma and Oklahoma probate law is applied to determine intestate succession. Thus, the removal of the exception should be reflected in S. 2880, the Five Nations legislation.

We would like to suggest amendments to portions of existing federal statutes relevant to inheritance prior to the passage of S. 1340. The amendments are:

25 U.S.C. §348—After the second "Provided," strike the words, "That the law of descent in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except by the" and insert "the Indian Land Consolidation Act, as amended, shall apply where such trust or restricted assets are located". See S. 1340 at §234(c).

25 U.S.C. §372—Insert before the word "hearing" in the words "upon notice and hearing", the words "opportunity for a". Insert the words "probate the decedent's trust estate, and pay valid creditor's claims out of funds in such estate or funds that may accrue up to the date of death of the decedent" after the word "decedent,". Insert "Provided, That in the payment of claims, 31 U.S.C. §3713(a)(1)(b) shall not apply." after "section 373 of this title."

25 U.S.C. §373—Insert "Provided also, that the Secretary shall pay valid creditor's claims out of funds in such estate or funds that may accrue up to the date of death of the decedent except that 31 U.S.C. §3713(a)(1)(b) shall not apply:" after the words "or use it for their benefit:"

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

NEAL A. MCCALEB,
Assistant Secretary for Indian Affairs.

RECOGNITION OF DOLORES GARCIA

Mr. BINGAMAN. Mr. President, it is rare for me to make a statement for the RECORD in honor of a retiring staff member, but this is a rare staff member—one who by any measure would be deserving of the Senate's time and of space in the CONGRESSIONAL RECORD. I am speaking of Dolores Garcia, whose service in the Senate started the same day as my own, January 3, 1983. Dolores and I had worked together prior to that when I was Attorney General of New Mexico, and she had been with the Attorney General's staff long before I came to that office.

My staff and I, as well as countless New Mexicans, feel fortunate to know and work with Dolores. Diligent, competent, with a benevolent nature and a strong work ethic, Dolores embodies the best of human traits. In her work as the coordinator for service academy nominations, she has started many young leaders on their way to success. She helps keep my Santa Fe office running smoothly, attends the needs of local and legislative officials, helps manage my office budget, and coordinates my state schedule. No matter how busy she might be, she always has time and a kind word for those who turn to her for help.

Dolores is a great friend to my staff and me. We hold her in the highest esteem. Another long-time staff member commented that he thought his best hope of getting into Heaven is on her coattails. I feel the same, Mr. President, and would feel fortunate to have her vouch for me.

A SPECIAL ADOPTION MONTH

Mr. CRAIG. Mr. President, November is a special month to the adoption community, because it is National Adoption Month. In my state of Idaho, this particular November is a very special month because it is when one of our newest citizens—Tilly McKeown—came home.

Tilly is one of hundreds of children from Cambodian orphanages who are the focus of a special humanitarian initiative by the United States Immigration and Naturalization Service and the State Department. Adoptions from Cambodia were halted late last year because of serious concerns about the process in that country, and the initiative has been working since then to investigate and clear these adoptions on a case by case basis.

We all want the adoption system to be ethical, transparent, and efficient. To achieve those goals in international adoptions, the United States signed the

Hague Convention on Intercountry Adoption, a landmark international treaty setting standards for adoption that will protect the interests of children and families everywhere in the world. The Senate ratified the treaty, and Congress passed legislation to implement it.

We expect our federal agencies involved in international adoption to work toward these goals with all sending countries, whether they have signed the treaty or not. These are important policy goals for our government, but what is more important, they will help bring waiting children everywhere together with the families who will love them forever.

They also will help prevent situations like the Cambodian dilemma from ever happening again. Before last December, our country had never placed a moratorium on adoptions out of a foreign country, and I think it is safe to say that anyone who knows anything about the Cambodian moratorium hopes our country never takes such an action again. In fact, some of us in Congress have worked on legislation to that end.

This surely must be the hope of every family whose adoption was caught in the moratorium. Mr. President, the anguish these families have endured is indescribable. I do not think a day has passed when they have not pressed the Cambodian and American governments for a resolution to enable them to bring their children home to the United States. They know all too well what an enormous impact government policies can have on human lives and futures.

I hope that some day, Tilly's parents will tell her the true story of how hard they worked, every day, to bring her home how sad they were every time the answer was ''not yet,'' how they traveled all the way to Cambodia just to see and hold her, and how overjoyed they were when they finally got the call to bring their daughter home.

And when they tell her that story, I hope they also share with her the fact that there were people across the nation and around the world who also cared, and worried about her, and were trying to help her and her family. In the United States Senate, the House of Representatives, the Department of State, the Immigration and Naturalization Service, and our embassies, people knew about Tilly and were working to remove the obstacles that kept this family apart, while still carrying out the requirements of the law. The White House played a critical role, providing extraordinary leadership and resources to resolve this complicated situation. The commitment this Administration has made to all of these families and their children is truly remarkable and should be commended. The humanitarian initiative has made tremendous progress, and none of this could have happened without the dedicated efforts of all these individuals, working together.

I realize the resolution of the Cambodian adoption crisis cannot come fast enough for the families involved, and some will never accept or forgive the decision that was made last December, or the amount of time that has passed. To them, I pledge to see this initiative through and work for reforms so that no other families are put in this predicament again. To the many government officials who are working in the field or in Washington, D.C. on this initiative, I encourage you to persevere in this very important effort; you are making a lasting difference in the lives of these families and their children.

And to Tilly, a very happy welcome to Idaho—at last.

SPINA BIFIDA

Mr. COCHRAN. Mr. President, I am pleased today to pay tribute to the more than 70,000 Americans and their family members who are currently affected by Spina Bifida, the Nation's most common permanently disabling birth defect. I also want to compliment the Spina Bifida Association of America, an organization that was founded in 1973 to address the needs of the individuals and families affected by Spina Bifida and which is currently the only national organization dedicated solely to advocating on behalf of the Spina Bifida community.

Spina Bifida is a neural tube defect that occurs when the central nervous system does not properly close during the early stages of pregnancy. Spina Bifida affects more than 4,000 pregnancies each year, but with proper medical care, people who suffer from Spina Bifida can lead full and productive lives. Today, approximately 90 percent of all babies diagnosed with this birth defect live into adulthood, approximately 80 percent have normal IQs, and approximately 75 percent participate in sports and other recreational activities. However, they must learn how to move using braces, crutches or wheelchairs, and how to function independently. The challenge now is to ensure that these individuals have the highest quality of life possible and to prevent future cases of Spina Bifida.

Congress has done much to deal with the challenges posed by Spina Bifida including providing funding to establish a National Spina Bifida Program at the Centers for Disease Control and Prevention. I was pleased the Senate recently adopted the ''Birth Defects and Developmental Disabilities Prevention Act of 2002,'' which takes important steps to improve the quality of life for individuals and families affected by Spina Bifida.

I also want to thank the Spina Bifida Association of Mississippi for all it has done for the families in our State who are affected by this condition. Specifically, I commend Susan Branson, the president of the Spina Bifida Association of Mississippi, for her dedication and commitment to helping families like her own who each day face the joys and challenges of having a child with Spina Bifida. In October, which was designated as National Spinal Bifida Awareness Month, Susan and her husband, Alan, and their 4-year-old daughter, Abigail, visited Washington and met with me. The Bransons live in Jackson, Mississippi, and in addition to Abigail they have four other children. We talked about their family's experience with having a child with Spina Bifida. When Abigail was born they were told that she would never be able to walk. Today, due to her and her parents' vigilance, advocacy, and commitment, Abigail can now walk with the aid of braces and a walker.

The Spina Bifida community and our nation have made great progress over the past three decades. Much work still needs to be done, but I am confident this organization and its chapters are up to the challenge.

CONGRESSMAN JOSEPH R. SKEEN

Mr. BINGAMAN. Mr. President, when this session of Congress ends, one member of New Mexico's congressional delegation will be retiring, and I rise to acknowledge his departure from public life and to express appreciation for his loyal service to our state and this nation.

JOE SKEEN has been involved in Republican politics in New Mexico for more than forty years, most of them as an elected official. He was in the State Senate for ten years, and while his two campaigns for governor in the 1970's were unsuccessful, he is one of the very few in the history of our country elected to the Congress as a write-in candidate. That occurred in 1980, and he has served his district in the House of Representatives for eleven terms, longer than any New Mexico House Member.

It cannot be said that JOE and I agree on even every fourth issue that comes down the pike, but we have worked well together on so much that matters to New Mexico. I have never doubted for a moment his devotion to what he thinks is right, nor have I doubted his ability to get the job done.

New Mexico is a small town in many ways, and while JOE and I were acquainted before either of us came to Washington, it was when I came here that we really got to know one another. I consider him, and his wife, Mary, to be friends, and am honored that they think the same of me.

They raise sheep on their ranch in Lincoln County, and I know JOE will be glad to get back home after having distinguished himself in the Congress, and representing his District so well.

We'll miss him.

THE REAL INTERSTATE DRIVER EQUITY ACT

Mr. TORRICELLI. Mr. President, the coming days will be historic for a large

number of small businesses that make up the luxury ground transportation industry. After much hard work from several members of the New Jersey Delegation and hundreds of constituents in New Jersey and around the country, the President will sign H.R. 2546, The Real Interstate Driver Equity Act. This Act will bring tremendous relief to those operators of the luxury ground transportation industry conducting interstate business.

Four years ago, two of my constituents Don Kensey of Au Premiere Limousine of Bellmawr, and James Moseley of James Limousine of Cherry Hill, approached my good friend Congressman Rob Andrews concerning the problem limousine operators in New Jersey were having with local jurisdictions in other States seizing and fining properly authorized vehicles upon picking up their clients to return them to New Jersey. Joining with many other limousine businesses in New Jersey and the National Limousine Association, our constituents organized a national grassroots campaign in the 106th Congress to educate the House and Senate. Today, the Congress is aware of the hardships faced by these small business owners across the country.

Because such a substantial portion of their service does not occur in a single State, limousine and other prearranged ground transportation service providers are frequently assessed registration and licensing fees by these other States. Enforcement of these requirements, which includes vehicle impoundment and heavy fines, has caused tremendous hardship to drivers and owners of these businesses, over 80% of which are one-to-three car operators grossing less than $500,000 a year. I would note that these problems are especially hard on small businesses in New Jersey, which borders on two States with large cities and airports.

Indeed, I was shocked to hear that in one particularly egregious instance, the CEO of McGraw Hill Publishing was forced out of his limousine, which was seized in another State and told to find another way home. That was when Senator CORZINE and myself, along with Congressman ANDREWS decided to take action.

The Real Interstate Driver Equity Act simply prohibits States other than a home licensing State from enacting or enforcing a law requiring a fee or some other payment requirement on vehicles that provide prearranged transportation service. States and localities can no longer restrict limousine or sedan services if the service is registered with the Department of Transportation as an interstate carrier; the company meets all of the requirements of the State in which it is domiciled or do business; and the limousine or sedan service is engaged in providing pre-arranged transportation from one state to another, including round trips.

This Congress, through the hard work of our constituents, has finally remedied this inequity in our interstate commerce law.

There were several other members who were instrumental in passing this legislation. I would like to thank Congressmen ROY BLUNT and ROB ANDREWS, who took the lead on H.R. 2546 in the House of Representatives and helped ensure its passage last year. In April of this year, with the assistance of my colleagues Senator HOLLINGS and Senator MCCAIN, the Commerce, Science and Transportation Committee passed H.R. 2546 unanimously. I am also most grateful to Senator REID, Senator BOND, and Senator CORZINE for their able assistance in passing this important small business legislation.

USE OF CUSTOMS FEES

Mr. DORGAN. Mr. President, there is an important provision in the Homeland Security Act of 2002 (H.R. 5710), that, if misinterpreted, could limit the ability of the U.S. Customs Service to effectively protect our borders.

Section 413 of this bill appropriately seeks to ensure that user fees that are currently used exclusively by the Customs Service for the purposes set out in 19 U.S.C. 58(c) will continue to be used for that sole purpose. These fees are paid by commercial vessels, aircraft, railroads and passengers that enter the U.S. This money is used to ensure that there will be Customs personnel available to clear these arriving goods and passengers efficiently when they arrive.

I am concerned that the wording of section 413 could be misconstrued since it merely states that these fees must be directed to the commercial operations of the Customs Service. I want to clarify that the intent of this provision is that these fees continue to be used for the purposes for which they were originally intended as set out in 19 U.S.C. 58(c). Additionally, I have consulted with Senator BAUCUS and Senator LIEBERMAN and they both agree with this view.

The work done by Customs inspectors at our ports of entry is critically important to our country's security and economic health. More than 1,100 Customs inspector positions, as well as overtime pay for Custom's employees, are currently funded out of the fees referred to in section 413. It is imperative that these fees continue to be used as intended. This statement serves as clarification that this is the purpose of section 413 of the Homeland Security bill being considered by the Senate.

BROWNFIELDS REVITALIZATION

Mr. BAUCUS. Mr. President, I rise today to highlight an issue of great importance to the people of my State and to people across this country.

Over the past several years, I worked closely with a number of my Senate colleagues to pass the Brownfields Revitalization and Environmental Restoration Act. Signed into law by the President last year, this act is an innovative piece of legislation that will promote and accelerate the cleanup of hundreds of brownfield sites around the country.

The Brownfields Revitalization and Environmental Restoration Act passed with strong bipartisan support in both the House and the Senate. It will help states and local communities clean up the country's estimated 1,000,000 brownfield sites. These sites blight our communities, threaten public health and safety, and drain local tax bases.

I am proud of this legislation. It devotes desperately needed resources to address the environmental and economic challenges posed by brownfields.

Still, I remain convinced that there is much left to do. With an estimated 1,000,000 brownfield sites across this nation and new sites being discovered each day, the very best efforts of our government will be insufficient to tackle this growing concern in any reasonable period of time.

For that reason, I have begun exploring legislative options to encourage additional private capital investment in the remediation and redevelopment of our nation's brownfield sites. Such a solution would complement the Brownfields Revitalization and Environmental Restoration Act and could help us make great strides toward creating jobs and cleaning up the environment in communities across the country.

Over 60 percent of the institutional capital in the United States is held for investment by tax-exempt entities such as pension funds and university endowments. Given the risks associated with acquiring and cleaning up contaminated sites, it is no surprise that private investors are reluctant to invest large amounts of capital in brownfields cleanup and revitalization. Tax exempt entities are often prevented from engaging in brownfield cleanups because of the unrelated business taxable income, UBTI, provisions in the code.

The UBTI provisions of the tax code play an important role in ensuring that entities do not use their tax-exempt status to gain a competitive advantage in the marketplace over taxed entities. It is clear, however, that the free market is not moving to remediate and redevelop many of these sites, certainly not at a rate that will solve this problem during our lifetimes. It is my belief that without some additional stimulus, many of these sites will remain unattractive as business investments and will continue to languish and blight our communities.

If we were to allow tax-exempt entities to invest in the remediation and redevelopment of these sites without incurring UBTI, we may be able to create a powerful engine to help revitalize our Nation's brownfield sites. It also seems possible that we could accomplish these goals in this slowed economic climate with a solution that neither materially impacts revenues nor

requires significant costs for administration.

In the coming months, it is my intent to explore legislative options to encourage the investment of additional private capital into the cleanup and redevelopment of our Nation's brownfield sites. It is my intention and desire to work on this matter in a bipartisan fashion with my good friend and colleague, the senior Senator from Iowa.

Mr. GRASSLEY. Mr. President, let me thank the good Senator from Montana and take a moment to echo his remarks. I strongly supported the Brownfield Revitalization Act and applaud the strides that it is making toward remediating brownfield sites across our Nation.

In Iowa, as in many other States, we are challenged with our share of brownfields in places like Des Moines, Cedar Rapids and Sioux City. The cleanup and redevelopment of brownfield sites can help reduce health risks, protect the environment, revitalize surrounding communities, preserve open space and create jobs by reintroducing properties into the stream of commerce that have languished for years.

Philosophically, I support efforts to encourage private markets to help solve problems such as those presented by our Nation's brownfield sites. Given the size and scope of the brownfield problem in this country, I believe it behooves us to look for additional, innovative and low-cost solutions to help encourage investment in the remediation and redevelopment of these sites.

I understand that current law may discourage tax-exempt investors from contributing capital to the remediation and revitalization of brownfield sites. Let me say to my good friend and colleague from Montana that I will gladly work with him to explore legislative options to help bring additional private capital to bear on solving our Nation's brownfield problem.

Mr. BAUCUS. Mr. President, I thank my good friend from Iowa. As we have worked together as chairmen and as ranking members of the Senate Finance Committee, I have always found him to approach issues in a fair and even-handed manner. Let me express my sincere appreciation to him for the many bipartisan efforts that we have worked on together, particularly the Brownfields Revitalization and Environmental Restoration Act that passed 99–0 in the Senate. I look forward to working with him on this and many other issues in the months and years to come.

CHIEF JUDGE LAWRENCE BASKIR

Mr. LEAHY. Mr. President, the United States Court of Federal Claims is the only federal court where the President may appoint and dismiss the chief judge. Although this power has been available since the Court of Federal Claims was established in 1982, President George W. Bush is the first President to use this power to remove a sitting judge. That is a regrettable decision because of the integrity and outstanding judicial record of the former incumbent, Chief Judge Lawrence Baskir. His absence is already being felt in the slower pace of important procedural reforms that Chief Judge Baskir had launched to improve the fairness and efficiency of the Court of Federal Claims.

Former Chief Judge Baskir was appointed in July, 2000 by President Clinton after the retirement of the previous incumbent chief judge, who had been appointed by President Regan. In his short, two-year tenure, Chief Judge Baskir had accomplished much in boosting public awareness of and respect for the work of this important, but little-known federal court.

The Court hears cases brought against the federal government by American citizens. It is especially important that litigants can rely on its objectivity and integrity. Some may say that because its original complement of judges was appointed by President Reagan and George Bush, Sr., its work had more of a political cast to it. Chief Judge Baskir worked hard to correct that impression, and he was scrupulous in every way in seeking to avoid even the appearance of any political involvement.

Among the ways he sought to reinforce the integrity of the Court was to ensure that incoming cases, some of which were highly charged with politics, were assigned automatically, ''off the wheel,'' and not directed to any particular, pre-determined judge. Just prior to his removal from the bench, the Court's new procedural rules took effect, rules for which he had pressed for two years. The rules, which are critical for the administration of justice and are the procedures for litigating cases in the Court, had not been revised in 10 years. Because Court rules define the parties' rights and obligations, they can give unfair advantage to one side or another. Their content is always contentious, and previous efforts to revise them had collapsed in deadlock. Chief Judge Baskir guided the revisions through with great success.

He reorganized the Clerk's Office, putting an end to delays in document handling, and instituted a ''same day'' rule for recording court filings. He brought the Court's electronic data systems into the 21st Century and created both internal and external web pages. He converted the main courtroom into a state of the art electronic courtroom, where attorneys can connect their own computers to the Court system, and have access to their own records and data and exhibits.

He also helped modernize the Court's alternative dispute settlement resolution, or ADR procedures. Resolving legal disputes through ADR can be a useful alternative to long litigation in certain circumstances. ADR is an important procedural option at the Court of Federal Claims, where citizens, often with very limited resources, are suing the federal government with its unlimited resources. ADR can serve in such instances to help level the playing field.

For example, he instituted a pilot ADR process in which incoming cases are assigned to an ADR judge at the same time they are assigned to a trial judge. This program is unique in the federal system, and has been chosen by the Federal Judicial Center as a model to examine and analyze for possible application in other federal courts.

Chief Judge Baskir made sure that ordinary citizens got fair treatment when they sued the federal government. Knowing of the large number of pro se plaintiffs, or people representing themselves, going up against the Justice Department, including parents with heartbreaking cases involving young children, he revised the system of handling these cases, and in the process referred more than 700 pro se plaintiffs to attorneys participating in the Court's vaccine program. Believing in the duty of members of the legal profession to contribute a portion of their time without charge for the good of the public, he also helped launch a pro bono program within the Court for both judges and legal clerks, and among the attorneys who are members of the Court's bar.

Many of these accomplishments would be impressive for a chief judicial administrative official whose tenure lasted a full term. This record is all the more impressive for having been achieved by a Chief Judge whose term lasted a mere 22 months. He achieved much because he brought an extensive legal and administrative background to the position, including service as Acting General Counsel of the U.S. Army, as staff director and chief counsel of a major U.S. Senate subcommittee, and as director and chief administrative officer of a major Presidential program under President Ford.

I commend Chief Judge Baskir on all that he accomplished as Chief Judge of the U.S. Court of Federal Claims. I thank him for his service to our Nation.

WHY SLOVENIA SHOULD BE INVITED TO JOIN NATO

Mr. HARKIN. Mr. President, the expansion of NATO is a forgone conclusion. Formal invitations are expected at the Prague Summit next week for three to nine new member countries to join. In fact, NATO enlargement represents a logical extension of the first serious American intervention in European geopolitics; namely, the famous Fourteen Points of President Woodrow Wilson, which provided substantial assistance and encouragement to the nations of Central Europe in their long-deferred aspirations to gain political independence and international recognition. History has shown that the substantial disengagement of America

from European politics between World War I and World War II, especially in Central Europe, left many newly independent nations in that region vulnerable to Russian and German hegemony.

As my colleagues know, NATO was originally created to confront the threat of Soviet expansion and to counterbalance the Warsaw Pact. Accordingly, when the cold war ended NATO's continued existence was questioned because it had fulfilled its original purpose. Rather than disband, however, NATO's 16 member countries, led by the United States, have sought to redefine the organization to meet the needs and challenges of a new era. NATO member states more recently have taken on new tasks, such as intervening and bringing to an end warfare in the Balkans. Since the September 11 attacks, NATO has also joined the battlefront in the struggle against terrorism. Through it all, NATO has looked to uphold the goals and principles it was conceived to defend: democracy, security cooperation, stability, and peaceful problem-solving throughout Europe and North America.

Critics of NATO expansion commonly cite article 5 of the NATO charter which declares an attack on any one member is an attack on all and obligates the signatories to assist the victim, as an unwise commitment with great potential to entwine the U.S. in foreign military conflicts in which U.S. security and vital national interests are not at stake. I joined those who were concerned, in the immediate aftermath of the cold war, that seeking NATO membership would require cash-strapped emerging democracies in Southern and Eastern Europe to spend too much of their national budgets on increased defense spending at the expense of meeting pressing shortfalls in education, health care, and other basic social needs.

Nevertheless, NATO enlargement is and has been the policy of our last three Presidents—Republicans and Democrats alike—and seems to have solid bipartisan support in the Congress. In Warsaw last year, President Bush expressed his proenlargement views saying, ''all of Europe's new democracies, from the Baltic to the Black Sea and all that lie between, should have the same chance for security and freedom, and the same chance to join the institutions of Europe, as Europe's old democracies.'' At the upcoming NATO Summit in Prague, this alliance will once again invite more countries to join NATO, and I believe strongly that the Republic of Slovenia should be at the top of the list for multiple reasons.

First, since Slovenia declared its independence in June 1991, the Slovenian people have made great strides towards becoming a stable parliamentary democracy. The Government of Slovenia is a tolerant one, granting its citizens complete religious freedom and many of the same civil liberties that we enjoy. It also respects the human rights of its citizens and an independent judiciary reinforces respect for the rule of law. An ombudsman deals with human rights problems, including citizenship cases. Minorities generally are treated fairly in practice as well as in law.

Second, with a rich industrial history, a traditional openness to the world, and sound macroeconomic policies, Slovenia is among the most successful countries in transitioning from socialism to a market economy. It boasts a stable growth in GDP, which now exceeds the equivalent of $16,000 in purchasing power parity relative to this small country's per gross domestic product. Slovenia also ranks among the countries with the lowest degree of investor risk. The level of privatization achieved and many other measures have improved the competitiveness of the Slovene economy and the profitability of companies doing business with the European Union. Among the more than 144,000 registered companies in Slovenia, the greatest number are engaged in trade and commerce, followed by industry, services, real estate, construction, transport and communications. Following independence, small business flowered and now more than 90 percent of Slovenia's companies are classified as small business enterprises.

Third, Slovenia offers the alliance a new partner to help stabilize and pacify the historically and currently unstable ''powder-keg'' region of the Balkans as well as Western and Central Europe. NATO operations in the Balkans have already proven the value of temporary bases, land, air and sea; transhipment facilities, transit concessions, airspace, road, and rail links, sea transport; access to national strategic intelligence, joint exercises in specific conditions, linguistic and other forms of civilian-military cooperation and medical services and Slovenia in NATO will help greatly in this regard. Slovenia also assumed many of these responsibilities already when NATO went to war with Serbia. Looking ahead, Slovenia's inclusion will further strengthen NATO's southern flank by bridging current NATO territory from Italy to Hungary and eventually perhaps its extension to Romania and Bulgaria.

Fourth, Slovenian and U.S. Armed Forces have been developing ever-closer working ties through collaborative database and curricula development activities. Although this collaboration has not occurred under NATO auspices, it has helped lay a solid foundation for Slovenia becoming a full-fledged NATO member. For instance, after the September 11 attacks on America, the Government of Slovenia promptly offered intelligence aid to the U.S. in various forms and joined the antiterrorist coalition with full public consensus. Shortly thereafter, the National Assembly of Slovenia adopted the Declaration on the Joint Fight against Terrorism. Since then, the U.S. has deepened our involvement with Slovenia on other fronts as well. For example, the U.S. this fiscal year contributed an additional $14 million to the Slovenian-led, International Trust for De-mining and Mine Victims Assistance, ITF, which has become the premier demining program in southern Europe.

Fifth, the Slovenian armed forces have made significant strides in modernizing and reforming their operations and equipment. The Government of Slovenia recently adopted a policy to transform the military from the present conscript army towards fully-professional armed forces. This fundamental change should accelerate the establishment of the main reaction forces of the brigade-size needed in order to be totally interchangeable and compatible with NATO tactics, logistics and equipment. A large part of the 10th Battalion of this force is currently deployed under the NATO flag in Bosnia, Herzegovina, and Kosovo. Furthermore, Slovenia has invested greatly in the education and training of its military officers and troops, so that today there are about the same percentage of English-speaking troops in the Slovenian Army as one would find in current NATO member's armed forces. In fact, many top officers, more than 200, have trained in the American military education institutes. According to both domestic and foreign estimates, the Slovenian Government has allocated $320 million for implementing these basic defense reforms. In 1996, the National Assembly of Slovenia enacted a law mandating that all military purchases and acquisitions be in accordance with NATO standards for interoperability. In short, the Government of Slovenia has already done much of what is required and remains very committed to achieving 100 percent NATO compatibility and fielding well-trained, effective armed forces.

Parenthetically, let me also say at this point that I don't think requiring 2 percent of GDP in defense spending is necessarily a good indicator of maximizing the contribution of so-called mini-member states in NATO. Some NATO member countries actually count military pensions toward fulfilling this requirement, but how do such military expenditures actually contribute to the deterrence and effectiveness of NATO armed forces? To me, it would make more sense to identify specialized roles for the armed forces of mini-member states to optimize their respective contributions to the overall increased strength and versatility of NATO.

Finally, Slovenia's sociopolitical development already mirrors West European standards. Not surprisingly therefore, political debate in Slovenia now centers on health care, environment, education, social welfare, and budget discipline. Since Slovenia's population is demographically old, the pensioners issue is now hotly discussed. While there is political consensus about the necessity for pension reform, sharp differences persist about the role the

state ought to play in the new system and whether or not the system should be privatized. Their great national debate is quite akin to the current prescription drug and Medicare debate in the U.S.

Clearly, Slovenia has made great strides in constructing a thriving democratic government, ready to meet the challenges and demands of the 21st century. It is very impressive that the Slovenian people and their duly elected government have accomplished all this in a mere 12 years. The values and principles upon which their nation has been founded are many of the same values and principles that we have come to cherish in our own Government and to champion throughout the world. We should embrace our Slovenian brothers and sisters and invite them into the NATO fold this November.

NATIONAL SCIENCE FOUNDATION DOUBLING ACT

Mr. ROCKEFELLER. Mr. President, I am delighted that Congress passed the National Science Foundation Doubling Act last week. I have been working for quite some time to increase basic research funding at the National Science Foundation. Passing this bill at such a critical time for our economy is extremely important, since investing in science and technology is one of the best ways to ensure long-term growth.

I am particularly pleased at the inclusion of two programs I authored, the Math and Science Partnership Program and the Robert Noyce Scholarship Program, that I separately proposed in freestanding legislation. Each program is an investment designed to strengthen and improve math and science education at elementary and secondary schools.

The Math and Science Partnership Program has strong bipartisan support, and President Bush requested and received funding in last year's appropriation bill to jump start this important program. The Math and Science Partnership program's inclusion in the reauthorization bill is important to provide both policy guidance and a long-term commitment to the program. This legislation provides increasing funding for math and science partnerships for five years, with a specific recommendation of $900 million for the first 3 years.

These grants will be awarded to universities, businesses, and State agencies to coordinate activities in math and science education for elementary and secondary school students. For example, funding could be given to a university which is working with a local business to offer workshops to kindergarten through 12th grade teachers, giving them new ideas for teaching science and math classes. Since introducing this initiative, I have visited many West Virginia classrooms, and teachers are excited about the potential for this program. Teachers are eager to partner with engineers and scientists from business and academia to engage students in high quality science and math programs.

The Robert Noyce Scholarship Program will similarly take a big step toward improving math and science education in schools. By awarding college scholarships in exchange for a promise from leading college students to teach in disadvantaged elementary and secondary schools, this program is intended to attract the most motivated students into the teaching profession. This NSF bill provides funding for the Noyce program for 5 years, with a recommendation of $60 million for the first 3 years.

Together, the Math and Science Partnership Program and the Noyce Scholarship Program will help the country in many ways. Promoting math and science education for our children is the most important investment we can make for the future of science and technology in the United States. I truly appreciate the bipartisan support for these incentives. I particularly want to acknowledge the extraordinary leadership of House Science Committee Chairman SHERWOOD BOEHLERT, who introduced the companion bill in the House and has been an ally for many years on science and education issues.

In addition to bolstering elementary and secondary math and science education, this bill also strives to stimulate scientific research throughout the country with the Experimental Program to Stimulate Competitive Research, EPSCoR. This program targets States, like West Virginia, that have historically had low amounts of science and technology research, and uses a State's own science and technology resources to promote economic development.

Under EPSCoR, disadvantaged states still must develop competitive proposals that pass peer review standards at NSF, but states do get assistance to become competitive and develop their research capacity. It is essential to encourage many states to invest in research. For many years, I have worked closely with the West Virginia EPSCoR program, and I am proud of its work. I know that this program has helped to leverage research and investment in our State. It has also helped to promote partnerships within our state universities and colleges, which is vital.

With this NSF bill, EPSCoR is a declared priority for NSF. Helping West Virginia and other states become competitive in first class research helps the individual States and our country as a whole.

Overall, the most important part of this legislation is the plan to double the NSF budget over the next 5 years, with the increases in the fourth and fifth year contingent on NSF meeting performance measures. This increase in funding will increase the length and amount of all research grants funded through NSF, giving researchers a better opportunity to conduct more in-depth studies and concentrate on discovery rather than grant proposals.

These types of grants are essential to technological and scientific advancements, which are the engines for long-term economic prosperity. Indeed, realizing the vital role that NSF plays in the economy's long-term health, some have called for a tripling of the NSF budget. Many of the discoveries currently occurring in other fields, including health care, are linked to the basic research in math, computing, and science that is supported by the NSF. By seeking to increase the agency's budget, the Congress has helped to ensure that the United States remains the world's leader in science and technology research and development.

Once again, I am proud that Congress has passed this valuable, bipartisan legislation, and I look forward to its approval by President Bush.

THE SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002

Mr. BAUCUS. As I promised when I spoke yesterday during floor action on the Social Security Protection Act of 2002—H.R. 4070, as amended—I am now submitting an unofficial cost estimate from the nonpartisan Congressional Budget Office for that bill.

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

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

PRELIMINARY CBO ESTIMATE OF THE BUDGETARY EFFECTS OF H.R. 4070, THE SOCIAL SECURITY PROTECTION ACT OF 2002

[* * * Preliminary and Unofficial * * * (Tentative conference)]

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	5-yr. 2003–07	10-yr. 2003–12
DIRECT SPENDING AND REVENUES												
Title I. Protection of beneficiaries												
Authority to reissue benefits misused by certain organizations serving as representative payees:												
Social Security benefits (off-budget)	1	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	1	1
Supplemental Security Income benefits	1	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	1	1
Title II. Program protections												
Authority to impose civil monetary penaties: Revenues	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)

PRELIMINARY CBO ESTIMATE OF THE BUDGETARY EFFECTS OF H.R. 4070, THE SOCIAL SECURITY PROTECTION ACT OF 2002—Continued

[* * * Preliminary and Unofficial * * * (Tentative conference)]

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	5-yr. 2003–07	10-yr. 2003–12
Denial of Title II benefits to fugitive felons and persons fleeing prosecution:												
Social Security benefits (off-budget)	−2	−28	−42	−53	−57	−59	−62	−64	−66	−68	−182	−501
Medicare	.....	−7	−12	−17	−21	−24	−25	−26	−28	−29	−57	−189
Title III. Attorney fee payment system improvements												
$75 cap (indexed) on attorney assessments in Title III: Proprietary receipts (off-budget) [a]	5	23	24	25	27	28	30	32	31	33	104	258
Title IV. Miscellaneous and technical amendments												
Application of waiver authority to demonstration projects initiated before sunset date: Social security benefits (off-budget)	.....	.....	.....	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Funding of $1-for-$2 demonstratioon projects: Social Security benefits (off-budget)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Treatment of 'individual work plans' as qualifying plans for purposes of Work Opportunity Credit: Revenues [a]	−1	−1	.....	.....	.....	.....	.....	.....	.....	.....	−2	−2
Limited exemption to duration-of-marriage requirement for survivor benefits where deceased worker had been barred from divorcing institutionalized spouse: Social Security benefits (off-budget)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Permission for Kentucky to operate divided retirement systems:												
Social Security revenues (off-budget)	1	1	2	2	2	3	3	4	4	5	8	27
Other revenues (on-budget)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Social Security benefits (off-budget)	.....	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	1	.....	1
60-month employment requirement for exemption from Government Pension Offset: Social Security benefits (off-budget)	0	0	−1	−2	−4	−8	−15	−26	−49	−80	−7	−185
Total, direct spending and revenues (effect on deficit)	5	−13	−33	−49	−57	−66	−75	−88	−116	−147	−147	−639
On-budget	2	−6	−12	−17	−21	−24	−25	−26	−28	−29	−64	−186
Off-budget	3	−7	−21	−32	−36	−42	−50	−62	−88	−118	−93	−453
SPENDING SUBJECT TO APPROPRIATION												
Limitation on administrative expenses, Social Security Authorization	8	6	4	4	4	4	5	5	5	6	27	51

Assumed enactment date: December 2002. Based on draft language dated November 18, 2002 (1:45 p.m.). Estimates are subject to further review by CBO and JCT.

* = Less than $500,000.

[a] Under current law, the Social Security Administration approves and pays attorney fees to successful Title II claimants and retains 6.3 percent to cover its processing costs. CBO expects receipts from that fee (which are recorded as negative outlays) to climb gradually from $30 million in 2002 to $55 million in 2012. Thus, a reduction in those receipts is depicted as a positive outlay.

[b] Estimate provided by Joint Committee on Taxation.

AN EMBARRASSING COP-OUT

Mr. KERRY. Mr. President, the Senate should be embarrassed at what we are about to do. It is amazing to me, with the country facing so many important challenges, and a slow economy to boot, that the Senate would consider adjourning for the year without passing the spending bills to fund the Government for the next 11 months. We are putting off until January decisions that should have been made months ago—and as a result, many Government agencies at the Federal, State, and local levels will not see the additional money they have been promised until next spring. That is halfway through the fiscal year.

Let's be clear about what is happening. The Federal Government will spend nearly $2 trillion this year. Yet we have not passed the appropriations bills because the administration objects to $9 billion in spending. We are about to pass a continuing resolution that runs through mid-January because the President objects to $9 billion—less than one-half of 1 percent of Federal spending. And his own party supports much of that spending.

I ask my Republican friends, do they think it will be much easier next year to push through significant spending cuts? Of course not. When offered the opportunity to vote no on spending bills, my Republican friends generally don't. We as Democrats must begin to blow a hole in this ridiculous myth that somehow Republicans don't like spending. They like spending just fine. They may claim to be for smaller government and lower spending, yet Republicans in the Senate have supported appropriations bills more than 85 percent of the time since they first took control in 1995. More and more, the differences between the parties are not over major spending decisions, because almost everyone here votes for all the spending.

The main difference between the parties is that Democrats want to pay for the spending, while Republicans are content to borrow from our children to pay for it. Today's GOP believes in the ''free lunch'' that we were all taught didn't exist. Future generations will suffer as a result.

What does a long-term CR actually mean for the American people? To start, a long-term CR would undermine the war on terror by denying nearly $40 billion in additional homeland security funds requested by the President. It would delay billions of dollars in planned increases to ramp up the Coast Guard and the Customs Service, hire hundreds of Border Patrol agents, bolster State and local antiterrorism programs, and step up other domestic security programs. The 11,000 FBI agents who are supposed to be combating the war on terrorism will have to wonder whether they have the necessary resources to fight that war. Many of the requirements of the Transportation Security Act require large expenditures, such as explosive detection equipment at airports—but the money won't be there. The Customs Service will have to defer the scheduled hiring of more than 600 agents and inspectors to serve at the Nation's high-risk land and sea points of entry. The President's budget promised $3.5 billion in new money to ''first responders,'' but those essential funds for emergency workers have not been approved. Thousands of emergency grants for fire departments, communications equipment, emergency operations centers, you name it—these items cannot be funded at fiscal year 2002 levels.

Or take education. The National Conference of State Legislatures has announced that States face a cumulative $58 billion budget deficit. Many States are already cutting public education funding, and many others are poised to do so—making inaction by the Federal Government extremely costly to our kids. Passing a long-term CR will delay increases in funding for critically important education programs such as the title I program and the Individuals with Disabilities Education Act, making it difficult for school districts to plan their budgets for the upcoming school year. The President's budget promised $3.5 billion in new money to ''first responders,'' but that money for emergency workers hasn't been approved.

Here is what's fascinating. Not a single Republican Senator up for election said they were for less education spending. They all talked about education as a top priority and voiced their support for the No Child Left Behind Act we passed last year. But who are they kidding? Public schools trying to implement the changes required by the law need more funding. For the GOP to support the law that authorizes the spending, but then object to the spending itself, is the height of hypocrisy.

Or take veterans programs, or Federal research spending. If a long-term CR is approved, it would shortchange veterans by funding Veterans Administration medical care at $2.5 billion less than what is needed to meet their needs. The 4-million veterans who rely on the VA for their health care will have to worry if that care will be available to them. And the Director of the National Institutes of Health has said that he might have to scale back bioterrorism research grants.

Now, we aren't living in a vacuum here. Like many others, I would like to find ways to slow the growth in Federal spending, and I have several ideas for doing so. But this year, the differences are so small relative to the budget that inaction is simply unnacceptable.

And here is what's worse. The Republicans, who exhort us to be mindful of how we are spending ''the people's

money'' now that deficits have returned—these are the same Republicans who voted for $500 billion in additional deficit-blowing tax cuts in the House, and would have voted for just as much in the Senate if given the chance. This President, who claims to be fiscally responsible and urges us to watch how we spend, sent up a budget this year with nearly $600 billion in new tax cuts for the well-off and increases in spending of 20 percent since he took office. And we are forced into a budget impasse over $9 billion.

Let me be clear: When we increase the deficit and add to the debt to pay for new tax cuts or new spending, it is no longer ''the people's money.'' It is our kids' money, and for that reason we should be far more responsible with our fiscal policy than we have been the last 2 years.

Congress has been abdicating its responsibilities by failing to do something about the economy before we leave. There are many good stimulus ideas out there—some of which are affordable, while others could be paid for by scaling back tax cuts scheduled for 2004 or 2006. But as things stand today, the Senate is unlikely to consider any real stimulus until after the State of the Union Address next year which means Congress won't act before February or March, which means that relief won't be in place before next summer. That is inexcusable. The American people shouldn't have to wait 8 months for us to act.

Simply put, to delay action on the budget when the difference is $9 billion out of $2 trillion, and when Republicans have voted for more than $500 billion in additional tax cuts, is an insult. We can do better, and we must.

OMB PROPOSED REVISIONS TO A–76 REGULATIONS

Mr. AKAKA. Mr. President, I rise today to express my concern over the administration's proposed changes to the A–76 process, and its impact on the Federal workforce and accountability in contracting decisions. The OMB draft rules issued last week raise serious questions over the transparency of Federal procurement policies and their effect on Federal workers. True competition must be fair to Federal employees, be cost-effective, and promote financial transparency and public accountability.

The proposed regulations to A–76 do not represent fair competition. The regulations would place Federal workers at a severe disadvantage by implementing a competition process where Federal jobs may be eliminated at any time, even before a competition is completed. The process would place greater emphasis on a contractor's past performance but would fail to account for the past performance of in-house employees.

The OMB proposal could threaten cost-effective procurement policies. Under the draft rules, subjective notions of ''best value'' would replace objective cost-savings in driving decisions for whether Federal work would be performed in-house or by the private sector. Government procurement should be based on sound analysis giving the greatest weight to cost savings. Decisions to contract out Federal jobs, which are based on projections and expectations of performance, risk squandering limited public resources on contractor promises to deliver more work than is needed, at a higher cost to the public.

We must ensure that any changes to A–76 are fair. The OMB proposal would require agencies to complete competitions within a 12-month timeframe. If a Federal agency was unable to finish a competition in this time, OMB could simply out-source Federal jobs to a contractor without competition. Moreover, the draft regulations would support the administration's arbitrary targets for contracting out Federal jobs, which I oppose because these targets artificially impose goals for contracting out. The proposal would also expand the types of Federal jobs that would be subject to public-private competitions, such as supervisory positions.

According to OMB's Office of Federal Procurement Policy, the majority of public-private competitions under the proposed rules would be based on the current lowest cost standard. There would be a pilot project to test the ''best value'' standard on information technology jobs. However, the use of the ''best value'' standard approach is controversial and subjective. I would hope that this would be limited to a genuine pilot project and would allow for a careful, objective review of the results.

There are important steps we can take now to improve financial transparency and accountability in Federal contracting while strengthening fairness in public-private competitions. In June of this year, I was pleased to work with Senator KENNEDY to improve financial transparency and cost-savings in contracting policies at the Department of Defense. Our amendment to the DoD authorization bill failed by only one vote. Our amendment would have required cost savings before decisions were made to contract out Government functions. It would have improved financial transparency by establishing measures for the true cost and size of the DoD contractor workforce. Our proposal would have promoted equity in public-private competitions by ensuring that Federal employees had the opportunity to compete for existing and new DoD work and that DoD competed an equitable number of contractor and civilian jobs.

As chairman of the Senate Government Affairs Federal Services Subcommittee and Armed Services Readiness Subcommittee, I look forward to ensuring that Federal contracting policies are conducted in a manner that achieves the best return on the dollar and is fair to our Federal workforce. It is my intention to work with my colleagues in the 108th Congress to pursue these goals.

CREDIT CARD ARMIES—FIREARMS AND TRAINING FOR TERROR IN THE UNITED STATES

Mr. LEVIN. Mr. President, I want to bring the attention of my colleagues to a report released in October by the Violence Policy Center, VPC, entitled Credit Card Armies—Firearms and Training for Terror in the United States. This report analyzes the ease with which members of terrorist organizations and criminals gain access to powerful firearms and ammunition. According to the VPC report, terrorist groups with little more than a credit card and a driver's license, can easily obtain military grade firepower, including 50 caliber sniper rifles, assault weapons, and extraordinarily powerful ammunition.

In response to the terrorist attacks of September 11, 2001, the Federal Bureau of Investigation searched the National Instant Criminal Background Check System for information on individuals detained. However, according to a New York Times article, the Department of Justice ordered the FBI to stop using NICS records for investigating suspected terrorists even after the FBI found that at least two individuals detained in relation to the terrorist investigation had been cleared to buy firearms. Further evidence gathered by the Bureau of Alcohol, Tobacco, and Firearms and reported by the New York Times determined that 34 firearms used in crimes had at some point been purchased by an individual on the same list of people detained after 9/11.

The VPC report provides several examples of terrorist groups, from al-Qaida to the Irish Republican Army, using our loopholes in our gun laws to purchase 50 caliber sniper rifles and other military style firearms. We need to pass the Schumer-Kennedy Use NICS in Terrorist Investigations Act and also Senator REED's ''Gun Show Background Check Act. These bills would assist law enforcement in identifying prohibited gun buyers and recognizing patterns of illegal purchases and misuse.

In January 2001, regulations issued by the Department of Justice directed the FBI to retain NICS information for a 90-day period. This 90-day period allows local law enforcement and the FBI to check NICS for illegal gun sales to criminals, terrorists and other prohibited buyers, identify purchasers using fake identification, and screen for gun dealers misusing the system. However, in June 2001, the Attorney General proposed reducing the length of time that law enforcement agencies can retain NICS data to 24 hours. This is simply an insufficient amount of time for law enforcement to review the NICS database.

The Attorney General's action concerns me greatly. I was pleased to cosponsor the Use NICS in Terrorist Investigations Act introduced by Senators KENNEDY and SCHUMER. This legislation would codify the 90-day period for law enforcement to retain and review NICS data. The need for this legislation was highlighted late last year when the Attorney General denied the Federal Bureau of Investigation access to the NICS database to review for gun sales to individuals they had detained in response to the September 11th terrorist attacks and refused to take a position on an amendment which would authorize that access.

Senator REED's Gun Show Background Check Act, which is supported by the International Association of Chiefs of Police, would extend the Brady Bill background check requirement to all sellers of firearms at gun shows. I cosponsored it because it is vital that we do all we can to prevent guns from getting into the hands of criminals and terrorists.

I urge my colleagues to consider these important pieces of gun safety legislation not only to protect our children from gun accidents and criminal use, but also to limit easy access to dangerous weapons by people who would seek to threaten our Nation's security.

TRIBUTE TO COMMANDER JEFFERY FREEMAN

Mr. COCHRAN. Mr. President, I am pleased to congratulate Commander Jeffery Freeman upon the completion of his career of service in the United States Navy. Throughout his 21 year military career, Commander Freeman served with distinction and dedication.

Continuing a family tradition of Naval Service since World War I, Jeff received his commission from the U.S. Naval Academy in 1981 and went on to earn his Naval Flight Officer Wings. Jeff served in four maritime patrol squadrons as a Patrol Plan Tactical Coordinator, Mission Commander, and ultimately as Officer-in-Charge, flying over 3,500 hours in the P–3 Orion aircraft, deploying to remote locations around world, and flying hundreds of hours tracking Soviet and other foreign submarines. Jeff served as a legislative fellow in my office, and he has served in the Navy Appropriations Liaison Office providing support to both the U.S. Senate and U.S. House of Representatives.

His family and his fellow shipmates can be proud of his distinguished service. Commander Freeman, his wife Annemarie of Biloxi, and their four children, have made many sacrifices during his Naval career, and we appreciate their contribution of conscientious service to our country. As he departs the Pentagon to start his second career, I call upon my colleagues to wish Jeff and his family every success, and the traditional Navy ''fair winds and following seas.''

VETERANS' BENEFITS ACT OF 2002, S. 2237

Mr. DAYTON. Mr. President, I rise today to applaud the Senate's action last night when it passed S. 2237, the Veterans' Benefits Act of 2002. This important legislation will make much-needed improvements to veterans' disability compensation payments, Medal of Honor pensions, housing benefits, claims adjudications, and education benefits through increased funding for State Approving Agencies. I strongly urge the President to sign this bill into law as quickly as possible.

I am pleased this bill also includes an important provision that will expand the civil protections provided to members of the National Guard under the Soldiers' and Sailors' Civil Relief Act of 1940. I worked closely on this provision with its sponsor, Senator Paul Wellstone. My late friend and colleague from the State of Minnesota was an outspoken advocate on behalf of America's veterans throughout his service in the Senate. The Wellstone-Dayton provision in this bill will better protect members of the National Guard in Minnesota and around the country. The provision specifies that National Guard members mobilized for more than 30 days by a state at the request of the Federal Government to respond to a national emergency be allowed protections under the Soldiers' and Sailors' Civil Relief Act during their duty.

The Soldiers' and Sailors' Civil Relief Act allows America's military personnel to have their legal rights secured until they can return from the military to defend themselves. It covers such issues as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, and income tax payments. One of the most widely known benefits under the act, for example, is the ability to reduce consumer debt and mortgage interest rates to six percent under certain circumstances. The original Soldiers' and Sailors' Civil Relief Act was actually passed during World War I. The statute was reenacted during World War II, then later modified during Operation Desert Storm. However, until now the Act's coverage has not included the National Guard as comprehensively as their active duty and reservist counterparts. I believe this is wrong.

Following the terrorist attacks against the United States on September 11, 2001, members of the Minnesota National Guard were activated by our State at the request of the President to provide security at several major airports. As the duration of these activations grew to several months, I began to hear from these brave men and women about the stress and financial burdens that accompanied their service. Senator Wellstone and I were shocked to learn that, although the Soldiers' and Sailors' Civil Relief Act exists to ease many of these same burdens for active-duty service members and reservists, members of the National Guard were not similarly covered for these types of activations, because this service was deemed to be State, rather than Federal, service. This discovery led to the Wellstone-Dayton provision.

Anyone who visited our Nation's airports after September 11 will not soon forget the contributions of countless members of the National Guard who, at the request of the President, contributed to a sense of greater security and peace of mind for air travelers by providing airport security. The men and women who provided these security efforts did so with courage and selflessness.

In light of September 11, it seems apparent that the National Guard has, and ought to have, a clear role in protecting Americans from outside threats. Further, when the President requests the men and women of the National Guard take on these new missions which help to protect Americans from terrorism, their civil interests should be protected under the Soldiers' and Sailors' Civil Relief Act. Accordingly, I am happy that this will be properly ensured with the Senate's passage of S. 2237 last night.

CRITICAL INFRASTRUCTURE INFORMATION SHARING

Mr. BENNETT. Mr. President, for several years, I have been actively working to protect our Nation's critical infrastructure and promote information sharing between the government and the private sector. From my experience with Y2K, I recognized that our Nation's critical infrastructure was vulnerable and that the private sector and the government needed to cooperate. Last year I introduced S. 1456, the Critical Infrastructure Information Security Act of 2001, which sought to bolster critical infrastructure security by fostering and encouraging critical infrastructure information sharing. Both the Senate Government Affairs Committee and the Senate Energy and Natural Resource Committee held hearings on this issue. Once legislation creating the Department of Homeland Security was introduced in the Senate, I worked to ensure that some of the protections found in S. 1456, specifically protection from public disclosure pursuant to the Freedom of Information Act (FOIA), were addressed and considered in the proposed legislation.

The need for congressional attention on this issue stems from the growth of new technology and the increased reliance on computer networks created new vulnerabilities. For the past two decades, once physically distinct operations, controls and procedures have been tightly integrated with information technology. Pipelines can be controlled remotely. A vulnerability in a telecommunication systems can impact the functioning of the Department of Defense and the financial services

sector. Sectors are more interconnected and more interdependent.

Eighty-five percent of the United States' critical infrastructures, the essential services that if disrupted or destroyed would impact our economic or national security such as financial services, telecommunications, transportation, energy, and emergency services, are still owned and operated by the private sector. Osama bin Laden has called on his supporters to attack the pillars of the U.S. economy the private sector.

If the private sector and the Federal Government are increasingly interconnected and are targets for those who wish us ill, it makes sense for both targets to share information with each other. We have to think differently about national security, as well as who is responsible for it. In the past, the defense of the Nation was about geography and an effective military command-and-control structure. Now prevention and protection must shift to partnerships that span private and government interests.

Yet the private sector has no access to government information about possible threats, much of which is often classified. The Federal Government, with its unique information and analytical capabilities, lacks specific information from the private sector on attacks. Both parties have a blind spot and only see parts of the problem. Government and industry would benefit from cooperating in response to threats, vulnerabilities, and actual attacks by sharing information and analysis. If the Department of Homeland Security is tasked to match threats with vulnerabilities, the private sector must be a willing partner.

Although the Senate bipartisan FOIA agreement that I negotiated is not included in the current homeland security bill, I am pleased that the final version includes a number of provisions that will foster critical infrastructure information sharing. As the government and the private sector cooperate and begin to exchange information, we will be in a better position to prevent, respond to and recover from future attacks to our country.

NOMINATION OF MICHAEL McCONNELL

Mr. HARKIN. Mr. President, I wish to express my concerns regarding the confirmation of Michael W. McConnell to serve on the United States 10th Circuit Court of Appeals.

Of President George W. Bush's judicial nominees, Michael W. McConnell is the most hard-line, impassioned, and consistent public foe of a woman's right to choose yet to come before the Senate. His legal views and philosophy are far outside the American mainstream.

This nomination passed out of the Judiciary Committee on November 14, and came before the full Senate on November 15. Given the lack of time to review Professor McConnell's record, an absence of recorded votes in opposition to this nominee should not be taken as a vote of confidence from all Senators.

McConnell is a long-time anti-choice scholar and activist whose views on the constitutional right to privacy leave little doubt about how he would rule in cases involving the right to choose. He believes that Roe v. Wade was wrongly decided and that significant restrictions on abortion are appropriate, even while Roe stands. He has joined conservative political activists in calling for a constitutional amendment to ban all abortions, possibly even in cases of rape and incest.

This issue of abortion is one in which thoughtful people of good conscience may disagree. However, it is my belief that Michael McConnell's core personal beliefs on the immorality of abortion and the moral status of the embryo, articulated repeatedly in numerous forums including law reviews, op-eds, and legal [or court] briefs, will make it difficult if not impossible for him to consider impartially the cases that would come before him as a judge.

McConnell's view of the Freedom of Access to Clinic Entrances Act also illustrates his inability to be impartial. Not only has he contended that the law is unconstitutional, but his view of the FACE Act is so colored by his opposition to the right to choose that he has expressed his admiration for a judge who blatantly ignored the law in acquitting defendants who broke the law.

Anti-choice legislatures have demonstrated great creativity in creating innovative barriers to a woman's right to choose. The constitutionality of these new barriers is frequently determined by the circuit courts, and is rarely reviewed by the Supreme Court.

It is my hope that the administration will begin to reach across the aisle to identify moderate, consensus nominees. The alternative will be an ongoing crisis in the judiciary. It is also my hope that Professor McConnell is not a harbinger of what is to come when Supreme Court vacancies occur.

ADDITIONAL STATEMENTS

CONGRATULATIONS TO BOB AND MARY JEAN FREESE

• Mr. BAUCUS. Mr. President, I rise to extend my congratulations to Bob and Mary Jean Freese on their 50 years of marriage. During that half century, their loving relationship has not only helped them raise five children, but has served them well in raising two additional generations, with seven grandchildren and one great-grand child.

Bob and Mary Jean were united at Salem Lutheran Church in Spokane, Washington on December 6, 1952. Throughout their lives together they have demonstrated a commitment to public service, and instilled a similar public service ethic in their families.

Bob is the son of a Marine Corps Officer and served honorably in the United States Air Force for ten years, and later was a plant engineer with Continental Baking Company. Mary Jean was a long time employee in the Spokane County Auditor's office.

While Bob and Mary Jean reside in Spokane, Washington, their daughter-in-law Maria Freese has provided dedicated service to the people of Montana, first as a member of my Senate staff and later as Tax Counsel with the Senate Finance Committee. Their son Terry recently retired from 25 years of service with Congressman Norm Dicks and as a Presidential appointee at the Department of Energy, their daughter Robin works with the state of Washington, their son Russell served with the U.S. Air Force, their daughter Peggy has worked with Spokane Community College. And their youngest son, Tom, has served the public in a number of positions in the automotive industry.

In their retirement, Bob and Mary Jean continue to help others by combining their interest in motorcycles with safety promoting community service at highway rest stops. Mary Jean is also an officer with the Spokane Genealogical Society and is always willing to help people seeking out their roots.

I hope that Bob and Mary Jean will continue to enjoy many more years of happiness together.•

ON THE RETIREMENT OF RIVERSIDE COUNTY SUPERVISOR TOM MULLEN

• Mrs. BOXER. Mr. President, I rise to reflect on the distinguished career of Riverside County Supervisor Tom Mullen, who will retire on December 13, 2002. Supervisor Mullen's passion for good government and good planning has set a standard for his county and for California.

Before his tenure as Supervisor, Tom Mullen worked in the field of law enforcement, serving 11 years with the Riverside Police Department and the Riverside County Sheriff's Department. He also served as an aide to former California State Senator Robert Presley, Director of Intergovernmental Affairs for the Riverside County Transportation Commission, and Director for External Program Development for the University of California, Riverside's College of Engineering and Center for Environmental Research and Technology.

As Supervisor of Riverside County's Fifth District, Mullen helped develop programs for young people, improve education, improve infrastructure, reduce traffic congestion and make the streets safer by adding more police officers to the beat. In recent years, his focus has been on creating as transportation, habitat and housing blueprint for Riverside County, a plan that will guide the rapid development expected to occur in the coming years. Because of his diligent work and vision, Riverside County's plan has won state and

national praise and will give the County a firm guide for the future.

During his career in public service, Supervisor Mullen has served with many different organizations and received many awards for his leadership and vision. He served as Chairman of the Board of Supervisors, the Riverside County Transportation Commission, the March Joint Powers Authority (MJPA) and currently serves as Co-Chairman of the County Child Protective Services Committee. Among Mullen's accolades, he received the Riverside Community College Alumnus of the Year Award in 2000, the Management Leader of the Year Award from UCR's A. Gary Anderson School of Management in 1998 and the good Government Award from the Riverside County Chapter of the Building Industry Association in 1997.

It is clear that Supervisor Mullen has made a tremendous impact on the County and on the lives of the people of Riverside. With good economic sense and organization, Tom Mullen has been able to lead one of the nation's fastest growing areas. I commend him and extend my best wishes to the Supervisor, his wife, Kathy Tappan, and his family on this occasion and in the future.●

COMMEMORATING THE 50TH ANNIVERSARY OF THE PADUCAH GASEOUS DIFFUSION PLANT

● Mr. BUNNING. Mr. President, on October 24, 2002, the Paducah Gaseous Diffusion Plant in Paducah, KY commemorated and celebrated its 50th anniversary. In 1952, the Paducah Plant began the process of enriching uranium to help build and maintain our national security against our adversaries throughout the Cold War era, and to this day the 1,500 workers there continue their work to help ensure a safer world by dismantling nuclear agents from Russia's stockpile of weapons from its gladly-gone-days as the Union of Soviet Socialist Republics.

Throughout these past 50 years, the Federal Government did not always shoot straight with the Paducah Plant workers. Much of the time the workers were exposed to harsh and deadly chemical and industrial agents. Many became sick and many died while the Federal Government looked the other way. But throughout these times these workers forged ahead, and they continue to do so today. Now knowing the dangers of then and even the risks that go along with their jobs today, these dedicated workers still roll up their sleeves and get the job done, without complaint and with no questions asked. They are selfless and humble. The history of the Paducah Plant and its workers, and what they have and continue to do to ensure a more peaceful world, has and will continue to be an inspiration to us all.

The Paducah Plant is tucked away in God's country in southwest Kentucky between the Ohio River and rolling prairies and farmland. The Paducah community and those in the surrounding area have been bedrock in their support of this plant and its workers, and they are owed a great deal of gratitude as well on this 50th anniversary. They have always been there with support and prayer for these plant workers and their family members during the toughest and roughest of times.

While the Federal Government and others turned away and failed to live up to their responsibilities to the Paducah Plant workers—neighbors, friends and family members were always there to comfort them and each other. This is a spirit which humbles us all. May God bless all those associated with this plant and its mission. We owe all of them more than we will ever realize.●

MR. STEPHEN ROGERS

● Mr. SCHUMER. Mr. President, it is with a heavy heart and great sadness that I bring news of the death of Stephen Rogers, a former publisher and long time President of the Syracuse Post-Standard. Mr. Rogers was a Central New York institution, a man who actively played a role in the newspaper's operation up until the day he died at ninety years old.

Although not originally from Central New York, he became one of the area's most influential figures, both because of his pen and community activism. Rogers was famous among local politicians for never shying away from asking tough questions, prompting a close friend to call him Socrates with a press card. Everyone from the Governor on down knew that an editorial board meeting at the Post-Standard was no walk in the park, as Rogers would force all who came to Syracuse to vigorously defend their policy choices. It is testament to Rogers' character and to how much he respected his craft, however, that no one ever doubted that the meetings would be enlightening and evenhanded. Indeed, journalism was part of the very marrow of Rogers' bones and a beloved profession: he once wryly told a group of college students, ''Believe me, it's more fun that working for a living.''

Rogers' love of fishing was perhaps the only activity that could match his commitment to his trade. New York State's beautiful lakes quickly helped bond him to the area when he first arrived in 1955, and he showed his love for the area by giving back to the community in so many ways. As Chairman of the Metropolitan Development Association, he was a staunch advocate and promoter of economic development in Central New York. Although he was criticized by some for overstepping the limits of objectivity required by his day job, Rogers felt that he could not in good conscience earn a living in community without giving back. It's not surprising that he could also count his leadership of the state publishers' association, the water board, and the United Way, as well as time spent on the boards of the YMCA, the former Crouse-Irving Memorial Hospital, Le Moyne College, the Red Cross and the symphony as other significant volunteer accomplishments.

If there is one thing to say about Stephen Rogers, it is that he was the epitome of good citizenship. His dedication to his craft, community activism, and unceasing work ethic meant that he stood out as a leader in Central New York up until his final days. He will be sorely missed by us all.●

TRIBUTE TO CENTURY CONSTRUCTION

● Mr. BUNNING. Mr. President, I rise today to pay tribute to Century Construction in Erlanger, KY. Last Friday, Sandy Taylor, Assistant Administrator for the Occupational Safety and Health Administration's, OSHA, 5th region in Chicago, presented Mike Mangeot, President and CEO of Century Construction, with a Voluntary Protection Program, VPP, award for Century's exemplary record of safety in the workplace.

OSHAs Voluntary Protection Programs are designed to recognize and promote effective safety and health management. In the programs, management, labor and OSHA work together to establish a cooperative relationship aimed at improving safety standards in the workplace. VPP participants are a select group of facilities, which have designed and implemented outstanding health and safety programs. Kevin Still, Century's Vice President for Administration and Safety Director in charge of Century's safety programs, deserves special recognition for the part he has played in creating a safe working environment for Century's employees. Kevin has been an integral part of Century's success.

There are over 6 million work places in the United States. Of these, only 900 have received VPP awards. Out of the nearly 750,000 construction contractors in this country, only three have won a VPP award for safety. Century is the first ever mobile site participant to win this award. By working with employees from both top-to-bottom and bottom-to-top, Century has demonstrated how far communication and teamwork can take an organization.

The men and women of Century Construction deserve our admiration and respect for their hard work and determination. I am proud to know that such companies are operating within Kentucky.●

RECOGNIZING PUBLIC SERVICE OF ANN JORGENSEN

● Mr. GRASSLEY. Mr. President, I want to take this opportunity to recognize and express appreciation for the contributions to public service made by Ann Jorgensen, who is finishing her term as board member to the Farm Credit Administration.

A production agriculture and hog farmer from my home State of Iowa, Ms. Jorgensen moved to Washington in 1997 to serve on the Presidentially appointed, Senate-confirmed, three-member board of the Farm Credit Administration, FCA. FCA is an independent U.S. Government agency responsible for regulating and examining the entities of the Farm Credit System. The Farm Credit System is a nationwide financial cooperative that lends to agriculture and rural America.

Members of the FCA board also serve as Directors for the Farm Credit System Insurance Corporation, FCSIC, to which Ms. Jorgensen was elected as the first woman chair in January 2000. FCSIC is an independent U.S. Government corporation responsible for ensuring the timely payment of principal and interest on insured notes, bonds, debentures, and other obligations issued on behalf of Farm Credit System banks. Ms. Jorgensen's leadership was instrumental in keeping the insurance fund at or near the statutory 2 percent capitalization level.

During Ms. Jorgensen's 5-year tenure at the Farm Credit Administration, many changes took place in the Farm Credit System influenced by the FCA board. Through the board approval of restructuring applications, the number of Farm Credit System associations consolidated from 250 to 103, thus creating greater efficiencies, better customer service, and cost savings to associations. The board also amended participation regulations allowing for the purchase of a 100-percent interest in participations and eliminating the territorial consent requirement. With these and other changes, the Farm Credit System today is well capitalized and profitable with a high asset quality.

Prior to her appointment to the FCA board, she served on a number of governing boards for the State of Iowa, including 6 years as a member of the Board of Regents. The Board of Regents is responsible for the State's three universities, including the University of Iowa Hospital, a world-renowned teaching hospital, and its affiliated clinics. She also served on the board of the Iowa Department of Economic Development and chaired the Iowa Rural Development Council. Among many other boards and committees, she has also served on the Agriculture Product Advisory Board, the Interstate Agricultural Grain Marketing Commission, the National Pork Producers Council Environmental Committee, the European Trade Task Force Legislative Study Committee; the Iowa Public Broadcasting Network Board of Directors and Foundation Board.

She was named to the Farm Foundation's Bennett Agricultural Round Table in June 2000. This provides a forum for discussion and dialogue among agricultural, agribusiness, government, academic, and interest group leaders on issues of importance to agriculture and rural America. Alpha Zeta, the national honorary agricultural fraternity, named her to its Centennial Honor Roll in 1997. She has also been inducted into the Iowa Volunteer Hall of Fame, and along with her husband, has previously been recognized by Farm Futures magazine as owner of one of the Top 10 Best Managed Farms.

I thank her for her numerous contributions to our farmers as well as rural America, and I extend my very best wishes for her continued success.●

TRIBUTE TO LT. COL. THOMAS J. STAPLETON

● Mr. BOND. Mr. President, it is with great pleasure that I rise today to pay special tribute to an outstanding soldier who has distinguished himself in his service to the United States Senate and the Nation as a United States Army Fellow. Lt. Col. Thomas Stapleton's fellowship officially ends upon the adjournment of this session and before he leaves, I wish to extend my most sincere thanks and appreciation for his exemplary service to myself, the citizens of Missouri and our great nation.

Lt. Col. Stapleton is a seasoned military leader with over 17 years of tactical, budget and acquisition experience that have been a tremendous contribution to my office. Lt. Colonel Stapleton served his nation in Operation Just Cause and Operation Desert Shield/Desert Storm from 1989–1991. He is a Distinguished Military Graduate from Canisius College, Buffalo, New York, holds a Master of Business Administration from Rochester Institute of Technology and attended Georgetown University's Government Affairs Institute.

Throughout his career, Lt. Colonel Stapleton's level of commitment and service have been evident in his various decorations and awards including the Bronze Star which he was awarded for exceptional service in Operation Desert Storm. Lt. Colonel Stapleton has proven his abilities and has consistently performed above and beyond the call of duty.

During his tour as a military fellow, Tom fulfilled crucial functions and carried out critical assignments within my office. His budgetary experience as an Army comptroller served him well in resolving numerous defense appropriations issues. His tactical experience was an invaluable resource as evidenced by the many dependable information briefs I received after the devastating attacks of 9–11. These attributes further served Tom as he traveled the roads of Missouri on my behalf meeting with veterans, military service-members and constituents at various installations, veteran's facilities and town hall meetings. In addition, I relied heavily on Lt. Colonel Stapleton's strong volley and solid serve in crushing two of my distinguished colleagues, Senator STEVENS and Senator WARNER, on the tennis court.

Lt. Colonel Stapleton is not just a soldier but a devoted husband and committed father of three children. Whether he was coaching soccer with his son, enjoying family vacations or throwing a birthday party for his children, Tom consistently made time for his family throughout his very demanding tour as a fellow. Anyone familiar with Lt. Colonel Stapleton's numerous achievements, awards and much deserved commendations knows that Tom's top priority is to be a dedicated family man. Tom embodies the values that we as Americans all hold dear. His commitment to family and country set the standard for a professional soldier and solid role model.

The Military Congressional Fellows programs affords members of Congress with a critical military perspective coupled with invaluable service and professionalism. The tremendous reputation and success of this program are a direct reflection of Fellows like Lt. Colonel Stapleton. Tom has distinguished himself as a member of my staff and my defense team. On behalf of the citizens of Missouri and a grateful Nation, we wish Lt. Col. Thomas Stapleton, his wife Anne, and three children Toni, Carly and Jack the best as he continues his distinguished career.●

TRIBUTE TO NANCY KRAFT

● Mr. BAUCUS. Mr. President, I rise today to ask my colleagues to join me in paying tribute to a dedicated member of the Montana Department of Fish, Wildlife and Parks, FWP, as she concludes 32 years of service to her State and Nation. We are proud that this native Montanan spent her entire working life dedicated to serving Montana's State's citizens and visitors.

Mrs. Nancy Kraft deserves this honor. We owe her our gratitude for her contributions to the conservation of Montana's wildlife and natural resources, as well as her efforts to preserve the outdoor heritage that makes the Treasure State's way of life unique.

Nancy's personal and professional career accomplishments truly reflect the character of life under the big sky. Her loyal service over three decades—spent in our capital city of Helena—are a testament to all those who value wildlife and open spaces. I would like to take a moment to reflect upon Nancy's career as she embarks on a new phase of life beyond government service.

Born in Helena, Nancy attended primary school locally and began work at the then Department of Fish and Game in 1970 as a temporary employee in the General Licensing section handling delinquent accounts. Skilled in pursuing overdue collections she soon designed a system that over the years returned more than $300,000 to the people of Montana.

Nancy progressed through several positions of increasing responsibility, while continuing to make sure licensing operations were closely related to

the needs and interests of Montana's recreating public. In 1985 she was selected as the FWP General License Section Supervisor. Her capable leadership led to substantive changes in regulations and license fees during the time that outdoor recreation became a major economic influence in Montana.

Because of her in-depth knowledge and ability to bring diverse interests together, Nancy was assigned to a team of FWP experts charged with the task of designing a system to automate the licensing processes. Recognizing that the transition to computers from a paper process was a major undertaking, she worked tirelessly to ensure the myriad regulations, drawing systems, fee schedules, and calendar requirements were accurately reflected in the system design.

In her final assignment Nancy was selected to be the Licensing Bureau Chief with responsibility for the collection of fees exceeding $30 million annually. Shortly after FWP celebrated its 100th anniversary, Nancy and her team embarked on one of the biggest challenges in state government—providing ongoing services with no down time while changing systems affecting over 400,000 customers.

Over the past 2 years Nancy helped lead the transition to the new Automated Licensing System. Within eight months of implementation, the system processed over one million license sales with error rates below 1 percent, and produced a steady increase in customer satisfaction. This shining example of perseverance and poise under pressure is a reflection of the quiet competence that Nancy Kraft brings to her workplace every day for the people of Montana.

Nancy's contributions to the State's highly complex and important licensing functions cannot be overstated. Her staff's accurate forecasting and collection of millions of dollars each year allow FWP to perform its primary mission while preparing for future uses of Montana's special natural resources. Such achievements are a clear testament to how she has, for more than 30 years, enhanced the fishing, hunting, and parks experience held in such high esteem by the people of Montana and our many visitors.

As a well known and highly regarded member of the Helena community, Nancy's ability and knowledge, her willingness to find solutions, and her congenial way of dealing with people from all walks of life will be most difficult to replace.

It is a great honor for me to present the credentials of Nancy Kraft to the Senate today. All of her actions reflect a devoted public servant with a sense of purpose.

As Nancy departs from public service I ask my colleagues to join with me in delivering this tribute to Nancy for her outstanding career and service to the State of Montana and the Nation, and our best wishes for a productive and rewarding retirement.●

RECOGNITION OF OUTSTANDING PROFESSORS MR. JAMES ADAMS AND DR. DENNIS C. JACOBS

● Mr. BAYH. Mr. President, I rise today to congratulate fellow Hoosiers Mr. James Adams and Dr. Dennis C. Jacobs on their recent selection as Professors of the Year. It is a major accomplishment as only four awards are given out nationally, one for each classification of institution. Mr. Adams was recognized as Outstanding Baccalaureate College Professor of the Year and Dr. Jacobs was recognized as Outstanding Research and Doctoral University Professor of the Year.

I am particularly proud, Mr. President, because Mr. Adams and Dr. Jacobs are two of four national Professors of the Year, and my home state of Indiana is the home for both. Both Mr. Adams and Dr. Jacobs represent the very best in higher education and Hoosier values.

Mr. James Adams is a professor of art at Manchester College in North Manchester, Indiana. During 42 years at Manchester, Mr. Adams has taught in the Art, English, Music, and Spanish departments, driven by his interest in new technologies, integrating service with learning, and interdisciplinary approaches to subjects. He has truly set an example to the rest of the teaching community.

In addition, Mr. Adams has been an exchange professor to Germany and Spain, and was instrumental in creating study-abroad programs on his campus. His international interest has also led him to supervise an Indiana University summer program in England, serve as faculty-in-residence for DePauw University in Spain, and he has conducted at least 20 student tours to Mayan sites.

Mr. James Adams' hobbies have also brought him success. He is a practicing painter and photographer who has exhibited throughout the United States and in England, Mexico, and Spain. A contributor to his community, Mr. Adams is a frequent lecturer at the Fort Wayne Museum of Art, and he also does pro bono work with the local Department of Motor Vehicles office, serving as a translator for Latino residents new to the area.

Mr. Adams earned undergraduate degrees at George Washington University and the Concoran School of Art, with a double major in Art and Modern Languages. He holds a Master of Fine Arts at the Instituo Allende, which is affiliated with the University of Guanajuato, Mexico, and he spent three years at the Ruskin School of Art at Oxford University.

Dr. Dennis C. Jacobs is a professor of chemistry at the University of Notre Dame in South Bend, Indiana. At Notre Dame, he has won several teaching awards and the Presidential Award for dedicated service to the University. His contribution to the learning community is evident.

In 1999, the Carnegie Foundation for the Advancement of Teaching named him a Carnegie Scholar largely for completely redesigning an important introductory chemistry class. The redesign led to greater student success and engagement, and the course is considered a leading example of the trend toward peer-led curricula. This is a remarkable accomplishment.

Dr. Jacobs has also combined chemistry and service learning, creating a course in which students and community partners evaluate lead contamination in area homes. He is also a Fellow with the Center for Social Concerns, focusing on other methods of integrating community service into the curriculum.

His work has earned him great respect in his community. One of his colleagues has described him as ''the kind of teacher who never stops growing, thinking, and changing.''

Dennis Jacobs earned undergraduate degrees at the University of California at Irvine in physics and chemistry and a Ph.D. in physical chemistry at Stanford University.

NATIONAL WINNERS

Outstanding Baccalaureate Colleges: James Adams, Professor, Art, Manchester College, North Manchester, IN

Outstanding Community Colleges: Alicia Juarrero, Professor, Philosophy, Prince George's Community College, Largo, MD

Outstanding Doctor and Research Universities: Dennis Jacobs, Professor, Chemistry, University of Notre Dame, Notre Dame, IN

Outstanding Master's Universities and Colleges: Francisco Jimenez, Director of Ethnic Studies Program and Fay Boyle, Professor in the department of Modern Languages and Literatures, Santa Clara University, Santa Clara, CA

STATE WINNERS

Alabama: Natalie Davis, Professor, Political Science, Birmingham-Southern College

Alaska: Steven Johnson, Assistant Professor and Director of Debate, University of Alaska Anchorage

Arizona: Christopher Impey, Professor, Astronomy, University of Arizona

Arkansas: Gay Stewart, Associate Professor, Physics, University of Arkansas

California: Cecilia Conrad, Associate Professor, Economics, Pamona College

Colorado: Aaron Byerley, Professor, Aeronautical Engineering, United States Air Forces Academy

Connecticut: Bruce Saulnier, Associate Professor, Computer Information Systems

District of Columbia: James A. Miller, Professor, English and American Studies, The George Washington University

Florida: Llewellyn M. Ehrhart, Professor, Biology, University of Central Florida

Georgia: Evelyn Dandy, Professor and Director of Pathways, Education, University of Central Florida

Idaho: Todd Shallat, Professor, History, Boise State University

Illinois: Nancy Beck Young, Associate Professor, History, McKendree College

Indiana: Leah H. Jamieson, Professor and Co-director of EPICS Program, Purdue University

Iowa: Herman Blake, Professor, Educational Leadership and Policy Studies, Iowa State University

Kansas: Peer Moore-Jansen, Associate Professor, Anthropology, Wichita State University

Kentucky: John J. Furlong, Professor, Philosophy, Transylvania University

Louisiana: Kay C. Dee, Assistant Professor, Biomedical Engineering, Tulane University

Maine: Keith W. Hutchinson, Professor, Biochemistry, University of Maine

Maryland: Spencer Benson, Associate Professor, University of Maryland College Park

Massachusetts: Judith Miller, Professor, Biology and Biotechnology, Worcester Polytechnic Institute

Michigan: Mark Francek, Professor, Central Michigan University

Minnesota: Robin Hasslen, Professor, Child and Family Studies, St. Cloud State University

Mississippi: Robert McElvaine, Professor, Arts and Letters, Millsaps College

Missouri: Anthony Vazzana, Assistant Professor, Mathematics, Truman State University

Montana: Esther L. England, Professor, Music, The University of Montana-Missoula

Nebraska: James H. Wiest, Professor, Sociology, Hastings College

New Hampshire: Davina M. Brown, Professor, Psychology, Franklin Pierce College

New Jersey: Thomas Heed, Associate Professor of Accounting, New Mexico State University

New York: George J. Searles, Professor, Humanities, Mohawk Valley Community College

North Carolina: Richard A. Huber, Associate Professor, Curricular Studies, The University of North Carolina at Wilmington

North Dakota: Lorraine Willoughby, Associate Professor, Minot State University

Ohio: Dorothy Salem, Professor, History, Cuyahoga Community College

Oklahoma: Christopher Oehrlein, Professor, Mathematics, Oklahoma City Community College

Oregon: Nicole Aas-Rouxparis, Professor, French, Lewis and Clark

Pennsylvania: Roseanne Hofmann, Professor, Mathematics, Montgomery County Community College

South Carolina: Fred C. James, Professor, Biology, Presbyterian College

Tennessee: Donald Potter Jr., Professor, Geology, University of the South

Utah: Jan Sojka, Professor, Physics, Utah State University

Vermont: Andrie Kusserow, Assistant Professor, Sociology/Anthropology, Saint Michael's College

Washington: Suzanne Wilson Barnett, Professor, History, University of Puget Sound

West Virginia: Elizabeth Fones-Wolf, Associate Professor, History, West Virginia University

Wisconsin: Cecelia Zorn, Professor, Nursing, University of Wisconsin-Bau Claire

TRIBUTE TO ERV NEFF, PRESIDENT, MINNESOTA STATE RETIREE COUNCIL, AFL–CIO

Mr. DAYTON. Mr. President, I rise to honor Erv Neff, a longtime friend and current President of the Minnesota State Retiree Council, AFL–CIO. On December 4, Erv will step down as the President of the Retiree Council after six years of dedicated service. Under Erv's leadership, the Minnesota State Retiree Council, AFL–CIO, has grown from 19 affiliated organizations in 1996 to 115 affiliated organizations today. Erv established the goal to expand the membership and the mission of the Retiree Council, and he succeeded admirably.

Erv has a lifetime of distinguished accomplishments. They include his stewardship of the Twin Cities Musicians Union and his service as an invaluable advisor to dozens of prominent public officials. His legacy will be enhanced by his post-retirement activities. Many people view retirement as an opportunity to relax after a lifetime of hard work and personal and professional accomplishments. Not Erv Neff. Erv recognized the potential positive contributions Minnesota retirees could make toward improving the quality of life in our state. He joined the AFL–CIO Retiree Council and was quickly elected to leadership positions within the organization. Since his election as President of the Council in 1996, Erv has demonstrated that the Council could play an active role in promoting legislative initiatives that would benefit senior citizens and working men and women. He led the Council's efforts to pass improved prescription drug benefits for senior citizens at the state and national levels. He arranged for prominent speakers to appear at monthly Council meetings to educate members on a wide variety of issues. By demonstrating the ability of the Council to play an effective role in improving the lives of senior citizens, Erv was able to build the Council into one of the most vigorous advocacy organizations in Minnesota.

I hope that Erv will look back with deserved pride on his service to working men and women and senior citizens. He has accomplished much throughout his life, and thousands of Minnesotans owe him their gratitude.

I wish Erv and his wife, Betsy, the very best this life has to offer.

POLITICAL REFORM IN EGYPT

• Mr. BUNNING. Mr. President, I rise today to address an important area for American foreign policy: much needed political reform in Egypt.

In the past, Egypt has proven to be a helpful ally. Egypt showed courage in becoming the first Arab nation to sign a peace treaty with Israel after the Camp David talks in 1978. Egypt fought with the broad international coalition we led as part of the Gulf War in 1990–91. And I believe that at times Egypt has helped to provide a moderate and thoughtful voice to discussions with more radical Arab states about Middle East and international issues. In fact, Egypt was banned from the Arab League for a number of years for some of its stands, and President Sadat was assassinated for his role in the Camp David talks.

However, I am very concerned about political repression in Egypt and the effect that this could have on the direction that nation takes in the future and on the larger issue of Middle East peace.

We have seen in recent years how political and economic repression in many Arab states have fueled the fires of Islamic radicalism. Arab communities that have little or no hope of economic progress, and where views are stifled by autocratic authorities, have proven to be fertile ground for radicals like Osama bin Laden and others who play to their fears, and use their anger and frustration as weapons. We know that radical Islamic fundamentalism and terrorism thrive in nations struggling with oppression and poverty. I think there is a clear link between the motives we have seen of those individuals involved in the September 11 attacks, the bombing of the Khobar towers and other terrorist acts with the repressive environments in their home nations.

Now I am afraid that the lack of political and legal reform in Egypt has become a growing problem, and this could further add to other mounting obstacles we now see in the Arab world. Consequently, the Egyptian government needs to seriously address democratic and institutional reform and it needs to do so quickly.

Since holding out an olive branch to Israel at Camp David, Egypt has received a great deal of American economic and military assistance. While many roads and infrastructure projects have been built over the years, now is the time to press Egypt to embrace and enact political reforms. This will have a positive impact on both Egyptian civil society and the economy.

For instance, as a Washington Post editorial recently pointed, Egypt needs to develop a responsible media that objectively reports news and information instead of government-backed anti-American and anti-Semitic propaganda that does nothing but fuel tensions throughout the region.

Also, Egypt needs to do a better job of strengthening the rule of law. This is fundamental not only to the development of a market economy, but to more robust social expression. I believe

it would be in Egypt's best interest to immediately release Saad Eddin Ibrahim, a dual American-Egyptian citizen who is in prison for the ''crime'' of advocating political reforms.

So far we have not debated in the Senate on the Foreign Operations appropriations bill for the 2003 fiscal year. And it now looks like we may not even have the opportunity to address it at all before the end of this Congress.

But, let me serve notice to my colleagues that when the Senate takes up the Foreign Operations bill next year that I plan to bring up the issue of political reform in Egypt and ask that we take a closer look at U.S. aid to that nation.

In fact, I have already drafted an amendment that would modify current law to expand the understanding that in providing assistance, the United States expects both economic and political reform be undertaken in Egypt.

I very much look forward to this debate.●

RETIREMENT OF CECIL WILLIAMS—AGRICULTURAL COUNCIL OF ARKANSAS

Mrs. LINCOLN. Mr. President, I rise today to pay tribute to the long and great career of Cecil Williams, who spent a life's work fighting on behalf of farmers and the farming way of life in my home State of Arkansas.

Cecil is retiring, after leading the Agricultural Council of Arkansas for 37 years. He joined the organization in 1965 and set to work immediately doing everything he could to make a better world for the thousands of farm families that have made their livelihoods out of the fertile soil of Arkansas. Since then, he has played a central role in many, many achievements: passage of important check-off programs for the cotton, rice, soybean, and corn industries; creation of the Producers Steering Committee within the National Cotton Council; the implementation of better insurance protection for Arkansas farmers, just to name a few.

Over the years, he has seen many things come and go—economic crises, overwhelming floods and endless droughts, farm bill after farm bill, and, yes, he has seen many politicians come and go, too.

He has also seen a lot of changes and a lot of problems that won't seem to go away: higher farm costs against ever lower commodity prices, urban and suburban sprawl that increasingly compete for land resources, a slow but continual rise in the average age of farmers.

Through it all, Cecil Williams has fought, tooth and nail, for Arkansas's farmers. He has fought with grit and determination, with passion and loyalty. He has fought with heart and with every bead of sweat he could give. He is a company man who has endured almost as long as the company. And through the years, he has quietly but surely built a career that stands as an inspiration for all of us who believe in production agriculture. I suppose he is not old enough to be the father of Arkansas agriculture, but he certainly has been its guardian. And he has served it well.

I have known Cecil for many years, first as the daughter of a rice farmer in the Arkansas Delta, and for the past 10 years as a Senator and congresswoman. Through two farm bills and through countless attacks on the foundation of America's farm policy, I have relied on Cecil's counsel and wisdom. His advice has always been sound, always deeply rooted in a respect and admiration for the people we both serve. He has never let us down.

And, now, on his retirement, it is my fervent hope that we who inherit his years of dedication and service will preserve and perpetuate his example, that we do not let him down.

TRIBUTE TO DR. MARY JANE BRANNON

● Mr. SESSIONS. Mr. President, Mary Jane Crump Brannon graduated from Huntingdon College in 1937 with majors in biology and English, and a minor in French. She received her Master of Arts degree from the University of Alabama in 1938 in Parasitology. She did further graduate work at the University of Chicago and the University of Illinois. She completed her Ph.D. in Parasitology at Tulane University in 1943. She was the mother of seven children, and taught biology at her alma mater for forty years.

She began teaching at Huntingdon in 1956, and taught full-time until 1986, and part-time for ten more years. During much of this time and during the time I was a student at Huntingdon, she was head of the Biology Department. After her retirement she ran an Elderhostel program for Huntingdon College and the Alabama Shakespeare Festival.

Those are the facts about Dr. Brannon and her career, but they do not begin to hint at the many lives she touched while teaching at Huntingdon. She was a great teacher, brilliant scientist, and incredibly committed to the betterment of her students.

Every student who studied advanced biology at Huntingdon during those 40 years knew Dr. Brannon, and she knew them and took an interest in them. They overlooked her difficulty with names—''Please answer question number seven Joe-Charlie-Sally-whatever your name is, child..''—because they knew she *cared* about them, and because she really wanted them to learn biology. She was very demanding of her students, but none were afraid of her; they knew she would do her best to teach them.

Pre-med students all looked to her for advice in getting into medical school. One student wanted to go to Tulane Medical School, but could not afford it. Dr. Brannon and the Chairman of the Tulane Admissions Committee were friends, and she called him. After their conversation Tulane offered that student a full tuition scholarship. Scholarships to medical school were even rarer then than they are now!

It would be difficult to count the number of students she helped get into graduate or professional school, but in 1983 she had taught 56 Doctors of Medicine or Osteopathy, seven dentists, and dozens of biologists. In 1983 alone, eleven Huntingdon graduates were admitted to medical school, out of a graduating class of less than 200! Many of these owed their acceptance into medical, dental, or graduate school to her advice, or to having her ''pull strings'' with directors of admission. Huntingdon's 89% acceptance rate to medical school was in large part due to her teaching and leadership.

Dr. Brannon followed the lives of her former students closely, and every year she contacted them in person or by mail. They all looked forward to the ''Biology Christmas Letter'' to find out what their college friends were doing currently. She served as a hub for information about classmates and the college. Dr. Brannon, by her loyalty to Huntingdon College caused her students to recognize the uniqueness of the school, and to be loyal also. When I attended Huntingdon College, everyone knew there was no more talented, hardworking or loyal student than those in the biology department. They were a special group. They reflected her values.

Students went to Dr. Brannon with their personal problems, too. One student, who now has a Ph.D. in chemistry, tells of going to Dr. Brannon for advice about her boyfriend, who had proposed. ''I remember seeking her advice, which was practical, insightful, and blunt, when a guy asked me to marry him my last year at Huntingdon. She told me if I were going to get a Ph.D., that particular guy would not be a good match intellectually, etc. She told me there would be plenty of guys who would want to marry me later on after I received my Ph.D. She encouraged me to get my education first, which was a bold statement from a teacher to a female student in the 1970s.''

She was always arranging field trips for her students to take—trips to research labs, to the medical and dental schools, or to wilderness areas of Alabama. She planned and coordinated an annual trip to Panama City, Florida, right after the end of the school year so that students could gather biological specimens. It was also so they could have a little fun, but she was their chaperone, and nobody dared misbehave! She always gave a nighttime lecture and demonstration on bioluminescence, showing us the ''things in the Gulf that glow in the dark.''

Every semester, for every class that she taught, Dr. Brannon invited the entire class over to her home for dinner. She did this for more than 30 years,

each semester. It was a personal way of telling us that she cared about us and wanted to share her home and talents with us.

She was a superb teacher. She taught students about biology, but perhaps more importantly she taught them about living and loving. Because of the real interest she had in each student, she was a powerful influence for good in each one's life.

Teachers are very important people. Many have touched my life in significant ways. Those special teachers who have a real passion for truth and excellence, and who care deeply about their subjects and their students are the ones who change lives—and change them for the better. Dr. Mary Jane Brannon was one of those. She saw the world clearly, spoke quickly and frankly (when one speaks the truth there is less need to hesitate), and strongly desired that her students live lives dedicated to excellence. Those who studied under her could not be unaffected. Indeed, she inspired students who were not her students. She was more than a teacher, she was a force for learning and right living.

Her former students remember her with gratitude, admiration and love.●

IN HONOR OF NATIONAL BIBLE WEEK

● Mr. SANTORUM. Mr. President, I rise today to join the National Bible Association in celebrating one of the most important pieces of literature in human history: the Bible. As Senate co-chair of National Bible Week 2002, it is my honor to participate in a nationwide recognition of the Bible's importance in our daily lives. From November 24 through December 1, communities and churches across America will take part in this tradition by reading and reflecting on the Bible's teachings and how they can help us to lead better lives.

This week of Biblical awareness is something that those whose faiths are based in Judeo-Christian belief can appreciate. But National Bible Week is also an opportunity for Americans of all religious backgrounds to experience the benefits of Bible study. Just as America's students read the Constitution of the United States and examine the laws that govern our social behavior, so should everyone read the Bible and consider the traditions and lessons that have come to govern our moral behavior. The ethical guidelines that the Bible provides for us have, in large part, built the moral basis of the Western world and its governments. Furthermore, the notions of right and wrong, of good and bad, and the principles we teach our children are illustrated by the Bible's stories. Through this book, God's word gives us a complete set of simple rules to follow to lead a virtuous life.

National Bible Week encourages the country to make time, over the course of 8 days, for returning to the source of their religious beliefs. In this way, a nationwide look at the Bible serves to bring people of different sects and schools together. It allows us to recognize the common text we all share, regardless of denomination or church, and lays down a standard of conduct and piety that applies to everyone without discrimination.

As a practicing Catholic, I carry God's word in my heart every day and, for me, the Bible is a source of strength and comfort. In my own behavior, with my family, and in my work, I rely on God's message to guide me. It is my hope that those who may have put the Bible aside will open themselves up to National Bible Week as a chance to reread such an important text, for believers and nonbelievers alike.

National Bible Week 2002 will be inaugurated in New York with a kickoff luncheon to raise funds for the National Bible Association, an organization dedicated to promoting daily Bible reading. I congratulate this group's efforts to encourage better Biblical understanding and to draw people of faith towards common ground for a clearer, more universal understanding of the Bible's lessons and God's word.●

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 referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT DOCUMENTING THE STATE OF SMALL BUSINESS AT THE END OF THE TWENTIETH CENTURY—PM 121

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Small Business and Entrepreneurship:

To the Congress of the United States:

This report documents the state of small business at the end of the 20th century. Small businesses have always been the backbone of our economy. The perennially account for most innovation and job creation. Small businesses have sustained the economy when it is robust and growing as well as in weaker times when small businesses have put the economy back on the track to long-term growth.

We must work together to give small businesses an environment in which they can thrive. Small businesses are disproportionately affected by Government regulations and paperwork, and I am committed to reducing this burden. We should regulate only where there is a real need, fully justified through rigorous cost-benefit analysis and clear legal authority. And when Government must regulate, it must adopt commonsense approaches. Regulations work best when agencies anticipate and analyze the effects of their proposals on small firms. Rules need to reflect the ability of small businesses to comply.

Another barrier to unleashing the full potential of small business is our tax code. I am committed to reducing taxes for all Americans—especially small businesses. We must eliminate permanently the estate tax, which so often has spelled the death of the business and the jobs of its employees after the death of its founder. Our tax code should encourage investment in small businesses, and particularly in new and growing businesses. Because the innovations that drive tomorrow's economy come from entrepreneurial small businesses today, we must help them enter the marketplace, not impede them before they get there. Above all, small businesses need a tax code that is understandable and stable. Fairness, simplicity, transparency, and accountability should be our goals, and I am committed to this end.

Small business embodies so much of what America is all about. Self-reliance, hard work, innovation, the courage to take risks for future growth: theses are values that have served our Nation well since its very beginning. They are values to be passed on from generation to generation. We must ensure that our small businesses continue to thrive and prosper, not just for their own sakes, but for all of us.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 19, 2002*.

REPORT ENTITLED ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2001—PM 122

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Health, Education, Labor, and Pensions:

To The Congress of the United States:

I transmit herewith the Annual Report of the Railroad Retirement Board presented for forwarding to you for the fiscal year ended September 30, 2001, pursuant to the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 19, 2002*.

MESSAGES FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by

Mr. Rota, one of its clerks, announced that the Clerk of the House of Representatives be directed to request the Senate to return the official papers on the bill (S. 1843) to extend certain hydro-electric licenses in the State of Alaska.

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2621. An act to amend title 18, United States Code, with respect to consumer product protection.

H.R. 3758. An act for the relief of So Hyun Jun.

H.R. 3988. An act to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

H.R. 4546. An act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 4628. An act to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 4727. An act to reauthorize the national dam safety program, and for other purposes.

H.R. 5590. An act to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations.

H.R. 5708. An act to reduce preexisting PAYGO balances, and for other purposes.

H.R. 5716. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

ENROLLED BILL PRESENTED

S. 1214. An act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, 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–9643. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Flue-Cured Tobacco Advisory Committee Amendment of Regulation'' [Doc. No. TB–02–14](RIN0581–AC11) received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9644. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the Beef Promotion and Research Rules Regulations'' [Doc. No. LS–99–20] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9645. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus'' [Doc. No. FV02–905–4 IFR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9646. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Kiwi Fruit Grown in California; Increased Assessment Rate'' [Doc No. FV02–920–4–FR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9647. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate'' [Doc. No. FV02–906–1 IFR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9648. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Removing Dancy and Robinson Tangerine Varieties From the Rules and Regulations'' [Doc. No. FV02–905–3 FIR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9649. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Irish Potatoes Imported into the United States; Modification of Handling and Import Regulations'' [FV00–945–2 FR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9650. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Canadian Border Ports; Blaine and Lynden, WA'' [Doc. No. 02–064–1] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9651. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Mediterranean Fruit Fly; Removal of Quarantined Areas'' [Doc. No. 01–093–3] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9652. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Gypsy Moth Generally Infested Areas'' [Doc. No. 02–053–2] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9653. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Low Pathogenic Avian Influenza; Payment of Indemnity'' [Doc. No. 02–048–1] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9654. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Change in Disease Status of Israel Because of BSE'' [Doc. No. 02–072–2] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9655. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clopyralid; Pesticide Tolerance Technical Correction'' received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9656. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Thiamenthoxam; Pesticide Tolerance'' received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9657. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Difluenzuron; Pesticide Tolerance Correction'' received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9658. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled ''Evidence for Accrued Benefits'' (RIN2900–AH42) received on November 7, 2002; to the Committee on Veterans' Affairs.

EC–9659. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled ''Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease'' received on November 13, 2002; to the Committee on Veterans' Affairs.

EC–9660. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled ''Civilian Health and Medical Program of the Department of Veterans' Affairs'' received on November 13, 2002; to the Committee on Veterans' Affairs.

EC–9661. A communication from the Under Secretary for Health, Department of Veterans' Affairs, transmitting, a report entitled ''New Initiatives: Meeting Veterans' Needs'' from the Virginia Office of Research and Development; to the Committee on Veterans' Affairs.

EC–9662. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Texas Regulatory Program'' (TX–048–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9663. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Utah Regulatory Program'' (UT–041–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9664. A communication from the Director, Office of Surface Mining, Department of

the Interior, transmitting, pursuant to law, the report of a rule entitled ''Kentucky Regulatory Program'' (KY–238–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9665. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Pennsylvania Regulatory Program'' (PA–136–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9666. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Wyoming Regulatory Program'' (WY–029–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9667. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Iowa Regulatory Program'' (IA–011–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9668. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Louisiana Regulatory Program'' (LA–022–FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC–9669. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Kentucky Regulatory Program'' (KY–237–FOR) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC–9670. A communication from the Assistant General Counsel for Regulatory Law, Office of Energy Efficiency and Renewable Energy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Departmental Energy and Utilities Management'' (DOE O 430.2A) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC–9671. A communication from the Assistant General Counsel for Regulatory Law, Office of Security, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Eligibility for Security Police Officer Positions in the Personal Security Assurance Program'' (RIN1992–AA30) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC–9672. A communication from the Assistant General Counsel for Regulatory Law, Office of Security, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Security Conditions'' (DOE N 473.8) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC–9673. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Augusta S.P. A. Model A109E Helicopters'' [Doc. No. 2002–SW–42]((RIN2120–AA64)(2002–0473)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9674. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopters Textron Canada Limited Model 407 Helicopters Docket No. 2002–SW–38'' ((RIN2120–AA64)(2002–0474)); to the Committee on Commerce, Science, and Transportation.

EC–9675. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (24) Admt. No. 3029 ((2120–AA65)(2002–0059)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9676. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS332C, L, L1 helicopters Docket No. 2002–SW–36'' ((RIN2120–AA64)(2002–0472)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9677. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rockwell Collins, Inc. FMC–4200, FMC–5000 and FMC–6000 Flight Management Computers Docket No. 2000–CE–13'' ((RIN2120–AA64)(2002–0471)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9678. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737 Series Airplanes Docket No. 2001–NM–251'' ((RIN2120–AA64)(2002–0470)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9679. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Sikorsky Aircraft Corporation Model S–76A, S–76B and S–76C helicopters; Docket No. 2001–SW–59'' ((RIN2120–AA64)(2002–0447)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9680. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd. Model PC–6 Airplanes; Docket No. 2002–CE–08'' ((RIN2120–AA64)(2002–0448)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9681. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: British Aerospace Jetstream Model 3201 Airplanes; Docket No. 2002–CE–25'' ((RIN2120–AA64)(2002–0449)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9682. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B Airplanes Docket No. 93–CE–37'' ((RIN2120–AA64)(2002–0450)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9683. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Agusta S.p.A model A109E Helicopters Docket No. 2002–SW–06'' ((RIN2120–AA64)(2002–0451)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9684. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier-Rotax GmbH Type 912F, 912S, and 914F Series Reciprocating Engines Docket No. 2002–NE–33'' ((2120–AA64)(2002–0452)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9685. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Britax Sell GmbH & Co. OHG Water Boilers, Coffee Makers, and Beverage Makers Docket No. 2000–NE–58'' ((RIN2120–AA64)(2002–0453)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9686. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas, model DC–9–81 (MD–81), DC–9–82(MD–82), DC–9–83(MD–83), DC–9–87(MD–87) and MD–88 Airplanes Docket No. 2002–NM–216'' ((RIN2120–AA64)(2002–0454)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9687. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney PW 4000 Series Turbofan Engines Docket No. 2000–NE–47'' ((RIN2120–AA64)(2002–0458)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9688. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas, model DC–9–10, 20, 30, 40 and 50 Series Airplanes Docket No. 2000–NM–57'' ((RIN2120–AA64)(2002–0455)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9689. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Beech models 35, 35R, A35 and B35 Airplanes; Docket No. 2000–CE–44'' ((RIN2120–AA64)(2002–0456)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9690. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas. Model 757–2—, 200CB, and 300 Series Airplanes; Docket No. 2000–NM–392'' ((RIN2120–AA64)(2002–0457)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9691. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt & Whitney JT8D–200 series Turbofan Engines Docket No. 2002–NE–11'' ((RIN2120–AA64)(2002–0459)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9692. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments 29 Amendments No. (3027)'' ((RIN2120–AA65)(2002–0055)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9693. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: EXTRA Flugzeugbau GmbH Model EA–300S Airplanes; Docket No. 99–CE–85'' ((RIN2120–AA64)(2002–0460)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9694. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 series Airplanes Docket No. 2002–NM–250'' ((RIN2120–AA64)(2002–0461)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9695. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd. Model PC–6 Airplanes Correction Docket No. 2002–CE–08'' ((RIN2120–AA64)(2002–0462)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9696. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Admt. Class D Airspace; Huntington, WV Docket No. 02–AEA–06'' ((RIN2120–AA66)(200–0172)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9697. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amdt. of Class D Airspace; Titusville, FL Docket No. 02–ASO–18'' ((RIN2120–AA66)(2002–0173)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9698. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (44) Amdt. No. 3028'' ((RIN2120–AA65)(2002–0056)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9699. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''IFR Altitudes; Miscellaneous Amendments 3 Amdt. No. 438 Docket No. 30336'' ((RIN2120–AA63)(2002–0009)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9700. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amdt. to Gordon, NE Class E Airspace Area Docket No. 02–ACE–9'' ((RIN2120–AA66)(2002–0175)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9701. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E5 Airspace; Spurce Pine, NC Docket No. 02–ASO–14'' ((RIN2120–AA66)(2002–0176)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9702. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Britten-Norman Limited BN-2, BN2B, BN2T and BN2A MK.III Series Aiplanes Docket No. 2002–CE–21'' ((RIN2120–AA64)(2002–0464)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9703. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Stemme GmbH & Co. KG Model S10–VT Sailplanes Docket No. 2002'' ((RIN2120–AA64)(2002–0463)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9704. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd. Model PC–& Airplanes Docket No. 2002–CE–28'' ((RIN2120–AA64)(2002–0465)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9705. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: MORAVAN a.s. Models Z–143L and Z–242L Airplanes Docket No. 99–CE–71'' received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9706. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedure; Miscellaneous Amendments (18) Admt. No. 3030'' ((RIN2120–AA65)(2002–0058)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9707. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing model 737–100, 200, 200C–300, 400 and 500 Series Airplanes Docket No.; 2002–NM–214'' ((RIN2120–AA64)(2002–0469)); to the Committee on Commerce, Science, and Transportation.

EC–9708. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hartzell Propeller Inc. Model HD–E6C–3 Propellers Docket No. 2001–NE–43'' ((RIN2120–AA64)(2002–0467)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9709. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E5 Airspace; Franklin, NC Correction Docket No. 02–ASO–10'' ((RIN2120–AA66)(2002–0177)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9710. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Honeywell International, Inc. (formerly AlliedSignal, Inc. and textron Lycoming) LF507 and ALF502R Series Turbofan Engines Docket No. 2002–Ne–21'' ((RIN2120–AA64)(2002–0468)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9711. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; (Including 2 regulations) [CGD07–02–132][COTP San Juan 02–133]'' ((RIN2115–AA97)(2002–0202)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9712. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations (Including 2 Regulations) [CGD08–02–025] [CGD08–02–036]'' ((RIN2115–AE47)(2002–0094)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9713. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Special Anchorage Area/Anchorage Grounds Regulations: Frenchman Bay, Bar Harbor, ME (CGD01–02–027)'' ((RIN2115–AA98)(2002–0002)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9714. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Shrewbury River, NJ (CGDO1–02–122)'' ((RIN2115–AE47)(2002–0095)) received on November 12, 2000; to the Committee on Commerce, Science, and Transportation.

EC–9715. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Captain of the Port Detroit Zone, Selfridge Army National Guard Base, Lake St. Clair (CGD09–02–523)'' ((RIN2115–AA97)(2002–0199)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9716. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Oahu, Maui, Hawaii and Kauaii, HI (CGD14–02–001)'' ((RIN2115–AA97)(2002–0200)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9717. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Danvers River, MA (CGD01–02–118)'' ((RIN2115–AE47)(2002–0091)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9718. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Connecticut River, CT (CGD01–02–100)'' ((RIN215–AE47)(2002–0093)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9719. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Illinois Waterway, Joliet, IL (CGD08–02–024)'' ((RIN2115–AE47)(2002–0092)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9720. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; (Including 3 regulations) [01–02–117] [01–02–123] [07–02–125]'' ((RIN2115–AE47)(2002–0090)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9721. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Dorchester Bay (CGD01–02–101)'' ((RIN2115–AE47)(2002–0089)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9722. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gulfstream, Model G–V Series Airplanes; Docket No. 2002–NM–255 [10–16/10–24]'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9723. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: REVO, Incorporated Models Lake LA–4, LA–4A, LA–4P, LA4–200 and Lake Model 250 Airplanes; Docket No. 2002–CE–40'' (RIN2120–AA66) received on November 7, 2002

EC–9724. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Agusta SpA Model A119 Helicopter; Docket No. 2002–SW–46'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9725. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Rockwell Collins, Inc. AFD 3010 Adaptive Flight Display Units; Docket No. 2002–CE–39'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9726. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Cirrus Design Corporation Model SR20 and SR22 Airplanes; Docket No. 2002–CE–41'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9727. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; MD Helicopter, Inc Model MD900 Helicopters; Docket No. 2001–SW–25'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9728. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier-Rotax Type 912 F, 912 S and 914 F Series Reciprocating Engines; Docket No. 2002–NE–17'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9729. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures: Miscellaneous Amendments (106); Amdt. No. 3025'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9730. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace; Henderson Airport; Las Vegas, NV; Docket No. 02–AWP–4'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9731. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Morganton, NC; Docket No. 02–ASO–17'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9732. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Matawan, NJ; Docket No. 02–AEA–16'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9733. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Highlands, NC; Docket No. 02–ASO–12'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9734. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace, Asheville, NC; Docket No. 02–ASO–11'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9735. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Marion, NC; Docket No. 02–ASO–13'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9736. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Andrews-Murphys, NC; Docket No. 02–ASO–16'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9737. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Sylva, NC; Docket No. 02–ASO–15'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9738. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Franklin, NC; Docket No. 02–ASO–10'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9739. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E5 Airspace; Prestonburg, KY; Docket No. 02–ASO–09'' (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany 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. (Rept. No. 107–345).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, without amendment:

S. 2065: A bill to provide for the implementation of air quality programs developed pursuant to an Intergovernmental Agreement between the Southern Ute Indian Tribes and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes. (Rept. No. 107–346).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 556: A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes. (Rept. No. 107–347).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 2946: A bill to reauthorize the Federal Trade Commission for fiscal years 2003, 2004, and 2005, and for other purposes. (Rept. No. 107–348).

By Mr. LIEBERMAN, from the Committee on Governmental Affairs, without amendment:

S. 3070: A bill to authorize appropriations for the Merit Systems Protection Board and the Office of Special Counsel, and for other purposes. (Rept. No. 107–349).

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1340: A bill to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

By Mr. LIEBERMAN, from the Committee on Governmental Affairs, without amendment:

S. 1822: A bill to amend title 5, United States Code, to allow certain catchup contributions to the Thrift Savings Plan to be made by participants age 50 or over.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEVIN from the Committee on Armed Services:

Arthur James Collingsworth, of California, to be a Member of the National Security Education Board for a term of four years.

Air Force nominations beginning Brigadier General Richard C. Collins and ending Colonel Bradley C. Young, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Air Force nomination of Maj. Gen. Arthur J. Lichte.

Army nomination of Colonel Terry W. Saltsman.

Army nomination of Col. Michael H. Sumrall.

Army nominations beginning Brigadier General Daniel D. Densford and ending Colonel Merrel W. Yocum, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Navy nomination of Rear Adm. Stanley R. Szemborski.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning Branford J. Mcallister and ending Alice Smart, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Navy nominations beginning Rowland E Mccoy and ending Alan K Wilmot, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Air Force nomination of David G. Smith.

Navy nominations beginning Rodney D Abbott and ending Bernerd C Zwahlen, which nominations were received by the Senate and appeared in the Congressional Record on October 17, 2002.

Army nominations beginning Tom R. Mackenzie and ending Terrence D. Wright, which nominations were received by the Senate and appeared in the Congressional Record on November 12, 2002.

Army nominations beginning Stephen M. Ackman and ending Joseph M. Zima, which nominations were received by the Senate and appeared in the Congressional Record on November 12, 2002.

Navy nomination of Phillip K. Pall.

Navy nomination of Stephanie L. O'Neal.

Navy nomination of Thomas P. Rosdahl.

Army nominations beginning William C. Cannon and ending Charles F. Maguire III, which nominations were received by the Senate and appeared in the Congressional Record on November 14, 2002.

Navy nominations beginning Robert D. Beal and ending Steven J. Zaccari, which nominations were received by the Senate and appeared in the Congressional Record on November 14, 2002.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

NOMINATIONS DISCHARGED

The Committee on Health, Education, Labor, and Pensions was discharged of the following nominations on November 19, 2002:

Federal Mine Safety and Health Review Commission Michael F. Duffy, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2006.

NATIONAL INSTITUTE FOR LITERACY

Mark G. Yudof, of Minnesota, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD

Carmel Borders, of Kentucky, to be a Member of the National Institute for Literacy Advisory Board for a term of three years.

William T. Hiller, of Ohio, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Robin Morris, of Georgia, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Jean Osborn, of Illinois, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

NATIONAL MUSEUM SERVICES BOARD

Margaret Scarlett, of Wyoming, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

David Donath, of Vermont, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

The Committee on Governmental Affairs was discharged of the following nominations on November 19, 2002:

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Alejandro Modesto Sanchez, of Florida, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2006.

Andrew Saul, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2004.

Gordon Whiting, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2006.

The Committee on Veterans Affairs was discharged of the following nomination on November 19, 2002:

DEPARTMENT OF VETERANS AFFAIRS

William H. Campbell, of Maryland, to be an Assistant Secretary of Veterans Affairs (Management).

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. KYL:

S. 3. A bill to repeal the sunset of the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and for other purposes; to the Committee on Finance.

By Mr. GRAMM:

S. 4. A bill to amend the Internal Revenue Code of 1986 to treat earnings on contributions to tax-deferred savings accounts as gain from the sale or exchange of a capital asset; to the Committee on Finance.

By Mr. GRAMM (for himself and Mr. HAGEL):

S. 5. A bill to strengthen and permanently preserve social security through the power of investment and compound interest without benefit reductions or tax increases, and for other purposes; to the Committee on Finance.

By Mr. DURBIN:

S. 3173. A bill to amend title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employees, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. FEINGOLD, and Ms. LANDRIEU):

S. 3174. A bill to permanently reenact chapter 12 of title 11, United States Code, and for other purposes; to the Committee on the Judiciary.

By Mr. SANTORUM:

S. 3175. A bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level; to the Committee on Finance.

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 3176. A bill to amend the Internal Revenue Code of 1986 to allow employers in renewal communities to qualify for the renewal community employment credit by employing residents of certain other renewal communities; to the Committee on Finance.

By Mr. HOLLINGS:

S. 3177. A bill to authorize appropriations for the programs of the Department of Commerce's National Institute of Standards and Technology, to amend the National Institute of Standards and Technology Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN:

S. 3178. A bill to amend the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986 to require warning labels for tobacco products; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN:

S. 3179. A bill to amend the Public Health Service Act to provide health care coverage for qualified caregivers; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HOLLINGS (for himself, Mr. SCHUMER, and Mrs. CLINTON):

S. Res. 359. A resolution recognizing the importance and accomplishments of the Thurgood Marshall Scholarship Fund; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DODD (for himself, Mrs. FEINSTEIN, Mr. MILLER, Mr. CLELAND, Mr. DASCHLE, Mr. REID, Mrs. CLINTON, and Mr. AKAKA):

S. Res. 360. A resolution congratulating former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize, and commending him for his lifetime of dedication to peace; considered and agreed to.

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

S. Con. Res. 159. A concurrent resolution to correct the enrollment of S. 1843; considered and agreed to.

ADDITIONAL COSPONSORS

S. 145

At the request of Mr. THURMOND, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 145, a bill to amend title 10, United States Code, to increase to parity with other surviving spouses the basic annuity that is provided under the uniformed services Survivor Benefit Plan for surviving spouses who are at least 62 years of age, and for other purposes.

S. 776

At the request of Mr. BINGAMAN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 776, a bill to amend title XIX of

the Social Security Act to increase the floor for treatment as an extremely low DSH State to 3 percent in fiscal year 2002.

S. 917

At the request of Ms. COLLINS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1203

At the request of Mr. SCHUMER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1203, a bill to amend title 38, United States Code, to provide housing loan benefits for the purchase of residential cooperative apartment units.

S. 1221

At the request of Mr. SPECTER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1221, a bill to amend title 38, United States Code, to establish an additional basis for establishing the inability of veterans to defray expenses of necessary medical care, and for other purposes.

S. 1375

At the request of Mr. DORGAN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1375, a bill to amend the Internal Revenue Code of 1986 to allow tax-free distributions from individual retirement accounts for charitable purposes.

S. 1506

At the request of Mr. DAYTON, his name was added as a cosponsor of S. 1506, a bill to amend title 10, United States Code, to repeal the requirement for reduction of SBP survivor annuities by dependency and indemnity compensation.

S. 1860

At the request of Mr. DORGAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1860, a bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes.

S. 2562

At the request of Mr. REID, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2562, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 2933

At the request of Mr. BREAUX, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Georgia (Mr. MILLER), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2933, a bill to promote elder justice, and for other purposes.

S. 3004

At the request of Mr. HELMS, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 3004, a bill to eliminate the Federal quota and price support programs for certain tobacco, to compensate quota owners and holders for the loss of tobacco quota asset value, to establish a tobacco community reinvestment program, and for other purposes.

S. 3074

At the request of Mr. BIDEN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 3074, a bill to provide bankruptcy judgeships.

S. 3094

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 3094, a bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds, dry peas, lentils, and small chickpeas.

S. 3114

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 3114, a bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S. 3125

At the request of Mr. BROWNBACK, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 3125, a bill to designate ''God Bless America'' as the national song of the United States.

S. 3125

At the request of Mr. NELSON of Florida, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 3125, supra.

S. RES. 339

At the request of Mrs. MURRAY, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. Res. 339, a resolution designating November 2002, as ''National Runaway Prevention Month.''

S. CON. RES. 3

At the request of Mr. FEINGOLD, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the U.S.S. *Wisconsin* and all those who served aboard her.

S. CON. RES. 157

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. Con. Res. 157, a concurrent resolution expressing the sense of Congress that United States Diplomatic missions should provide the full and complete protection of the United States to certain citizens of the United States living abroad.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL:

S. 3. A bill to repeal the sunset of the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and for other purposes; to the Committee on Finance.

Mr. KYL. Mr. President, Investors are the backbone of the U.S. economic system. They provide the capital that entrepreneurs use to start and grow businesses. Investors invest in everything from corporations like General Electric to the local Mom and Pop convenience store. These are the businesses that employ our American workers and compete against other businesses throughout the United States and the world. It is investor capital that fuels the most dynamic workings of our economy.

Too often, our Federal Government has taken the American investor for granted. Even worse, our Federal Government has singled him out for adverse treatment by placing significant impediments in his path.

Congress needs to refocus our government's attention on helping our investors as well as making our U.S. businesses more attractive entities in which to invest.

Today, I am introducing legislation, the ''Contract with Investors,'' which incorporates a number of proposals to foster a better investment environment.

In order to satisfy an arcane Senate budget rule, the 2001 tax-relief law's provisions will expire in 2011. Making this bipartisan tax relief permanent will eliminate a large source of investor uncertainty that currently exists in the marketplace. Businesses are having a hard time planning with the Tax Code potentially reverting back to old tax laws. Businesses, and the investors who own them, need certainty and a stable environment in which to prosper. Making last year's tax provisions permanent will go a long way towards providing that certainty.

The second thing my bill does is accelerate last year's marginal income tax rate reductions. Instead of reducing the tax brackets in 2004 and 2006, as currently scheduled, my bill will move the 2004 rate reductions up to 2003 and the 2006 rate reductions up to 2004. Marginal tax-rate reductions benefit all income tax-paying Americans. Many investors invest in businesses that are sole proprietorships, i.e. nonincorporated business entities. Owners of these businesses pay the highest individual marginal income tax rate; under my bill the highest rate they would pay in 2004 and beyond would be 35 percent, the same rate as corporations.

The third provision would accelerate the repeal of the estate, or more accurately ''death'', tax. A December 1998 report by the Joint Economic Committee concluded that the existence of the death tax during the last century has reduced the stock of investors' capital in the economy by nearly half a

trillion dollars. The Joint Committee estimates that, by repealing the death tax and putting those resources to better use, as many as 240,000 jobs could be created over seven years, and Americans would have an additional $24.4 billion in disposable personal income.

Last year, Dr. Wilbur Steger, President of Consad Research Corporation and a professor at Carnegie Mellon University testified before the Senate Finance Committee that an immediate death-tax repeal would provide a $40 billion automatic stimulus to the economy. This is based on estimates of the amount of net unrealized capital gains that would be unlocked by such a repeal. Many Americans choose to hold onto their assets until death in order to obtain for their heirs a ''step-up'' in basis. Eliminating the death tax and a limited step-up in basis will provide an incentive for Americans to sell assets before death, hence the term ''unlocking.''

Under current law, the death tax will go down to zero in 2010 but reappear thereafter, at potent 2001 levels, thus adding significant complexity to future death-tax planning, increasing costs that are a drag on productivity, and retreating from a principled rejection of a frankly immoral tax. This is unsatisfactory. Until the death tax is repealed, family businesses, farms and ranches must still pay for expensive life-insurance policies, death-tax planners, and tax attorneys. These expenses total more than $12 billion a year, according to Consad Research Corporation. A more efficient utilization of these resources would result in an immediate stimulus for the economy. More workers will be hired, more capital assets purchased and more productive goods made if we accelerate the elimination of the death tax and make it permanent. In short, Congress should hurry up and bury the death tax for all time to enable family businesses, farms, and ranches to begin investing those billions of wasted resources in the economy, creating jobs and expanding services, providing a powerful stimulus for their long-term survival. My bill would permanently repeal the death tax in 2005, thus allowing all Americans 2 years to plan for a future in which the federal government no longer taxes the death of its citizens.

The fourth provision in my Contract with Investors addresses the taxation of capital gains. My bill would reduce it to 10 percent. The capital-gains tax is a form of double-taxation that penalizes risk-taking and entrepreneurship. As many economists, including Federal Reserve Chairman Alan Greenspan, note, the capital-gains tax should not exist. Short of eliminating this tax, Congress must enact a large, and permanent, reduction in the capital-gains tax rate in order to stimulate new investment and more productive use of resources for both the short-term and the long-term health of our economy.

According to a recent study by the American Council for Capital Formation, American taxpayers face capital-gain tax rates that are 35 percent higher than those paid by the average investor in other countries. In addition, the United States is one of a small number of countries that requires a holding period for an investment to qualify for a lower capital-gain treatment.

In the last decade, individual capital-gains rate reductions and shortening of the holding period has boosted U.S. economic growth. Reducing the cost of capital will promote the promote the type of productive business investment that fosters growth in output and high-paying jobs. Lowering rates will aid entrepreneurs in their effort to promote technological advances in products and services that people want and need.

And let's not forget about our national savings. Reducing capital-gains taxes means fewer taxes on Americans who choose to save for their future. What our economy needs is to remove impediments for savings and capital formation. When Americans choose to save for their retirement security and other financial goals, they are investing in the United States. We need to make that choice more attractive so that Americans choose to invest more in the United States. Reducing the capital-gains taxes will help achieve this goal.

My bill will also modernize the capital-loss provisions by increasing the amount of capital loss an individual may deduct against ordinary income to $10,000 from the current-law $3,000, and indexing it for future inflation. This $3,000 limit was arbitrarily set over 25 years ago and would have grown to $10,000 had it been indexed when it was enacted. Due to this lack of indexation, many investors are forced to hold on to unproductive investments. Updating this $3,000 limit will permit investors to sell these unproductive assets and invest the proceeds in more productive assets.

Next, my bill will provide additional incentives for Americans to increase the amounts and periods of time in which they invest for their retirement security. Increasing the annual, maximum IRA contribution from $3,000 to $5,000 and the annual, maximum 401(k) plan contribution from $11,000 to $15,000 would enable American workers to save more for their future by investing in businesses. Increasing from 70.5 to 75 the age at which those tax-deferred retirement-savings accounts must begin making minimum required annual withdrawals will allow American seniors who are approaching this arbitrary age to choose whether to maintain their investments. They will not longer be forced to divest.

The next provision in my bill would eliminate the double taxation of corporate profits. Currently, businesses pay income taxes on their profits. Their investors are forced to pay a second income tax on the amounts that corporations distribute to them in the form of dividends. The national Center for Policy Analysis has calculated that the combined tax rate on corporate profits is approximately 60 percent.

My bill would remedy this problem by exempting from income tax the dividends received by individuals from publicly traded C corporations. Eliminating this taxation will produce higher returns on dividend-yielding equity investments. Companies will have an incentive to make money and give it to the investor/shareholders in order to increase the value of the stock. Investors and businesses will benefit from this proposal.

Finally, I have included five provisions under Sense of the Senate language. I believe that the Senate must act on these issues and I stand ready and willing to assist my fellow Senators in solving these problems.

First, Congress should pass legislation to safeguard American workers' pension and retirement accounts. This year, the Finance Committee unanimously passed out of committee such a bill. The Senate and the House of Representatives should act quickly to pass similar legislation as soon as possible.

Second, Congress should modernize this country's international tax provisions in order to permit U.S. companies to better compete internationally. Our Tax Code's provisions, particularly the international tax, are placing our U.S. companies and the investors who own them at a distinct competitive disadvantage. Congress must modernize these provisions and move towards ending the current practice of taxing profits earned outside our country's boundaries.

Third, Congress must take the trouble to purge redundant, outdated, and unscientific regulatory burdens on investors and U.S. companies. Congress is quick to pass onerous new laws but slow to repeal them. This is an abdication of our responsibilities as legislators. Before placing new burdens on investors and businesses, Congress should be required to perform a cost-benefit analysis as well as instituting performance criteria to monitor and evaluate these new burdens on U.S. businesses and investors.

Fourth, Congress should enact meaningful tort reform as soon as possible.

Finally, Congress should enact meaningful tax reform that simplifies the Federal Tax Code and reduces the cost-recovery periods that businesses are forced to use to recover the costs of capital.

Now is the time for bold action. A ''Contract with Investors'' is long overdue. I have laid out my principles. I look forward to future hearings and discussions with my colleagues. It's time to get working.

By Mr. GRAMM (for himself and Mr. HAGEL):

S. 5. A bill to strengthen and permanently preserve social security through the power of investment and compound interest without benefit reductions or tax increases, and for other purposes; to the Committee on Finance.

Mr. HAGEL. Mr. President, I rise today to join the senior Senator from Texas in introducing the Social Security Preservation Act. He has worked a decade on this proposal, and I want to ensure that, as he leaves this distinguished body in a few short weeks, his time and effort will not have been wasted, for the stakes are far too high.

Everyone knows that America's demographics are rapidly changing. In just nine short years, in 2011, the first of my generation of baby boomers will retire. In the 20 years thereafter, the number of Americans aged 65 and older will grow four times as fast as the number of working Americans. Under the current system, where no real investments are ever made and current benefits are paid entirely by taxing current workers, how do we expect to pay for this shift in demographics? In 2015, Social Security will be distributing more in benefits than it collects in payroll taxes, and by 2038, the system will be completely bankrupt. Congress will be forced to either raise taxes on the next generation of workers by nearly 40 percent or cut the benefits of retirees by nearly 30 percent. If we continue to defer the difficult decisions on how we fix the system, that will be the position we will find ourselves in. If we begin now, however, we can stabilize and enhance the system before it is scheduled to go broke. But we must start now.

In his message to Congress on Social Security in 1935, Franklin Delano Roosevelt called for a Social Security system of ''voluntary contributory annuities by which individual initiative can increase the annual amounts received in old age.'' This bill embraces that vision, and will strengthen and permanently preserve Social Security by actually making investments. All workers will have the option of investing a portion of their wages into accounts that earn a higher rate of return. Upon retirement, these investing workers would use the money in their accounts to purchase an annuity to pay benefits promised under the current system plus a bonus for participating in the new system. They could keep any excess. All workers, both those who invest and those who choose to remain in the current system, would be guaranteed every dollar of their currently promised benefit. No worker would ever experience a cut in benefits or a hike in taxes at any time. And when fully implemented, these changes to Social Security will yield benefits over two times those currently provided to an average worker. And the system's coming insolvency in 2038 would be reversed.

It is time for our Nation to confront Social Security's impending financial crisis. For too long, we have ignored our nation's changing demographics which will result in a crushing burden being placed on our Social Security and Medicare systems if we don't deal with this challenge now. It will demand either higher taxes or reduced benefits later if we continue to defer our responsibilities. For too long, we have feared open and informative debate about reforming the Social Security system, believing that the American people are unwilling to consider the realities that we face. Politicians have been afraid of the political risks in honestly dealing with Social Security. The Congress and the President must face up to their responsibilities in dealing with this challenge. I will reintroduce this legislation to reform the Social Security system at the beginning of the next Congress and look forward to working with my colleagues and President Bush in this effort.

By Mr. DURBIN:

S. 3173. A bill to amend title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employees, and for other purposes; to the Committee on Governmental Affairs.

Mr. DURBIN. Mr. President, today I am introducing legislation to make available to all Americans the same range of private health insurance plans available to Members of Congress and other Federal employees through the Federal Employees Health Benefits Program, FEHBP.

Too many Americans do not have real insurance options. Many individuals lack insurance because no insurer is willing to cover them at a reasonable price. Others work for employers who do not provide health insurance or offer only one insurance provider. This legislation addresses these issues by giving individuals and businesses access to the group purchasing power of FEHBP and the wide range of health plans in that program.

The OPTION Act, Offering People True Insurance Options Nationwide, would expand insurance options by allowing individuals to enroll in private health insurance plans nearly identical to the plans available to federal employees. Though the OPTION program would be separate from the Federal employees program, it would be modeled after FEHBP and would draw from FEHBP's strengths: plan choice, group purchasing savings, comprehensive benefits, and open enrollment periods.

Under this legislation, all FEHBP health plans would be required to offer an OPTION health plan to non-Federal employees with the same range of benefits they offer Federal employees through FEHBP.

OPTION enrollees would be placed in a separate risk pool to prevent any adverse effect on current FEHBP employees, annuitants, and their families. The OPTION Act would not result in any changes to the premiums or benefits of today's FEHBP health plans.

OPTION health plans would not be allowed to impose any preexisting condition exclusions on new OPTION enrollees who have at least one year of health insurance coverage immediately prior to enrollment in an OPTION plan. To prevent people from waiting until they are sick to enroll, health plans would be allowed to exclude coverage for preexisting conditions for up to one year for people without coverage immediately prior to enrollment.

One of the few differences from FEHBP is that OPTION plans would be allowed to vary premiums by age so that younger enrollees would be more likely to enroll. OPTION plans also would be required to offer rebates or lower premiums to encourage and reward longevity of health coverage. These provisions would act as an incentive for people to sign up when they are young and to maintain continuous coverage.

Along with making FEHBP available in the individual market, the OPTION program will allow businesses to tap into the type of group buying power in the federal employees program if they voluntarily choose to participate. To be eligible, a business would have to be willing to pay at least a minimum percentage of premiums, varying from 40 percent to 60 percent depending on the size of the business. Employers would also be offered an incentive to begin enrolling their employees by allowing them to pay as little as 20 percent of the premium for the first year. This innovative employer option would encourage employer health coverage rather than shifting coverage away from the private sector. I want to emphasize that employer participation would be entirely voluntary.

Under the OPTION Act, premiums would not be government-subsidized. Instead, enrollees and those employers who choose to participate would be responsible for the cost of the premiums.

The OPTION program would be administered by the Office of Personnel Management, OPM, which administers the FEHBP program, and would generally follow the rules for FEHBP. OPM has developed considerable expertise in negotiating and working with health plans and has shown that it can run a health program well at a minimal cost. We can build on OPM's expertise to extend the same health insurance options to all Americans.

Finally, once it is up and running, this program would pay for itself. Administrative costs would be covered from a portion of the OPTION premiums. Those who benefit from the program would pay for its overhead costs.

This legislation could open the door for many Americans to obtain good health insurance coverage. Health insurance premiums in today's market can be especially high, both for individuals and for small businesses buying insurance on their own. This legislation will reduce the cost of insurance, and as a result will help to reduce the number of uninsured Americans. It will also expand insurance options. I encourage my colleagues to support this very important legislation.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 3173

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 ''Offering People True Insurance Options Nationwide Act of 2002''.

SEC. 2. OPTION HEALTH INSURANCE.

Subpart G of part III of title 5, United States Code, is amended by adding at the end the following:

''CHAPTER 90A—HEALTH INSURANCE FOR NON-FEDERAL EMPLOYEES

''Sec.
''9051. Definitions.
''9052. Health insurance for non-Federal employees.
''9053. Contract requirement.
''9054. Eligibility.
''9055. Alternative conditions to Federal employee plans.
''9056. Coordination with social security benefits.
''9057. Non-Federal employer participation.

''§ 9051. Definitions

''In this chapter—

''(1) the terms defined under section 8901 shall have the meanings given such terms under that section; and

''(2) the term 'Office' means the Office of Personnel Management.

''§ 9052. Health insurance for non-Federal employees

''(a) The Office of Personnel Management shall administer a health insurance program for non-Federal employees in accordance with this chapter.

''(b) Except as provided under this chapter, the Office shall prescribe regulations to apply the provisions of chapter 89 to the greatest extent practicable to eligible individuals covered under this chapter.

''(c) In no event shall the enactment of this chapter result in—

''(1) any increase in the level of individual or Government contributions required under chapter 89, including copayments or deductibles;

''(2) any decrease in the types of benefits offered under chapter 89; or

''(3) any other change that would adversely affect the coverage afforded under chapter 89 to employees and annuitants and members of family under that chapter.

''(d) The Office shall develop methods to facilitate enrollment under this chapter, including the use of the Internet.

''(e) The Office may enter into contracts for the performance of appropriate administrative functions under this chapter.

''§ 9053. Contract requirement

''(a) Each contract entered into under section 8902 shall require a carrier to offer to eligible individuals under this chapter, throughout each term for which the contract remains effective, the same benefits (subject to the same maximums, limitations, exclusions, and other similar terms or conditions) as would be offered under such contract or applicable health benefits plan to employees, annuitants, and members of family.

''(b)(1) The Office may waive the requirements of this section, if the Office determines, based on a petition submitted by a carrier that—

''(A) the carrier is unable to offer the applicable health benefits plan because of a limitation in the capacity of the plan to deliver services or assure financial solvency;

''(B) the applicable health benefits plan is not sponsored by a carrier licensed under applicable State law; or

''(C) bona fide enrollment restrictions make the application of this chapter inappropriate, including restrictions common to plans which are limited to individuals having a past or current employment relationship with a particular agency or other authority of the Government.

''(2) The Office may require a petition under this subsection to include—

''(A) a description of the efforts the carrier proposes to take in order to offer the applicable health benefits plan under this chapter; and

''(B) the proposed date for offering such a health benefits plan.

''(3) A waiver under this subsection may be for any period determined by the Office. The Office may grant subsequent waivers under this section.

''§ 9054. Eligibility

''An individual shall be eligible to enroll in a plan under this chapter, unless the individual is enrolled or eligible to enroll in a plan under chapter 89.

''§ 9055. Alternative conditions to Federal employee plans

''(a) For purposes of enrollment in a health benefits plan under this chapter, an individual who had coverage under a health insurance plan and is not a qualified beneficiary as defined under section 4980B(g)(1) of the Internal Revenue Code of 1986 shall be treated in a similar manner as an individual who begins employment as an employee under chapter 89.

''(b) In the administration of this chapter, covered individuals under this chapter shall be in a risk pool separate from covered individuals under chapter 89.

''(c)(1) Each contract under this chapter may include a preexisting condition exclusion as defined under section 9801(b)(1) of the Internal Revenue Code of 1986.

''(2)(A) The preexisting condition exclusion under this subsection shall provide for coverage of a preexisting condition to begin not more than 1 year after the date of coverage of an individual under a health benefits plan, reduced by 1 month for each month that individual was covered under a health insurance plan immediately preceding the date the individual submitted an application for coverage under this chapter.

''(B) For purposes of this paragraph, a lapse in coverage of not more than 63 days immediately preceding the date of the submission of an application for coverage shall not be considered a lapse in continuous coverage.

''(d)(1) Rates charged and premiums paid for a health benefits plan under this chapter—

''(A) may be adjusted and differ from such rates charged and premiums paid for the same health benefits plan offered under chapter 89;

''(B) shall be negotiated in the same manner as negotiated under chapter 89; and

''(C) shall be adjusted to cover the administrative costs of this chapter.

''(2) In determining rates and premiums under this chapter—

''(A) the age of covered individuals may be considered; and

''(B) rebates or lower rates and premiums shall be set to encourage longevity of coverage.

''(e) No Government contribution shall be made for any covered individual under this chapter.

''(f) If an individual who is enrolled in a health benefits plan under this chapter terminates the enrollment, the individual shall not be eligible for reenrollment until the first open enrollment period following 6 months after the date of such termination.

''§ 9056. Coordination with social security benefits

''Benefits under this chapter shall, with respect to an individual who is entitled to benefits under part A of title XVIII of the Social Security Act, be offered (for use in coordination with those social security benefits) to the same extent and in the same manner as if coverage were under chapter 89.

''§ 9057. Non-Federal employer participation

''(a) In this section the term—

''(1) 'employee', notwithstanding section 9051, means an employee of a non-Federal employer;

''(2) 'non-Federal employer' means an employer that is not the Federal Government; and

''(3) 'total premium amount' means the total premiums for individual coverage for the health benefits plan under which the employee is enrolled, regardless of whether the employee is enrolled as an individual or for self and family.

''(b)(1) The Office shall prescribe regulations under which non-Federal employers may participate under this chapter, including—

''(A) the offering of health benefits plans under this chapter to employees through participating non-Federal employers; and

''(B) a requirement for participating non-Federal employer contributions to the payment of premiums for employees who enroll in a health benefits plan under this chapter.

''(2) A participating non-Federal employer shall pay an employer contribution for the premiums of an employee or other applicable covered individual as follows:

''(A) A non-Federal employer that employs not more than 2 employees shall not be required to pay an employer contribution.

''(B) A non-Federal employer that employs more than 2 and not more than 25 employees shall pay not less than 40 percent of the total premium amount.

''(C) A non-Federal employer that employs more than 25 and not more than 50 employees shall pay not less than 50 percent of the total premium amount.

''(D) A non-Federal employer that employs more than 50 employees shall pay not less than 60 percent of the total premium amount.

''(3) Notwithstanding paragraph (2) (B), (C), or (D), a non-Federal employer that employs more than 2 employees shall pay not less than 20 percent of the total premium amount with respect to the first year in which that employer participates under this chapter.

''(c)(1) A participating non-Federal employer shall ensure that each eligible full-time employee may enroll in a plan under this chapter.

''(2)(A) A participating non-Federal employer may not offer a health insurance plan to employees (other than a health benefits plan under this chapter) unless such health insurance plan is offered continuously on and after the date of enactment of this chapter.

''(B) If a participating non-Federal employer offers coverage under this chapter and under another plan as provided under subparagraph (A), the non-Federal employer—

''(i) shall treat all employees in the same manner with respect to such offerings; and

''(ii) may not use financial incentives or disincentives to encourage an employee or class of employees to enroll in the health insurance plan not offered under this chapter.''.

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CONTRACT REQUIREMENT UNDER CHAPTER 89.—Section 8902 of title 5, United States Code, is amended by adding after subsection (o) the following:

''(p) Each contract under this chapter shall include a provision that the carrier shall offer any health benefits plan as required under chapter 90A.''.

(b) TABLE OF CHAPTERS.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 90 the following:

''90A. Health Insurance for Non-Federal Employees ..... 9051''.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act and shall apply to contracts that take effect with respect to calendar year 2003 and each calendar year thereafter.

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 3176. A bill to amend the Internal Revenue Code of 1986 to allow employers in renewal communities to qualify for the renewal community employment credit by employing residents of certain other renewal communities; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, today I am introducing a modification of legislation I introduced earlier in the 107th Congress relating to the Renewal Community program. The Renewal Community program has been tremendously valuable in promoting job growth and economic development in the poorest areas of the country.

There are 40 urban and rural renewal community areas designated under the Community Renewal Tax Relief Act of 2000. The poverty rate in renewal communities is at least 20 percent, and the unemployment rate is one-and-a-half times the national level. The households in the renewal communities have incomes that are 80 percent below the median income of households in their local jurisdictions. Four areas of Louisiana received renewal community designations.

Businesses in a renewal community can receive a variety of tax benefits for hiring residents of the same renewal community. These tax benefits include A $1,500 Federal credit for hiring workers from the renewal community, as well as a $2,400 work opportunity credit for hiring employees from groups with traditionally high unemployment rates. There is one important qualification in the program that poses a peculiar problem in Louisiana, as well as a few other parts of the country: a business can only take advantage of these credits if it hires residents from the same renewal community that the business is in.

Why is this a problem for Louisiana? Because, some of our renewal communities border each other. Under the rules of the program, the business cannot receive the credit for hiring a resident of a different renewal community. In Louisiana, the closest available job for someone might be at a business two or three miles away, but if that business is not in the same renewal community as the worker, the business cannot get the tax credit.

A good example of what I am talking about is in the northern part of Louisiana, home of the North Louisiana Renewal Community and the Ouachita Renewal Community. The city of Monroe is located at the heart of the Ouachita Renewal Community and it serves as the economic hub for Northeast Louisiana. All around Monroe and the Ouachita Renewal Community there are parishes which fall in the North Louisiana Renewal Community, Morehouse Parish to the north, Richland Parish to the east, Caldwell Parish to the south, and Lincoln Parish to the west. People from these parishes will naturally look in Monroe for jobs. But under the rule, businesses in Monroe cannot take advantage of the tax credits even if they hire wokers from only a short distance away.

My legislation, the Renewal Community Tax Benefit Improvement Act of 2002, will allow the employers in one renewal community to hire employees from an adjacent or nearby renewal community area and still receive the tax benefits granted through the act. The bill I am introducing today is a slightly more narrow version of my earlier bill to bring needed flexibility to the renewal community program. I am pleased that my colleague from Louisiana, Senator BREAUX, is an original cosponsor of this bill.

This legislation is a small change that will make a big difference to the people of Louisiana. I urge my colleagues to support this bill.

By Mr. HOLLINGS:

S. 3177. A bill to authorize appropriations for the programs of the Department of Commerce's National Institute of Standards and Technology, to amend the National Institute of Standards and Technology Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, today I am pleased to introduce the National Institutes of Standards and Technology, NIST, Authorization Act. The bill is a routine authorization of appropriations for NIST. It includes some provisions to change the Institute's Advanced Technology Program that were the subject of hearings in the Commerce Committee earlier this year. In addition, the bill includes several technical changes to the NIST Act which the agency has requested.

NIST is really a hidden treasure. Twice in the past five years, NIST Scientists have shared in the Physics Nobel Prize. Whether they are investigating the collapse of the World Trade Center, making small manufacturers better, sponsoring innovative research, or improving timekeeping, the people of this little-noticed agency continue to do amazing work, and I commend them.

Nonetheless, we continue to be embroiled in an annual tug-of-war on funding for the Advanced Technology Program, known as ATP. I am encouraged that Secretary Evans and Deputy Secretary Bodman want to stabilize this program. I am introducing this bill to help them in that cause by including several of the Department's suggestions to improve the ATP.

The benefits of the ATP are well-documented. The program has been studied thoroughly from individual case studies, to comprehensive examinations like the 2001 study by the National Academy of Sciences' National Research Council. The results are clear. ATP is stimulating collaboration, accelerating the development of high-risk technologies, and paying off for the nation.

The Commerce Department has proposed several changes to the ATP. The bill includes provisions to allow universities to lead ATP projects and to have interest in the intellectual property developed under those projects, as well as provisions to further clarify that projects are to remove scientific and technical barriers and to evaluate ATP's review process.

In addition, the bill would clarify that the program should operate free of political influence by ensuring that final project decisions are made by career NIST officials, as they have been since the program's inception.

However, the Administration's proposal for recoupment of up to 5 times the original amount of funding is not acceptable and is not included. The record on recoupment was made at our hearing in April of this year. It is an approach which the program has tried and failed. More importantly, recoupment discourages companies from participating in the program, imposing overwhelming accounting burdens that companies may be unable to fulfill.

In the end, the bill hopes to build on ATP's tremendous successes. Since its inception in 1989 this industry-led, competitive, and cost-shared program has helped the U.S. develop the next generation of breakthrough technologies in advance of its foreign competitors.

The Commerce Committee heard testimony from Scott Donnelly of GE. His company, with ATP funding, developed a new method to produce the X-ray panels that are the heart of a new digital mammography system. This system is giving women and their doctors access to better, cheaper digital mammograms.

A March 1999 study found that future returns from just three of the completed ATP projects, improving automobile manufacturing processes, reducing the cost of blood and immune cell production, and using a new material for prosthesis devices, would pay for all projects funded to date by the ATP.

The bill also provides full funding for the Manufacturing Extension Partnership, MEP, Centers which the Administration has proposed to cut. Ironically,

these MEP Centers help fulfill one of the top priorities stated in the Administration's budget: ''revitalize the economy and create jobs.'' MEP helps small manufacturers stay competitive and, in 2000, helped these businesses attain $2.3 billion in increased or retained sales, save costs of $480 million, and create or retain more than 25,000 jobs.

While the time remaining in this session is short, I want to introduce this NIST Authorization bill to stimulate the productive dialog that we have had with interested members and the Administration on the programs of NIST. I look forward to continuing this work during the 108th Congress.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 359—RECOGNIZING THE IMPORTANCE AND ACCOMPLISHMENTS OF THE THURGOOD MARSHALL SCHOLARSHIP FUND

Mr. HOLLINGS (for himself, Mr. SCHUMER, and Mrs. CLINTON) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 359

Whereas in 1987, the Thurgood Marshall Scholarship Fund was founded, under the leadership of Dr. N. Joyce Payne, in conjunction with its founding corporate sponsors, Miller Brewing Corporation and the National Basketball Association;

Whereas since its inception, the Thurgood Marshall Scholarship Fund has provided more than $20,000,000 in scholarships and programmatic support to students attending the 45 historically Black public colleges and universities (including 5 historically Black law schools) that make up the fund's membership;

Whereas the Thurgood Marshall Scholarship Fund is the only national organization to provide merit scholarships and programmatic and capacity-building support to 45 historically Black public colleges and universities;

Whereas the Thurgood Marshall Scholarship Fund was created to bridge the technological, financial, and programmatic gaps between historically Black public and private colleges and universities;

Whereas the 45 member institutions of the Thurgood Marshall Scholarship Fund are a critical source of public higher education for African Americans, with more than 215,000 students at the institutions;

Whereas more than 77 percent of all students enrolled in historically Black colleges and universities attend member institutions of the Thurgood Marshall Scholarship Fund;

Whereas the legacy and commitment to education of the Thurgood Marshall Scholarship Fund centers on a foundation of preparing a new generation of leaders;

Whereas the Thurgood Marshall Scholarship Fund continues to provide students quality academic instruction in a positive learning environment while promoting equal opportunity in higher education; and

Whereas October 2002 marks the 15th anniversary of the Thurgood Marshall Scholarship Fund: Now, therefore, be it

Resolved, That the Senate—

(1) fully supports the goals and ideals of the Thurgood Marshall Scholarship Fund; and

(2) salutes and acknowledges the Thurgood Marshall Scholarship Fund and its vigorous and persistent efforts in support of equal opportunity in higher education.

SENATE RESOLUTION 360—CONGRATULATING FORMER PRESIDENT JIMMY CARTER FOR BEING AWARDED THE 2002 NOBEL PEACE PRIZE, AND COMMENDING HIM FOR HIS LIFETIME OF DEDICATION TO PEACE

Mr. DODD (for himself, Mrs. FEINSTEIN, Mr. MILLER, Mr. CLELAND, Mr. DASCHLE, Mr. REID, Mrs. CLINTON, and Mr. AKAKA) submitted the following resolution; which was considered and agreed to:

S. RES. 360

Whereas in 1978, President Carter personally negotiated with Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin to reach the Camp David Accords, the cornerstone of all subsequent peace efforts in the Middle East;

Whereas President Carter completed negotiations on the Strategic Arms Limitation Talks II (SALT II) and continued to make strategic arms control a focus of United States security policy;

Whereas President Carter emphasized the importance of human rights as a key element of United States foreign policy;

Whereas former President Carter and his wife Rosalynn established the Carter Center in 1982;

Whereas the Carter Center has taken an active and vital role in world affairs, always seeking to improve human rights, promote democracy, resolve conflicts, and enhance the lives of the people of the world;

Whereas former President Carter has made countless trips abroad to promote peace, democracy, and human rights, including visits to East Timor, North Korea, Cuba, Haiti, Nicaragua, and Mexico, among many others; and

Whereas former President Carter has made the promotion of peace, democracy, and human rights his life's work: Now, therefore be it

Resolved, That the Senate recognizes and congratulates former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize and commends him for his tireless work for and dedication to peace.

SENATE CONCURRENT RESOLUTION 159—TO CORRECT THE ENROLLMENT OF S. 1843

Mr. BINGAMAN (for himself and Mr. MURKOWSKI) submitted the following concurrent resolution, which was considered and agreed to:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 1843) To extend certain hydro-electric licenses in the State of Alaska the Secretary of the Senate is hereby authorized and directed, in the enrollment of the said bill, to make the following corrections, namely:

In subsection (c), delete ''3 consecutive 2-year time periods.'' and insert ''one 2-year time period.''.

AMENDMENTS SUBMITTED & PROPOSED

SA 4970. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 695, to establish the Oil Region National Heritage Area.

SA 4971. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 941, to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes.

SA 4972. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 1894, to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes.

SA 4973. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 980, an act to establish the Moccasin Bend National Archeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Military Park.

SA 4974. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 37, to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails.

SA 4975. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 198, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

SA 4976. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2670, to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems.

SA 4977. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2222, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

SA 4978. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

TEXT OF AMENDMENTS

SA 4970. Mr. REID (for Mr. BINGAMAN) proposed am amendment to the bill H.R. 695, to establish the Oil Region National Heritage Area; as follows:

1. On page 44, line 22, strike ''Act'' and insert ''title''.

2. On page 45, line 11, strike ''Act:'' and insert ''title:''

3. Beginning on page 99, line 13, insert the following:

TITLE IX—CROSSROADS OF THE AMERICAN REVOLUTION NATIONAL HERITAGE AREA

SEC. 901. SHORT TITLE.

This title may be cited as the ''Crossroads of the American Revolution National Heritage Area Act of 2002''.

SEC. 902. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the State of New Jersey was critically important during the American Revolution because of the strategic location of the State between the British armies headquartered in New York City, New York, and the Continental Congress in the city of Philadelphia, Pennsylvania;

(2) General George Washington spent almost half of the period of the American Revolution personally commanding troops of the Continental Army in the State of New Jersey, including two severe winters spent in encampments in the area that is now Morristown National Historical Park, a unit of the National Park System;

(3) it was during the ten crucial days of the American Revolution between December 25, 1776, and January 3, 1777, that General Washington, after retreating across the State of New Jersey from the State of New York to the State of Pennsylvania in the face of total defeat, recrossed the Delaware River on the night of December 25, 1776, and went on to win crucial battles at Trenton and Princeton in the State of New Jersey;

(4) Thomas Paine, who accompanied the troops during the retreat, described the events during those days as ''the times that try men's souls'';

(5) the sites of 296 military engagements are located in the State of New Jersey, including—

(A) several important battles of the American Revolution that were significant to the outcome of the American Revolution and the history of the United States; and

(B) several national historic landmarks, including Washington's Crossing, the Old Trenton Barracks, and Princeton, Monmouth and Red Bank Battlefields;

(6) additional national historic landmarks in the State of New Jersey include the homes of—

(A) Richard Stockton, Joseph Hewes, John Witherspoon, and Francis Hopkinson, signers of the Declaration of Independence;

(B) Elias Boudinout, President of the Continental Congress; and

(C) William Livingston, patriot and Governor of the State of New Jersey from 1776 to 1790;

(7) portions of the landscapes important to the strategies of the British and Continental armies, including waterways, mountains, farms, wetlands, villages, and roadways—

(A) retain the integrity of the period of the American Revolution; and

(B) offer outstanding opportunities for conservation, education, and recreation;

(8) the National Register of Historic Places lists 251 buildings and sites in the National Park Service study area for the Crossroads of the American Revolution that are associated with the period of the American Revolution;

(9) civilian populations residing in the State of New Jersey during the American Revolution suffered extreme hardships because of the continuous conflict in the State and marauding contingents of loyalist Tories and rebel sympathizers;

(10) because of the important role that the State of New Jersey played in the successful outcome of the American Revolution, there is a Federal interest in developing a regional framework to assist the State of New Jersey, local governments and organizations, and private citizens in—

(A) preserving and protecting cultural, historic, and natural resources of the period; and

(B) bringing recognition to those resources for the educational and recreational benefit of the present and future generations of citizens of the United States; and

(11) the National Park Service has conducted a national heritage area feasibility study in the State of New Jersey that demonstrates that there is a sufficient assemblage of nationally distinctive cultural, historic, and natural resources necessary to establish the Crossroads of the American Revolution National Heritage Area.

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

(1) to assist communities, organizations, and citizens in the State of New Jersey in preserving the special historic identity of the State and the importance of the State to the United States;

(2) to foster a close working relationship among all levels of government, the private sector, and local communities in the State;

(3) to provide for the management, preservation, protection, and interpretation of the cultural, historic, and natural resources of the State for the educational and inspirational benefit of future generations;

(4) to strengthen the value of Morristown National Historical Park as an asset to the State by—

(A) establishing a network of related historic resources, protected landscapes, educational opportunities, and events depicting the landscape of the State of New Jersey during the American Revolution; and

(B) establishing partnerships between Morristown National Historical Park and other public and privately owned resources in the Heritage Area that represent the fulcrum of the American Revolution; and

(5) to authorize Federal financial and technical assistance for the purposes described in paragraphs (1) through (4).

SEC. 903. DEFINITIONS.

In this title:

(1) ASSOCIATION.—The term ''Association'' means the Crossroads of the American Revolution Association, Inc., a nonprofit corporation in the State.

(2) HERITAGE AREA.—The term ''Heritage Area'' means the Crossroads of the American Revolution National Heritage Area established by section 904(a).

(3) MANAGEMENT ENTITY.—The term ''management entity'' means the management entity for the Heritage Area designated by section 904(d).

(4) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area developed under section 905.

(5) MAP.—The term ''map'' means the map entitled ''Crossroads of the American Revolution National Heritage Area'', numbered CRREL 80,000, and dated April 2002.

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

(7) STATE.—The term ''State'' means the State of New Jersey.

SEC. 904. CROSSROADS OF THE AMERICAN REVOLUTION NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Crossroads of the American Revolution National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of the land and water within the boundaries of the Heritage Area, as depicted on the map.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) MANAGEMENT ENTITY.—The Association shall be the management entity for the Heritage Area.

SEC. 905. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are first made available to carry out this title, the management entity shall submit to the Secretary for approval a management plan for the Heritage Area.

(b) REQUIREMENTS.—The management plan shall—

(1) include comprehensive policies, strategies, and recommendations for conservation, funding, management, and development of the Heritage Area;

(2) take into consideration existing State, county, and local plans;

(3) describe actions that units of local government, private organizations, and individuals have agreed to take to protect the cultural, historic, and natural resources of the Heritage Area;

(4) identify existing and potential sources of funding for the protection, management, and development of the Heritage Area during the first 5 years of implementation of the management plan; and

(5) include—

(A) an inventory of the cultural, educational, historic, natural, recreational, and scenic resources of the Heritage Area relating to the themes of the Heritage Area that should be restored, managed, or developed;

(B) recommendations of policies and strategies for resource management that result in—

(i) application of appropriate land and water management techniques; and

(ii) development of intergovernmental and interagency cooperative agreements to protect the cultural, educational, historic, natural, recreational, and scenic resources of the Heritage Area;

(C) a program of implementation of the management plan that includes for the first 5 years of implementation—

(i) plans for resource protection, restoration, construction; and

(ii) specific commitments for implementation that have been made by the management entity or any government, organization, or individual;

(D) an analysis of and recommendations for ways in which Federal, State, and local programs, including programs of the National Park Service, may be best coordinated to promote the purposes of this title; and

(E) an interpretive plan for the Heritage Area.

(c) APPROVAL OR DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after the date of receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve the management plan, the Secretary shall consider whether—

(A) the Board of Directors of the management entity is representative of the diverse interests of the Heritage Area, including—

(i) governments;

(ii) natural and historic resource protection organizations;

(iii) educational institutions;

(iv) businesses; and

(v) recreational organizations;

(B) the management entity provided adequate opportunity for public and governmental involvement in the preparation of the management plan, including public hearings;

(C) the resource protection and interpretation strategies in the management plan would adequately protect the cultural, historic, and natural resources of the Heritage Area; and

(D) the Secretary has received adequate assurances from the appropriate State and local officials whose support is needed to ensure the effective implementation of the State and local aspects of the management plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan under paragraph (1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 60 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(d) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall approve or disapprove each amendment to the

management plan that the Secretary determines may make a substantial change to the management plan.

(2) USE OF FUNDS.—Funds made available under this title shall not be expended by the management entity to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

(e) IMPLEMENTATION.—On completion of the 3–year period described in subsection (a), any funding made available under this title shall be made available to the management entity only for implementation of the approved management plan.

SEC. 906. AUTHORITIES, DUTIES, AND PROHIBITIONS APPLICABLE TO THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of preparing and implementing the management plan, the management entity may use funds made available under this title to—

(1) make grants to, provide technical assistance to, and enter into cooperative agreements with, the State (including a political subdivision thereof), a nonprofit organization, or any other person;

(2) hire and compensate staff, including individuals with expertise in—

(A) cultural, historic, or natural resource protection; or

(B) heritage programming;

(3) obtain funds or services from any source (including a Federal law or program);

(4) contract for goods or services; and

(5) support any other activity

(A) that furthers the purposes of the Heritage Area; and

(B) that is consistent with the management plan.

(b) DUTIES.—In addition to developing the management plan, the management entity shall

(1) assist units of local government, regional planning organizations, and nonprofit organizations in implementing the approved management plan by—

(A) carrying out programs and projects that recognize, protect, and enhance important resource values in the Heritage Area;

(B) establishing and maintaining interpretive exhibits and programs in the Heritage Area;

(C) developing recreational and educational opportunities in the Heritage Area;

(D) increasing public awareness of and appreciation for cultural, historic, and natural resources of the Heritage Area;

(E) protecting and restoring historic sites and buildings that are located in the Heritage Area and related to the themes of the Heritage Area;

(F) ensuring that clear, consistent, and appropriate signs identifying points of public access and sites of interest are installed throughout the Heritage Area; and

(G) promoting a wide range of partnerships among governments, organizations, and individuals to further the purposes of the Heritage Area;

(2) in preparing and implementing the management plan, consider the interests of diverse units of government, businesses, organizations, and individuals in the Heritage Area;

(3) conduct public meetings at least semiannually regarding the development and implementation of the management plan;

(4) for any fiscal year for which Federal funds are received under this title

(A) submit to the Secretary a report that describes for the year

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which a grant was made;

(B) make available for audit all information relating to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing expenditures of Federal funds by any entity, that the receiving entity make available for audit all records and other information relating to the expenditure of the funds; and

(5) encourage, by appropriate means, economic viability that is consistent with the purposes of the Heritage Area; and

(6) maintain headquarters for the management entity in Mercer County.

(c) Prohibition on the Acquisition of Real Property.

(1) FEDERAL FUNDS.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(2) OTHER FUNDS.—Notwithstanding paragraph (1), the management entity may acquire real property or an interest in real property using any other source of funding, including other Federal funding.

SEC. 907. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—On the request of the management entity, the Secretary may provide technical and financial assistance to the Heritage Area for the development and implementation of the management plan.

(2) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall give priority to actions that assist in—

(A) conserving the significant cultural, historic, natural, and scenic resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(3) Preservation of Historic Properties.—To carry out the purposes of this title, the Secretary may provide assistance to a State or local government or nonprofit organization to provide for the appropriate treatment of

(A) historic objects; or

(B) structures that are listed or eligible for listing on the National Register of Historic Places.

(4) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the management entity and other public or private entities to carry out this subsection.

(b) OTHER FEDERAL AGENCIES.—Any Federal agency conducting or supporting an activity that directly affects the Heritage Area shall—

(1) consult with the Secretary and the management entity regarding the activity;

(2) cooperate with the Secretary and the management entity in carrying out the activity, and to the maximum extent practicable, coordinate the activity with the carrying out of its duties; and

(3) to the maximum extent practicable, conduct the activity to avoid adverse effects on the Heritage Area.

SEC. 908. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 909. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE X NATIONAL AVIATION HERITAGE AREA

SEC.1001. SHORT TITLE.

This title may be cited as the ''National Aviation Heritage Area Act''.

SEC. 1002. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Few technological advances have transformed the world or our Nation's economy, society, culture, and national character as the development of powered flight.

(2) The industrial, cultural, and natural heritage legacies of the aviation and aerospace industry in the State of Ohio are nationally significant.

(3) Dayton, Ohio, and other defined areas where the development of the airplane and aerospace technology established our Nation's leadership in both civil and military aeronautics and astronautics set the foundation for the 20th Century to be an American Century.

(4) Wright-Patterson Air Force Base in Dayton, Ohio, is the birthplace, the home, and an integral part of the future of aerospace.

(5) The economic strength of our Nation is connected integrally to the vitality of the aviation and aerospace industry, which is responsible for an estimated 11,200,000 American jobs.

(6) The industrial and cultural heritage of the aviation and aerospace industry in the State of Ohio includes the social history and living cultural traditions of several generations.

(7) The Department of the Interior is responsible for protecting and interpreting the Nation's cultural and historic resources, and there are significant examples of these resources within Ohio to merit the involvement of the Federal Government to develop programs and projects in cooperation with the Aviation Heritage Foundation, Incorporated, the State of Ohio, and other local and governmental entities to adequately conserve, protect, and interpret this heritage for the educational and recreational benefit of this and future generations of Americans, while providing opportunities for education and revitalization.

(8) Since the enactment of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), partnerships among the Federal, State, and local governments and the private sector have greatly assisted the development and preservation of the historic aviation resources in the Miami Valley.

(9) An aviation heritage area centered in Southwest Ohio is a suitable and feasible management option to increase collaboration, promote heritage tourism, and build on the established partnerships among Ohio's historic aviation resources and related sites.

(10) A critical level of collaboration among the historic aviation resources in Southwest Ohio cannot be achieved without a congressionally established national heritage area and the support of the National Park Service and other Federal agencies which own significant historic aviation-related sites in Ohio.

(11) The Aviation Heritage Foundation, Incorporated, would be an appropriate management entity to oversee the development of the National Aviation Heritage Area.

(12) Five National Park Service and Dayton Aviation Heritage Commission studies and planning documents: ''Study of Alternatives: Dayton's Aviation Heritage'', ''Dayton Aviation Heritage National Historical Park Suitability/Feasibility Study'', ''Dayton Aviation Heritage General Management Plan'', ''Dayton Historic Resources Preservation and Development Plan'', and Heritage Area Concept Study (in progress), demonstrated that sufficient historical resources exist to establish the National Aviation Heritage Area.

(13) With the advent of the 100th anniversary of the first powered flight in 2003, it is recognized that the preservation of properties nationally significant in the history of

aviation is an important goal for the future education of Americans.

(14) Local governments, the State of Ohio, and private sector interests have embraced the heritage area concept and desire to enter into a partnership with the Federal government to preserve, protect, and develop the Heritage Area for public benefit.

(15) The National Aviation Heritage Area would complement and enhance the aviation-related resources within the National Park Service, especially the Dayton Aviation Heritage National Historical Park, Ohio.

(b) PURPOSE.—The purpose of this title is to establish the Heritage Area to—

(1) encourage and facilitate collaboration among the facilities, sites, organizations, governmental entities, and educational institutions within the Heritage Area to promote heritage tourism and to develop educational and cultural programs for the public;

(2) preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, structures, facilities, and sites within the National Aviation Heritage Area;

(3) encourage within the National Aviation Heritage Area a broad range of economic opportunities enhancing the quality of life for present and future generations;

(4) provide a management framework to assist the State of Ohio, its political subdivisions, other areas, and private organizations, or combinations thereof, in preparing and implementing an integrated Management Plan to conserve their aviation heritage and in developing policies and programs that will preserve, enhance, and interpret the cultural, historical, natural, recreation, and scenic resources of the Heritage Area; and

(5) authorize the Secretary to provide financial and technical assistance to the State of Ohio, its political subdivisions, and private organizations, or combinations thereof, in preparing and implementing the private Management Plan.

SEC. 1003. DEFINITIONS.

For purposes of this title:

(1) BOARD.—The term ''Board'' means the Board of Directors of the Foundation.

(2) FINANCIAL ASSISTANCE.—The term ''financial assistance'' means funds appropriated by Congress and made available to the management entity for the purpose of preparing and implementing the Management Plan.

(3) HERITAGE AREA.—The term ''Heritage Area'' means the National Aviation Heritage Area established by section 1004 to receive, distribute, and account for Federal funds appropriated for the purpose of this title.

(4) MANAGEMENT PLAN.—The term ''Management Plan'' means the management plan for the Heritage Area developed under section 1006.

(5) MANAGEMENT ENTITY.—The term ''management entity'' means the Aviation Heritage Foundation, Incorporated (a nonprofit corporation established under the laws of the State of Ohio).

(6) PARTNER.—The term ''partner'' means a Federal, State, or local governmental entity, organization, private industry, educational institution, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

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

(8) TECHNICAL ASSISTANCE.—The term ''technical assistance'' means any guidance, advice, help, or aid, other than financial assistance, provided by the Secretary.

SEC. 1004. NATIONAL AVIATION HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the States of Ohio and Indiana, the National Aviation Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall include the following:

(1) A core area consisting of resources in Montgomery, Greene, Warren, Miami, Clark, and Champaign Counties in Ohio.

(2) The Neil Armstrong Air & Space Museum, Wapakoneta, Ohio, and the Wilbur Wright Birthplace and Museum, Millville, Indiana.

(3) Sites, buildings, and districts within the core area recommended by the Management Plan.

(c) MAP.—A map of the Heritage Area shall be included in the Management Plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Aviation Heritage Foundation.

SEC. 1005. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of implementing the Management Plan, the management entity may use Federal funds made available through this title to—

(1) make grants to, and enter into cooperative agreements with, the State of Ohio and political subdivisions of that State, private organizations, or any person;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The management entity shall—

(1) develop and submit to the Secretary for approval the proposed Management Plan in accordance with section 1006;

(2) give priority to implementing actions set forth in the Management Plan, including taking steps to assist units of government and nonprofit organizations in preserving resources within the Heritage Area and encouraging local governments to adopt land use policies consistent with the management of the Heritage Area and the goals of the Management Plan;

(3) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area in developing and implementing the Management Plan;

(4) maintain a collaboration among the partners to promote heritage tourism and to assist partners to develop educational and cultural programs for the public;

(5) encourage economic viability in the Heritage Area consistent with the goals of the Management Plan;

(6) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(7) assist units of government and nonprofit organizations to ensure that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are placed throughout the Heritage Area;

(8) conduct public meetings at least quarterly regarding the implementation of the Management Plan;

(9) submit substantial amendments to the Management Plan to the Secretary for the approval of the Secretary; and

(10) for any year in which Federal funds have been received under this title—

(A) submit an annual report to the Secretary that sets forth the accomplishments of the management entity and its expenses and income;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(c) USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The management entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(2) OTHER SOURCES.—Nothing in this title precludes the management entity from using Federal funds from other sources for authorized purposes.

SEC. 1006. MANAGEMENT PLAN.

(a) PREPARATION OF PLAN.—Not later than 3 years after the date of enactment of this title, the management entity shall submit to the Secretary for approval a proposed Management Plan that shall take into consideration State and local plans and involve residents, public agencies, and private organizations in the Heritage Area.

(b) CONTENTS.—The Management Plan shall incorporate an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the Heritage Area and shall include the following:

(1) An inventory of the resources contained in the core area of the Heritage Area, including the Dayton Aviation Heritage Historical Park, the sites, buildings, and districts listed in section 202 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), and any other property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, or maintained because of its significance.

(2) An assessment of cultural landscapes within the Heritage Area.

(3) Provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with the purposes of this title.

(4) An interpretation plan for the Heritage Area.

(5) A program for implementation of the Management Plan by the management entity, including the following:

(A) Facilitating ongoing collaboration among the partners to promote heritage tourism and to develop educational and cultural programs for the public.

(B) Assisting partners planning for restoration and construction.

(C) Specific commitments of the partners for the first 5 years of operation.

(6) The identification of sources of funding for implementing the plan.

(7) A description and evaluation of the management entity, including its membership and organizational structure.

(C) DISQUALIFICATION FROM FUNDING.—If a proposed Management Plan is not submitted to the Secretary within 3 years of the date of the enactment of this title, the management entity shall be ineligible to receive additional funding under this title until the date on which the Secretary receives the proposed Management Plan.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—The Secretary, in consultation with the State of Ohio, shall approve or disapprove the proposed Management Plan submitted under this title not later than 90 days after receiving such proposed Management Plan.

(e) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a proposed Management Plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed Management Plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(f) APPROVAL OF AMENDMENTS.—The Secretary shall review and approve substantial amendments to the Management Plan. Funds appropriated under this title may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

SEC. 1007. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—Upon the request of the management entity, the Secretary may provide technical assistance, on a reimbursable or non-reimbursable basis, and financial assistance to the Heritage Area to develop and implement the management plan. The Secretary is authorized to enter into cooperative agreements with the management entitity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) DUTIES OF OTHER FEDERAL AGENCIES.—Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title;

(3) to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(4) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

SEC. 1008. COORDINATION BETWEEN THE SECRETARY AND THE SECRETARY OF DEFENSE AND THE ADMINISTRATOR OF NASA.

The decisions concerning the execution of this title as it applies to properties under the control of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall be made by such Secretary or such Administrator, in consultation with the Secretary of the Interior.

SEC. 1009. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—To carry out this title there is authorized to be appropriated $10,000,000, except that not more than $1,000,000 may be appropriated to carry out this title for any fiscal year.

(b) 50 PERCENT MATCH.—The Federal share of the cost of activities carried out using any assistance or grant under this title shall not exceed 50 percent.

SEC. 1010. SUNSET PROVISION.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

SEC. 1011. STUDY.

(a) IN GENERAL.—The Secretary shall conduct a special resource study updating the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419) and detailing alternatives for incorporating the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park.

(b) CONTENTS.—The study shall include an analysis of alternatives for including the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park that detail management and development options and costs.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with the Delphi Corporation, the Dayton Aviation Heritage Commission, the Aviation Heritage Foundation, State and local agencies, and other interested parties in the area.

SEC. 1012. REPORT.

Not later than 3 years after funds are first made available for this title, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study conducted under section 1011.

TITLE XI—CHAMPLAIN VALLEY NATIONAL HERITAGE PARTNERSHIP

SECTION 1101. SHORT TITLE.

This title may be cited as the ''Champlain Valley National Heritage Partnership Act of 2002''.

SEC. 1102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Champlain Valley and its extensive cultural and natural resources have played a significant role in the history of the United States and the individual States of Vermont and New York;

(2) archeological evidence indicates that the Champlain Valley has been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Iroquois and Algonquin descent;

(3) the linked waterways of the Champlain Valley, including the Richelieu River in Canada, played a unique and significant role in the establishment and development of the United States and Canada through several distinct eras, including—

(A) the era of European exploration, during which Samuel de Champlain and other explorers used the waterways as a means of access through the wilderness;

(B) the era of military campaigns, including highly significant military campaigns of the French and Indian War, the American Revolution, and the War of 1812; and

(C) the era of maritime commerce, during which canals boats, schooners, and steamships formed the backbone of commercial transportation for the region;

(4) those unique and significant eras are best described by the theme ''The Making of Nations and Corridors of Commerce'';

(5) the artifacts are structures associated with those eras are unusually well-preserved;

(6) the Champlain Valley is recognized as having one of the richest collections of historical resources in North America;

(7) the history and cultural heritage of the Champlain Valley are shared with Canada and the Province of Quebec;

(8) there are benefits in celebrating and promoting this mutual heritage;

(9) tourism is among the most important industries in the Champlain Valley, and heritage tourism in particular plays a significant role in the economy of the Champlain Valley;

(10) it is important to enhance heritage tourism in the Champlain Valley while ensuring that increased visitation will not impair the historical and cultural resources of the region;

(11) according to the 1999 report of the National Park Service entitled ''Champlain Valley Heritage Corridor Project'', ''the Champlain Valley contains resources and represents a theme 'The Making of Nations and Corridors of Commerce', that is of outstanding importance in H.S. history''; and

(12) it is in the interest of the United States to preserve and interpret the historical and cultural resources of the Champlain Valley for the education and benefit of present and future generations.

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

(1) to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York to recognize the importance of the historical, cultural, and recreational resources of the Champlain Valley region to the United States;

(2) to assist the State of Vermont and New York, including units of local government and non-governmental organizations in the States, in preserving, protecting, and interpreting those resources for the benefit of the people of the United States;

(3) to use those resources and the theme ''The Making of Nations and Corridors of Commerce'' to—

(A) revitalize the economy of communities in the Champlain Valley; and

(B) generate and sustain increased levels of tourism in the Champlain Valley;

(4) to encourage—

(A) partnerships among State and local governments and non- governmental organizations in the United States; and

(B) collaboration with Canada and the Province of Quebec to—

(i) interpret and promote the history of the waterways of the Champlain Valley region;

(ii) form stronger bonds between the United States and Canada; and

(iii) promote the international aspects of the Champlain Valley region; and

(5) to provide financial and technical assistance for the purposes described in paragraphs (1) through (4).

SEC. 1103. DEFINITIONS.

In this title:

(1) HERITAGE PARTNERSHIP.—The term ''Heritage Partnership'' means the Champlain Valley National Heritage Partnership established by section 1104(a).

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the Lake Champlain Basin Program.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed under section 1104(b)(B)(i).

(4) REGION.—

(A) IN GENERAL.—The term ''region'' means any area or community in one of the States in which a physical, cultural, or historical resource that represents the theme is located.

(B) INCLUSIONS.—The term ''region'' includes—

(i) the linked navigable waterways of—

(I) Lake Champlain;

(II) Lake George;

(III) the Champlain Canal; and

(IV) the portion of the Upper Hudson River extending south to Saratoga;

(ii) portions of Grand Isle, Franklin, Chittenden, Addison, Rutland, and Bennington Counties in the State of Vermont; and

(iii) portions of Clinton, Essex, Warren, Saratoga and Washington Counties in the State of New York.

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

(6) STATE.—The term ''State'' means—

(A) the State of Vermont; and

(B) the State of New York.

(7) THEME.—The term ''theme'' means the theme ''The Making of Nations and Corridors of Commerce'', as the term is used in the 1999 report of the National Park Service entitled

''Champlain Valley Heritage Corridor Project'', that describes the periods of international conflict and maritime commerce during which the region played a unique and significant role in the development of the United States and Canada.

SEC. 1104. HERITAGE PARTNERSHIP.

(a) ESTABLISHMENT.—There is established in the region the Champlain Valley National Heritage Partnership.

(b) MANAGEMENT ENTITY.—

(1) DUTIES.—

(A) IN GENERAL.—The management entity shall implement the title.

(B) MANAGEMENT PLAN.—(i) Not later than 3 years after the date of enactment of this title, the management entity shall develop a management plan for the Heritage Partnership.

(ii) EXISTING PLAN.—Pending the completion and approval of the management plan, the management entity may implement the provisions of this title based on its federally authorized plan ''Opportunities for Action, an Evolving Plan For Lake Champlain''.

(iii) CONTENTS.—The management plan shall include—

(I) recommendations for funding, managing, and developing the Heritage Partnership;

(II) a description of activities to be carried out by public and private organizations to protect the resources of the Heritage Partnership;

(III) a list of specific, potential sources of funding for the protection, management, and development of the Heritage Partnership;

(IV) an assessment of the organizational capacity of the management entity to achieve the goals for implementation; and

(V) recommendations of ways in which to encourage collaboration with Canada and the Province of Quebec in implementing this title.

(iv) CONSIDERATIONS.—In developing the management plan under clause (i), the management entity shall take into consideration existing Federal, State, and local plans relating to the region.

(v) SUBMISSION TO SECRETARY FOR APPROVAL.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall submit the management plan to the Secretary for approval.

(II) EFFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (I), the Secretary shall not provide any additional funding under this title until a management plan for the Heritage Partnership is submitted to the Secretary.

(vi) APPROVAL.—Not later than 90 days after receiving the management plan submitted under subparagraph (v), the Secretary, in consultation with the States, shall approve or disapprove the management plan.

(vii) ACTION FOLLOWING DISAPPROVAL.—

(I) IN GENERAL.—If the Secretary disapproves a management plan under subparagraph (vi), the Secretary shall—

(aa) advise the management entity in writing of the reasons for the disapproval;

(bb) make recommendations for revisions to the management plan; and

(cc) allow the management entity to submit to the Secretary revisions to the management plan.

(II) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (vii)(I)(cc), the Secretary shall approve or disapprove the revision.

(viii) AMENDMENT.—

(I) IN GENERAL.—After approval by the Secretary of the management plan, the management entity shall periodically

(aa) review the management plan; and

(bb) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any amendments to the management plan that the management entity considers to be appropriate.

(II) EXPENDITURE OF FUNDS.—No funds made available under this title shall be used to implement any amendment proposed by the management entity under subparagraph (viii)(1) until the Secretary approves the amendments.

(2) PARTNERSHIPS.—

(A) IN GENERAL.—In carrying out this title, the management entity may enter into partnerships with—

(i) the States, including units of local governments in the States;

(ii) non-governmental organizations;

(iii) Indian Tribes; and

(iv) other persons in the Heritage Partnership.

(B) GRANTS.—Subject to the availability of funds, the management entity may provide grants to partners under subparagraph (A) to assist in implementing this title.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(c) ASSISTANCE FROM SECRETARY.—To carry out the purposes of this title, the Secretary may provide technical and financial assistance to the management entity.

SEC. 1105. SAVINGS PROVISIONS.

Nothing in this title—

(1) grants powers of zoning or land use to the management entity;

(2) modifies, enlarges, or diminishes the authority of the Federal Government or a State or local government to manage or regulate any use of land under any law (including regulations); or

(3) obstructs or limits private business development activities or resource development activities.

SEC. 1106. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title not more than a total of $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) shall not be less than 50 percent.

SEC. 1107. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE XII—BLUE RIDGE NATIONAL HERITAGE AREA

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Blue Ridge National Heritage Area Act of 2002''.

SEC. 1202. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Blue Ridge Mountains and the extensive cultural and natural resources of the Blue Ridge Mountains have played a significant role in the history of the United States and the State of North Carolina;

(2) archaeological evidence indicates that the Blue Ridge Mountains have been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Cherokee descent;

(3) the Blue Ridge Mountains of western North Carolina, including the Great Smoky Mountains, played a unique and significant role in the establishment and development of the culture of the United States through several distinct legacies, including—

(A) the craft heritage that—

(i) was first influenced by the Cherokee Indians;

(ii) was the origin of the traditional craft movement starting in 1900 and the contemporary craft movement starting in the 1940's; and

(iii) is carried out by over 4,000 craftspeople in the Blue Ridge Mountains of western North Carolina, the third largest concentration of such people in the United States;

(B) a musical heritage comprised of distinctive instrumental and vocal traditions that—

(i) includes stringband music, bluegrass, ballad singing, blues, and sacred music;

(ii) has received national recognition; and

(iii) has made the region 1 of the richest repositories of traditional music and folklife in the United States;

(C) the Cherokee heritage—

(i) dating back thousands of years; and

(ii) offering—

(I) nationally significant cultural traditions practiced by the Eastern Band of Cherokee Indians;

(II) authentic tradition bearers;

(III) historic sites; and

(IV) historically important collections of Cherokee artifacts; and

(D) the agricultural heritage established by the Cherokee Indians, including medicinal and ceremonial food crops, combined with the historic European patterns of raising livestock, culminating in the largest number of specialty crop farms in North Carolina;

(4) the artifacts and structures associated with those legacies are unusually well-preserved;

(5) the Blue Ridge Mountains are recognized as having one of the richest collections of historical resources in North America;

(6) the history and cultural heritage of the Blue Ridge Mountains are shared with the States of Virginia, Tennessee, and Georgia;

(7) there are significant cultural, economic, and educational benefits in celebrating and promoting this mutual heritage;

(8) according to the 2002 reports entitled ''The Blue Ridge Heritage and Cultural Partnership'' and ''Western North Carolina National Heritage Area Feasibility Study and Plan'', the Blue Ridge Mountains contain numerous resources that are of outstanding importance to the history of the United States; and

(9) it is in the interest of the United States to preserve and interpret the cultural and historical resources of the Blue Ridge Mountains for the education and benefit of present and future generations.

(b) PURPOSE.—The purpose of this title is to foster a close working relationship with, and to assist, all levels of government, the private sector, and local communities in the State in managing, preserving, protecting, and interpreting the cultural, historical, and natural resources of the Heritage Area while continuing to develop economic opportunities.

SEC. 1203. DEFINITIONS.

In this title:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Blue Ridge National Heritage Area established by section 1204(a).

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the management entity for the Heritage Area designated by section 1204(c).

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area approved under section 1205.

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

(5) STATE.—The term ''State'' means the State of North Carolina.

SEC. 1204. BLUE RIDGE NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Blue Ridge National Heritage Area in the State.

(b) BOUNDARIES.—The Heritage Area shall consist of the counties of Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey in the State.

(c) MANAGEMENT ENTITY.—

(1) IN GENERAL.—As a condition of the receipt of funds made available under section 1209(a), the Blue Ridge National Heritage Area Partnership shall be the management entity for the Heritage Area.

(2) BOARD OF DIRECTORS.—

(A) COMPOSITION.—The management entity shall be governed by a board of directors composed of 9 members, of whom—

(i) 2 members shall be appointed by AdvantageWest;

(ii) 2 members shall be appointed by Hand-Made In America, Inc.;

(iii) one member shall be appointed by the Education Resources Consortium of Western North Carolina;

(iv) 1 member shall be appointed by the Eastern Band of the Cherokee Indians; and

(v) 3 members shall be appointed by the Governor of North Carolina and shall—

(I) reside in geographically diverse regions of the Heritage Area;

(II) be a representative of State or local governments or the private sector; and

(III) have knowledge of tourism, economic and community development, regional planning, historic preservation, cultural or natural resources development, regional planning, conservation, recreational services, education, or museum services.

SEC. 1205. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall submit to the Secretary for approval a management plan for the Heritage Area.

(b) CONSIDERATION OF OTHER PLANS AND ACTIONS.—In developing the management plan, the management entity shall—

(1) for the purpose of presenting a unified preservation and interpretation plan, take into consideration Federal, State, and local plans; and

(2) provide for the participation of residents, public agencies, and private organizations in the Heritage Area.

(c) CONTENTS.—The management plan shall—

(1) present comprehensive recommendations and strategies for the conservation, funding, management, and development of the Heritage Area;

(2) identify existing and potential sources of Federal and non-Federal funding for the conservation, management, and development of the Heritage Area; and

(3) include—

(A) an inventory of the cultural, historical, natural, and recreational resources of the Heritage Area, including a list of property that—

(i) relates to the purposes of the Heritage Area; and

(ii) should be conserved, restored, managed, developed, or maintained because of the significance of the property;

(B) a program of strategies and actions for the implementation of the management plan that identifies the roles of agencies and organizations that are involved in the implementation of the management plan;

(C) an interpretive and educational plan for the Heritage Area;

(D) a recommendation of policies for resource management and protection that develop intergovernmental cooperative agreements to manage and protect the cultural, historical, natural, and recreational resources of the Heritage Area; and

(E) an analysis of ways in which Federal, State, and local programs may best be coordinated to promote the purposes of this title.

(d) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date described in subsection (a), the Secretary shall not provide any additional funding under this title until a management plan is submitted to the Secretary.

(e) APPROVAL OR DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receiving the management plan submitted under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve the management plan, the Secretary shall consider whether the management plan—

(A) has strong local support from landowners, business interests, nonprofit organizations, and governments in the Heritage Area; and

(B) has a high potential for effective partnership mechanisms.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan under subsection (e)(1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) allow the management entity to submit to the Secretary revisions to the management plan.

(4) DEADLINE FOR APPROVAL OF REVISION.—Not later than 60 days after the date on which a revision is submitted under paragraph (3)(C), the Secretary shall approve or disapprove the proposed revision.

(f) AMENDMENT OF APPROVED MANAGEMENT PLAN.

(1) IN GENERAL.—After approval by the Secretary of a management plan, the management entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval, the recommendation of the management entity for any amendments to the management plan.

(2) USE OF FUNDS.—No funds made available under section 1209(a) shall be used to implement any amendment proposed by the management entity under paragraph (1)(B) until the Secretary approves the amendment.

SEC. 1206. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For the purposes of developing and implementing the management plan, the management entity may use funds made available under section 1209(a) to—

(1) make grants to, and enter into cooperative agreements with, the State (including a political subdivision), nonprofit organizations, or persons;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—In addition to developing the management plan, the management entity shall—

(1) develop and implement the management plan while considering the interests of diverse units of government, businesses, private property owners, and nonprofit groups in the Heritage Area;

(2) conduct public meetings in the Heritage Area at least semiannually on the development and implementation of the management plan;

(3) give priority to the implementation of actions, goals, and strategies in the management plan, including providing assistance to units of government, nonprofit organizations, and persons in—

(A) carrying out the programs that protect resources in the Heritage Area;

(B) encouraging economic viability in the Heritage Area in accordance with the goals of the management plan;

(C) establishing and maintaining interpretive exhibits in the Heritage Area;

(D) developing recreational and educational opportunities in the Heritage Area; and

(E) increasing public awareness of and appreciation for the cultural, historical, and natural resources of the Heritage Area; and

(4) for any fiscal year for which Federal funds are received under section 1209(a)

(A) submit to the Secretary a report that describes, for the fiscal year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which a grant was made;

(B) make available for audit by Congress, the Secretary, and appropriate units of government, all records relating to the expenditure of funds and any matching funds; and

(C) require, for all agreements authorizing expenditure of Federal funds by any entity, that the receiving entity make available for audit all records relating to the expenditure of funds.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds received under section 1209(a) to acquire real property or an interest in real property.

SEC. 1207. TECHNICAL AND FINANCIAL ASSISTANCE.

(a) IN GENERAL.—The Secretary may provide to the management entity technical assistance and, subject to the availability of appropriations, financial assistance, for use in developing and implementing the management plan.

(b) PRIORITY FOR ASSISTANCE.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the preservation of the significant cultural, historical, natural, and recreational resources of the Heritage Area; and

(2) the provision of educational, interpretive, and recreational opportunities that are consistent with the resources of the Heritage Area.

SEC. 1208. LAND USE REGULATION.

(a) IN GENERAL.—Nothing in this title—

(1) grants any power of zoning or land use to the management entity; or

(2) modifies, enlarges, or diminishes any authority of the Federal Government or any State or local government to regulate any use of land under any law (including regulations).

(b) PRIVATE PROPERTY.—Nothing in this title—

(1) abridges the rights of any person with respect to private property;

(2) affects the authority of the State or local government with respect to private property; or

(3) imposes any additional burden on any property owner.

SEC. 1209. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title

$10,000,000, of which not more than $1,000,000 shall be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) shall be not less than 50 percent.

SEC. 1210. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE XIII—ATCHAFALAYA NATIONAL HERITAGE AREA

SECTION 1301. SHORT TITLE.

This title may be cited as the ''Atchafalaya National Heritage Area Act''.

SEC. 1302. FINDINGS.

Congress finds that—

(1) the Atchafalaya Basin area of Louisiana, designated by the Louisiana Legislature as the ''Atchafalaya Trace State Heritage Area'' and consisting of the area described in section 1305(b), is an area in which natural, scenic, cultural, and historic resources form a cohesive and nationally distinctive landscape arising from patterns of human activity shaped by geography;

(2) the significance of the area is enhanced by the continued use of the area by people whose traditions have helped shape the landscape;

(3) there is a national interest in protecting, conserving, restoring, promoting, and interpreting the benefits of the area for the residents of, and visitors to, the area;

(4) the area represents an assemblage of rich and varied resources forming a unique aspect of the heritage of the United States;

(5) the area reflects a complex mixture of people and their origins, traditions, customs, beliefs, and folkways of interest to the public;

(6) the land and water of the area offer outstanding recreational opportunities, educational experiences, and potential for interpretation and scientific research; and

(7) local governments of the area support the establishment of a national heritage area.

SEC. 1303. PURPOSES.

The purposes of this title are—

(1) to protect, preserve, conserve, restore, promote, and interpret the significant resource values and functions of the Atchafalaya Basin area and advance sustainable economic development of the area;

(2) to foster a close working relationship with all levels of government, the private sector, and the local communities in the area so as to enable those communities to conserve their heritage while continuing to pursue economic opportunities; and

(3) to establish, in partnership with the State, local communities, preservation organizations, private corporations, and landowners in the Heritage Area, the Atchafalaya Trace State Heritage Area, as designated by the Louisiana Legislature, as the Atchafalaya National Heritage Area.

SEC. 1304. DEFINITIONS.

In this title:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Atchafalaya National Heritage Area established by section 1305(a).

(2) LOCAL COORDINATING ENTITY.—The term ''local coordinating entity'' means the local coordinating entity for the Heritage Area designated by section 1305(c).

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area developed under section 1307.

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

(5) STATE.—The term ''State'' means the State of Louisiana.

SEC. 1305. ATCHAFALAYA NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Atchafalaya National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of the whole of the following parishes in the State: St. Mary, Iberia, St. Martin, St. Landry, Avoyelles, Pointe Coupee, Iberville, Assumption, Terrebonne, Lafayette, West Baton Rouge, Concordia, and East Baton Rouge.

(c) LOCAL COORDINATING ENTITY.—

(1) IN GENERAL.—The Atchafalaya Trace Commission shall be the local coordinating entity for the Heritage Area.

(2) COMPOSITION.—The local coordinating entity shall be composed of 13 members appointed by the governing authority of each parish within the Heritage Area.

SEC. 1306. AUTHORITIES AND DUTIES OF THE LOCAL COORDINATING ENTITY.

(a) AUTHORITIES.—For the purposes of developing and implementing the management plan and otherwise carrying out this title, the local coordinating entity may—

(1) make grants to, and enter into cooperative agreements with, the State, units of local government, and private organizations;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The local coordinating entity shall—

(1) submit to the Secretary for approval a management plan;

(2) implement the management plan, including providing assistance to units of government and others in—

(A) carrying out programs that recognize important resource values within the Heritage Area;

(B) encouraging sustainable economic development within the Heritage Area;

(C) establishing and maintaining interpretive sites within the Heritage Area; and

(D) increasing public awareness of, and appreciation for the natural, historic, and cultural resources of, the Heritage Area;

(3) adopt bylaws governing the conduct of the local coordinating entity; and

(4) for any year for which Federal funds are received under this title, submit to the Secretary a report that describes, for the year—

(A) the accomplishments of the local coordinating entity; and

(B) the expenses and income of the local coordinating entity.

(c) ACQUISITION OF REAL PROPERTY.—The local coordinating entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(d) PUBLIC MEETINGS.—The local coordinating entity shall conduct public meetings at least quarterly.

SEC. 1307. MANAGEMENT PLAN.

(a) IN GENERAL.—The local coordinating entity shall develop a management plan for the Heritage Area that incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, scenic, cultural, historic, and recreational resources of the Heritage Area.

(b) CONSIDERATION OF OTHER PLANS AND ACTIONS.—In developing the management plan, the local coordinating entity shall—

(1) take into consideration State and local plans; and

(2) invite the participation of residents, public agencies, and private organizations in the Heritage Area.

(c) CONTENTS.—The management plan shall include—

(1) an inventory of the resources in the Heritage Area, including—

(A) a list of property in the Heritage Area that—

(i) relates to the purposes of the Heritage Area; and

(ii) should be preserved, restored, managed, or maintained because of the significance of the property; and

(B) an assessment of cultural landscapes within the Heritage Area;

(2) provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with this title;

(3) an interpretation plan for the Heritage Area; and

(4) a program for implementation of the management plan that includes—

(A) actions to be carried out by units of government, private organizations, and public-private partnerships to protect the resources of the Heritage Area; and

(B) the identification of existing and potential sources of funding for implementing the plan.

(d) SUBMISSION TO SECRETARY FOR APPROVAL.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the local coordinating entity shall submit the management plan to the Secretary for approval.

(2) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (1), the Secretary shall not provide any additional funding under this title until a management plan for the Heritage Area is submitted to the Secretary.

(e) APPROVAL.—

(1) IN GENERAL.—Not later than 90 days after receiving the management plan submitted under subsection (d)(1), the Secretary, in consultation with the State, shall approve or disapprove the management plan.

(2) ACTION FOLLOWING DISAPPROVAL.—

(A) IN GENERAL.—If the Secretary disapproves a management plan under paragraph (1), the Secretary shall—

(i) advise the local coordinating entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the management plan; and

(iii) allow the local coordinating entity to submit to the Secretary revisions to the management plan.

(B) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (A)(iii), the Secretary shall approve or disapprove the revision.

(f) REVISION.—

(1) IN GENERAL.—After approval by the Secretary of a management plan, the local coordinating entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval by the Secretary, the recommendations of the local coordinating entity for any revisions to the management plan that the local coordinating entity considers to be appropriate.

(2) EXPENDITURE OF FUNDS.—No funds made available under this title shall be used to implement any revision proposed by the local coordinating entity under paragraph (1)(B) until the Secretary approves the revision.

SEC. 1308. COST SHARING.

The Federal share of the cost of any activity assisted by the local coordinating entity under this title shall not exceed 50 percent.

SEC. 1309. EFFECT.

Nothing in this title or in establishment of the Heritage Area—

(1) grants any Federal agency regulatory authority over any interest in the Heritage Area, unless cooperatively agreed on by all involved parties;

(2) modifies, enlarges, or diminishes any authority of the Federal Government or a State or local government to regulate any

use of land as provided for by law (including regulations) in existence on the date of enactment of this title;

(3) grants any power of zoning or land use to the local coordinating entity;

(4) imposes any environmental, occupational, safety, or other rule, standard, or permitting process that is different from those in effect on the date of enactment of this title that would be applicable had the Heritage Area not been established;

(5)(A) imposes any change in Federal environmental quality standards; or

(B) authorizes designation of any portion of the Heritage Area that is subject to part C of Title I of the Clean Air Act (42 U.S.C. 7470 et seq.) as class 1 for the purposes of that part solely by reason of the establishment of the Heritage Area;

(6) authorizes any Federal or State agency to impose more restrictive water use designations, or water quality standards on uses of or discharges to, waters of the United States or waters of the State within or adjacent to the Heritage Area solely by reason of the establishment of the Heritage Area;

(7) abridges, restricts, or alters any applicable rule, standard, or review procedure for permitting of facilities within or adjacent to the Heritage Area; or

(8) affects the continuing use and operation, where located on the date of enactment of this title, of any public utility or common carrier.

SEC. 1310. REPORTS.

For any year in which Federal funds have been made available under this title, the local coordinating entity shall submit to the Secretary a report that describes—

(1) the accomplishments of the local coordinating entity; and

(2) the expenses and income of the local coordinating entity.

SEC. 1311. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 shall be made available for any fiscal year.

SEC. 1312. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

SA 4971. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 941, to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—RANCHO CORRAL DE TIERRA GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Rancho Corral de Tierra Golden Gate National Recreation Area Boundary Adjustment Act of 2002''.

SEC. 102. GOLDEN GATE NATIONAL RECREATION AREA, CALIFORNIA.

(a) BOUNDARY ADJUSTMENT.—Section 2(a) of Public Law 92–589 (16 U.S.C. 460bb–1(a)) is amended—

(1) by striking 'The recreation area shall comprise' and inserting the following:

''(1) IN GENERAL.—The recreation area shall comprise''; and

(2) by striking ''The following additional lands are also'' and all that follows through the period at the end of the paragraph and inserting the following:

''(2) ADDITIONAL LAND.—In addition to the land described in paragraph (1), the recreation area shall include—

''(A) the parcels numbered by the Assessor of Marin County, California, 119–040–04, 119–040–05, 119–040–18, 166–202–03, 166–010–06, 166–010–07, 166–010–24, 166–010–25, 119–240–19, 166–010–10, 166–010–22, 119–240–03, 119–240–51, 119–240–52, 119–240–54, 166–010–12, 166–010–13, and 119–235–10;

''(B) land and water in San Mateo County generally depicted on the map entitled 'Sweeney Ridge Addition, Golden Gate National Recreation Area', numbered NRA GG–80,000–A, and dated May 1980;

''(C) land acquired under the Golden Gate National Recreation Area Addition Act of 1992 (16 U.S.C. 460bb–1 note; Public Law 102–299);

''(D) land generally depicted on the map entitled 'Additions to Golden Gate National Recreation Area', numbered NPS–80–076, and dated July 2000/PWR–PLRPC; and

''(E) land generally depicted on the map entitled 'Rancho Corral de Tierra Additions to the Golden Gate National Recreation Area', numbered NPS–80,079A and dated July 2001.

''(3) ACQUISITION AUTHORITY.—The Secretary may acquire land described in paragraph 102(E) only from a willing seller.''.

(b) EXTENSION OF TERM OF ADVISORY COMMISSION.—Section 5(g) of Public Law 92–589 (16 U.S.C. 460bb–4(g)) is amended by striking ''thirty years after the enactment of this Act'' and inserting ''on December 31, 2012''.

TITLE II—YOSEMITE NATIONAL PARK EDUCATION IMPROVEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Yosemite National Park Education Improvement Act''.

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The three elementary schools serving the children of employees of Yosemite National Park are served by the Bass Lake Joint Union Elementary School District and Mariposa Unified School District.

(2) The schools are in remote mountainous areas and long distances from other educational and administrative facilities of the two local educational agencies.

(3) Because of their remote locations and relatively small number of students, schools serving the children of employees of the Park provide fewer services in more basic facilities than the educational services and facilities provided to students that attend other schools served by the two local educational agencies.

(4) Because of the long distances involved and adverse weather and road conditions that occur during much of the school year, it is impractical for the children of employees of the Park who live within or near the Park to attend other schools served by the two local educational agencies.

(b) PURPOSE.—The purpose of this title is to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist the State of California or local educational agencies in California in providing educational services for students attending schools located within the Park.

SEC. 203. PAYMENTS FOR EDUCATIONAL SERVICES.

(a) AUTHORITY TO PROVIDE FUNDS.—For fiscal years 2003 through 2007, the Secretary may provide funds to the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District for educational services to students who are dependents of persons engaged in the administration, operation, and maintenance of the Park or students who live at or near the Park upon real property of the United States.

(b) LIMITATIONS ON USE OF FUNDS.—Payments made by the Secretary under this section may not be used for new construction, construction contracts, or major capital improvements, and may be used only to pay public employees for services otherwise authorized by this title.

(c) LIMITATIONS ON AMOUNT OF FUNDS.—Payments made under this section shall not exceed the lesser of $400,000 in any fiscal year or the amount necessary to provide students described in subsection (a) with educational services that are normally provided and generally available to students who attend public schools elsewhere in the State of California.

(d) LIMITATION ON FUNDING SOURCES.—

(1) EXCEPTIONS.—Funds from the following sources may not be used to make payments under this section:

(A) Fees authorized and collected under the Land and Water Conservation Fund Act of 1956 (16 U.S.C., 4601–4 et seq.).

(B) The recreational fee demonstration program under section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 4601–6a note).

(C) The national park passport program established under section 602 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5992).

(D) Emergency appropriations for Yosemite flood recovery.

(E) Funds appropriated for the Operation of the National Park Service (ONPS Funds).

(e) DEFINITIONS.—For the purposes of this title, the following definitions apply:

(1) LOCAL EDUCATIONAL AGENCIES.—The term ''local educational agencies'' has the meaning given that term in section 9109(26) of the Elementary and Secondary Education Act of 1965.

(2) EDUCATIONAL SERVICES.—The term ''educational services'' means services that may include maintenance and minor upgrades of facilities and transportation to and from school.

(3) PARK.—The term ''Park'' means Yosemite National Park.

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

SEC. 204. AUTHORIZATION FOR PARK FACILITIES TO BE LOCATED OUTSIDE THE BOUNDARIES OF YOSEMITE NATIONAL PARK.

Section 814(c) of the Omnibus Parks and Public Lands Management Act of 1966 (16 U.S.C. 346e) is amended—

(1) in the first sentence—

(A) by inserting ''and Yosemite National Park'' after ''Zion National Park''; and

(B) by inserting ''transportation systems and'' before ''the establishment of''; and

(2) by striking ''park'' each place it appears and inserting ''parks''.

SEC. 205. MANZANAR NATIONAL HISTORIC SITE ADVISORY COMMISSIONS.

Section 105(h) of Public Law 102–248 (16 U.S.C. 461 note) is amended by striking ''10 years after the date of enactment of this title'' and inserting ''on December 31, 2012''.

TITLE III—JOHN MUIR NATIONAL HISTORIC SITE BOUNDARY ADJUSTMENT

SEC. 301. SHORT TITLE.

This title may be cited as the ''John Muir National Historic Site Boundary Adjustment Act''.

SEC. 302. BOUNDARY ADJUSTMENT.

(a) BOUNDARY.—The boundary of the John Muir National Historic Site is adjusted to include the lands generally depicted on the map entitled ''Boundary Map, John Muir National Historic Site'' numbered PWR–OL 426–80,044a and dated August 2001.

(b) LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire the

lands and interests in lands identified as the ''Boundary Adjustment Area'' on the map referred to in subsection (a) by donation, purchase with donated or appropriated funds, exchange, or otherwise.

(c) ADMINISTRATION.—The lands and interests in lands described in subsection (b) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

TITLE IV—SAN GABRIEL RIVER WATERSHEDS STUDY SEC. 401. SHORT TITLE.

This title may be cited as the ''San Gabriel River Watersheds Study Act of 2002''.

SEC. 402. AUTHORIZATION OF STUDY.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter in this title referred to as the 'Secretary', in consultation with the Secretary of Agriculture and the Secretary of the Army, shall conduct a comprehensive resource study of the following areas:

(1) The San Gabriel River and its tributaries north of and including the city of Santa Fe Springs, and

(2) The San Gabriel Mountains within the territory of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (as defined in section 32603(c)(1)(C) of the State of California Public Resource Code).

(b) STUDY CONDUCT AND COMPLETION.—(1) The Secretary shall conduct a comprehensive evaluation of the area's natural and recreational resources to make recommendations for the future coordinated management, protection and enhancement of these resources and an analysis of the cost of each option. In addition, the study shall consider a system of greenways, scenic roadways, river, and trail corridors linking communities within the area.

(2) The study shall be conducted in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)).

(c) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS.—In conducting the study authorized by this section, the Secretary shall consult with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and other appropriate State, county, and local government entities.

(d) CONSIDERATIONS.—In conducting the study authorized by this section, the Secretary shall consider regional flood control and drainage needs and publicly owned infrastructure, including, but not limited to, wastewater treatment facilities.

SEC. 403. REPORT.

Not later than 3 years after funds are made available for this title, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report on the findings, conclusions, and recommendations of the study.

TITLE V—GRAND TETON NATIONAL PARK LAND EXCHANGE SEC. 501. DEFINITIONS.

As used in this title:

(1) FEDERAL LANDS.—The term ''Federal lands'' means public lands as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

(2) GOVERNOR.—The term ''Governor'' means the Governor of the State of Wyoming.

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

(4) STATE LANDS.—The term ''State lands'' means lands and interest in lands owned by the State of Wyoming within the boundaries of Grand Teton National Park as identified on a map titled ''Private, State & County Inholdings Grand Teton National Park'', dated March 2001, and numbered GTNP/0001.

SEC. 502. ACQUISITION OF STATE LANDS.

(a) AUTHORIZATION TO ACQUIRE LANDS.—The Secretary is authorized to acquire approximately 1,406 acres of State lands within the exterior boundaries of Grand Teton National Park, as generally depicted on the map referenced in section 101(4), by any one or a combination of the following—

(1) donation;

(2) purchase with donated or appropriated funds; or

(3) exchange of Federal lands in the State of Wyoming that are identified for disposal under approved land use plans in effect on the date of enactment of this title under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) that are of equal value to the State lands acquired in the exchange.

(b) IDENTIFICATION OF LANDS FOR EXCHANGE.—In the event that the Secretary or the Governor determines that the Federal lands eligible for exchange under subsection (a)(3) are not sufficient or acceptable for the acquisition of all the State lands identified in section 501(4), the Secretary shall identify other Federal lands or interests therein in the State of Wyoming for possible exchange and shall identify such lands or interests together with their estimated value in a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives. Such lands or interests shall not be available for exchange unless authorized by an Act of Congress enacted after the date of submission of the report.

SEC. 503. VALUATION OF STATE AND FEDERAL INTERESTS.

(a) AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the value of any Federal lands eligible for exchange under section 502(a)(3) or State lands, then the Secretary and the Governor may select a qualified appraiser to conduct an appraisal of those lands. The purchase or exchange under section 502(a) shall be conducted based on the values determined by the appraisal.

(b) NO AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the selection of a qualified appraiser under subsection (a), then the Secretary and the Governor shall each designate a qualified appraiser. The two designated appraisers shall select a qualified third appraiser to conduct the appraisal with the advice and assistance of the two designated appraisers. The purchase or exchange under section 502(a) shall be conducted based on the values determined by the appraisal.

(c) APPRAISAL COSTS.—The Secretary and the State of Wyoming shall each pay one-half of the appraisal costs under subsections (a) and (b).

SEC. 504. ADMINISTRATION OF STATE LANDS ACQUIRED BY THE UNITED STATES.

The State lands conveyed to the United States under section 502(a) shall become part of Grand Teton National Park. The Secretary shall manage such lands under the Act of August 25, 1916 (commonly known as the 'National Park Service Organic Act') and other laws, rules, and regulations applicable to Grand Teton National Park.

SEC. 505. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this title.

TITLE VI—GALISTEO BASIN ARCHAEOLOGICAL SITES PROTECTION

SEC. 601. SHORT TITLE.

This title may be cited as the ''Galisteo Basin Archaeological Sites Protection Act''.

SEC. 602. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Galisteo Basin and surrounding area of New Mexico is the location of many well preserved prehistoric and historic archaeological resources of Native American and Spanish colonial cultures;

(2) these resources include the largest ruins of Pueblo Indian settlements in the United

States, spectacular examples of Native American rock art, and ruins of Spanish colonial settlements; and (3) these resources are being threatened by natural causes, urban development, vandalism, and uncontrolled excavations.

(b) PURPOSE.—The purpose of this title is to provide for the preservation, protection, and interpretation of the nationally significant archaeological resources in the Galisteo Basin in New Mexico.

SEC. 603. ESTABLISHMENT OF GALISTEO BASIN ARCHAEOLOGICAL PROTECTION SITES.

(a) IN GENERAL.—the following archaeological sites located in the Galisteo Basin in the State of New Mexico, totaling approximately 4,591 acres, are hereby designated as Galisteo Basin Archaeological Protection Sites:

Name	*Acres*
Arroyo Hondo Pueblo	21
Burnt Corn Pueblo	110
Chamisa Locita Pueblo	16
Comanche Gap Petroglyphs	764
Espinoso Ridge Site	160
La Cienega Pueblo & Petroglyphs	126
La Cienega Pithouse Village	179
La Cieneguilla Petroglyphs/Camino Real Site	531
La Cieneguilla Pueblo	11
Lamy Pueblo	30
Lamy Junction Site	80
Las Huertas	44
Pa'ako Pueblo	29
Petroglyph Hill	130
Pueblo Blanco	878
Pueblo Colorado	120
Pueblo Galisteo/Las Madres	133
Pueblo Largo	60
Pueblo She	120
Rote Chert Quarry	5
San Cristobal Pueblo	520
San Lazaro Pueblo	360
San Marcos Pueblo	152
Upper Arroyo Hondo Pueblo	12
Total Acreage	4,591

(b) AVAILABILITY OF MAPS.—The archaeological protection sites listed in subsection (b) are generally depicted on a series of 19 maps entitled 'Galisteo Basin Archaeological Protection Sites' and dated July, 2002. The Secretary shall keep the maps on file and available for public inspection in appropriate offices in New Mexico of the Bureau of Land Management and the National Park Service.

(c) BOUNDARY ADJUSTMENTS.—The Secretary may make minor boundary adjustments to the archaeological protection sites by publishing notice thereof in the Federal Register.

SEC. 604. ADDITIONAL SITES.

(a) IN GENERAL.—The Secretary of the Interior (in this title referred to as the ''Secretary'') shall—

(1) continue to search for additional Native American and Spanish colonial sites in the Galisteo Basin area of New Mexico; and

(2) submit to Congress, within three years after the date funds become available and thereafter as needed, recommendations for additions to, deletions from, and modifications of the boundaries of the list of archaeological protection sites in section 3 of this title.

(b) ADDITIONS ONLY BY STATUTE.—Additions to or deletions from the list in section 3 shall be made only by an Act of Congress.

SEC. 605. ADMINISTRATION.

(a) IN GENERAL.—

(1) The Secretary shall administer archaeological protection sites located on Federal land in accordance with the provisions of this title, the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), and other applicable laws in a manner that will protect, preserve, and maintain the archaeological resources and provide for research thereon.

(2) The Secretary shall have no authority to administer archaeological protection sites which are on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner.

(3) Nothing in this title shall be construed to extend the authorities of the Archaeological Resources Protection Act of 1979 or the Native American Graves Protection and Repatriation Act to private lands which are designated as an archaeological protection site.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Within three complete fiscal years after the date funds are made available, the Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives, a general management plan for the identification, research, protection, and public interpretation of—

(A) the archaeological protection sites located on Federal land; and

(B) for sites on State or private lands for which the Secretary has entered into cooperative agreements pursuant to section 606 of this title.

(2) CONSULTATION.—The general management plan shall be developed by the Secretary in consultation with the Governor of New Mexico, the New Mexico State Land Commissioner, affected Native American pueblos, and other interested parties.

SEC. 606. COOPERATIVE AGREEMENTS.

The Secretary is authorized to enter into cooperative agreements with owners of non-Federal lands with regard to an archaeological protection site, or portion thereof, located on their property. The purpose of such an agreement shall be to enable the Secretary to assist with the protection, preservation, maintenance, and administration of the archaeological resources and associated lands. Where appropriate, a cooperative agreement may also provide for public interpretation of the site.

SEC. 607. ACQUISITIONS.

(a) IN GENERAL.—The Secretary is authorized to acquire lands and interests therein within the boundaries of the archaeological protection sites, including access thereto, by donation, by purchase with donated or appropriated funds, or by exchange.

(b) CONSENT OF OWNER REQUIRED.—The Secretary may only acquire lands or interests therein with the consent of the owner thereof.

(c) STATE LANDS.—The Secretary may acquire lands or interests therein owned by the State of New Mexico or a political subdivision thereof only by donation or exchange, except that State trust lands may only be acquired by exchange.

SEC. 608. WITHDRAWAL.

Subject to valid existing rights, all Federal lands within the archaeological protection sites are hereby withdrawn—

(1) from all forms of entry, appropriation, or disposal under the public land laws and all amendments thereto;

(2) from location, entry, and patent under the mining law and all amendments thereto; and

(3) from disposition under all laws relating to mineral and geothermal leasing, and all amendments thereto.

SEC. 609. SAVINGS PROVISIONS.

Nothing in this title shall be construed—

(1) to authorize the regulation of privately owned lands within an area designated as an archaeological protection site;

(2) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands;

(3) to modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(4) to restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VII—KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK

SEC. 701. SHORT TITLE.

This title may be cited as the ''Kaloko-Honokohau National Historical Park Addition Title of 2002''.

SEC. 702. ADDITIONS TO KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK.

Section 505(a) of Public Law 95–625 (16 U.S.C. 396d(a)) is amended—

(1) by striking ''(a) In order'' and inserting ''(a)(1) In order'';

(2) by striking ''1978,'' and all that follows and inserting ''1978.''; and

(3) by adding at the end the following new paragraphs:

''(2) The boundaries of the park are modified to include lands and interests therein comprised of Parcels 1 and 2 totaling 2.14 acres, identified as 'Trace A' on the map entitled 'Kaloko-Honokohau National Historical Park Proposed Boundary Adjustment', numbered PWR (PISO) 466/82,043 and dated April 2002.

''(3) The maps referred to in this subsection shall be on file and available for public inspection in the appropriate offices of the National Park Service.''.

SEC. 703. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VIII—MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 801. LACKAWANNA VALLEY HERITAGE AREA.

Section 106(a) of the Lackawanna Valley National Heritage Area Act of 2000 (Public Law 106–278; 16 U.S.C. 461 note.) is amended to read as follows:

''(a) AUTHORITIES OF MANAGEMENT ENTITY.—For purposes of preparing and implementing the management plan, the management entity may—

''(1) make grants to, and enter into cooperative agreements with, the State and political subdivisions of the State, private organizations, or any person; and

''(2) hire and compensate staff.''.

SEC. 802. HAWAIIAN SPELLING ERRORS.

Section 5 of the Act entitled ''An Act to add certain lands on the Island of Hawaii to the Hawaii National Park, and for other purposes'', as added by Public Law 99–564 (100 Stat. 3179; 16 U.S.C. 392c) is amended by striking ''Hawaii Volcanoes'' each place it appears and inserting ''Hawai'i Volcanoes''.

SEC. 803. "I HAVE A DREAM" PLAQUE AT LINCOLN MEMORIAL.

Section 2 of Public Law 106–365 (114 Stat. 1409) is amended by striking ''and expand contributions'' and inserting ''and expend contributions''.

SEC. 804. WILD AND SCENIC RIVERS AND NATIONAL TRAILS.

(a) WILD AND SCENIC RIVERS.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended—

(1) by redesignating the paragraph (162), pertaining to White Clay Creek, Delaware and Pennsylvania, as paragraph (163);

(2) by designating the second paragraph (161), pertaining to the Wekiva River, Wekiwa Springs Run, Rock Springs Run, and Black Water Creek, Florida, as paragraph (162);

(3) by designating the undesignated paragraph pertaining to the Wildhorse and Kiger Creeks, Oregon, as paragraph (164); and

(4) by redesignating the third paragraph (161), pertaining to the Lower Delaware River and associated tributaries, New Jersey and Pennsylvania, as paragraph (165).

(b) NATIONAL TRAILS.—Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by redesignating the second paragraph (21), pertaining to the Ala Kahakai National Historic Trail, and enacted by Public Law 106–509 as paragraph (22).

SEC. 805. JAMESTOWN 400th COMMEMORATION COMMISSION.

The Jamestown 400th Commemoration Commission Act of 2000 (Public Law 106–565; 114 Stat. 2812; 16 U.S.C. 81 note.) is amended—

(1) in section 2(a)(5), by striking ''State'';

(2) in sections 2(b), 3(3), and 4(h), by striking ''State'' and inserting ''Commonwealth'' each place it appears;

(3) in section 3, by striking paragraph (5) and inserting the following:

''(5) COMMONWEALTH.—The term 'Commonwealth' means the Commonwealth of Virginia, including agencies and entities of the Commonwealth.'' and

(4) in section 4(b)(1), by striking ''16'' and inserting ''15''.

SEC. 806. ROSIE THE RIVETER—WORLD WAR II HOME FRONT NATIONAL HISTORICAL PARK.

The Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000 (Public Law 106–352; 114 Stat. 1371; 16 U.S.C 410ggg–1) is amended—

(1) in section 2(a), by striking ''numbered 963/80000'' and inserting ''numbered 963/80,000'';

(2) in section 3(a)(1), by striking ''August 35'' and inserting ''August 25''.

(3) in section 3(b)(1), by striking ''the World War II Child Development Centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67A,'' and inserting ''the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A,''; and

(4) in section 3(e)(2), by striking ''the World War II day care centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67,'' and inserting ''the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A,''.

SEC. 807. VICKSBURG CAMPAIGN TRAIL BATTLEFIELDS.

The Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Public Law 106–487; 114 Stat. 2202) is amended—

(1) in section 2(a)(1), by striking ''and Tennessee'' and inserting ''Tennessee, and Kentucky'';

(2) in section 3(1), by striking ''and Tennessee,'' and inserting ''Tennessee, and Kentucky,''; and

(3) in section 3(2)—

(A) by striking ''and'' at the end of subparagraph (R);

(B) by redesignating subparagraph (S) as subparagraph (T); and

(C) by inserting a new subparagraph (S) as follows:

''(S) Fort Heiman in Calloway County, Kentucky, and resources in and around Columbus in Hickman County, Kentucky; and''.

SEC. 808. HARRIET TUBMAN SPECIAL RESOURCE STUDY.

Section 3(c) of the Harriet Tubman Special Resource Study Act (Public Law 106–516; 114 Stat. 2405) is amended by striking ''Public Law 91–383'' and all that follows through ''3501)'' and inserting ''the National Park System General Authorities Act (16 U.S.C. 1a–5)''.

SEC. 809. PUBLIC LAND MANAGEMENT AGENCY FOUNDATIONS.

Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management agencies shall qualify for General Service Administration contract airfares.

SEC. 810. POPULAR NAMES.

(a) NATIONAL PARK SERVICE ORGANIC ACT.—The Act of August 25, 1916 (16 U.S.C. 1 et seq.; popularly known as the ''National Park Service Organic Act'' is amended by adding at the end the following new section:

''SEC. 5. This Act may be cited as the 'National Park Service Organic Act'.''.

(b) NATIONAL PARK SYSTEM GENERAL AUTHORITIES ACT.—Public Law 91–383 (16 U.S.C. 1a–1 et seq.; popularly known as the ''National Park System General Authorities Act'') is amended by adding at the end the following new section:

''SEC. 14. This Act may be cited as the 'National Park System General Authorities Act.' ''

SEC. 811. PARK POLICE INDEMNIFICATION.

Section 2(b) of the Act of November 6, 2000, (Public Law 106–437; 114 Stat. 1921) is amended by striking ''the Act'' and inserting ''of the Act''.

SEC. 812. BOSTON HARBOR ISLANDS NATIONAL RECREATION AREA.

Section 1029(c)(2)(B)(i) of division I of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333; 110 Stat. 4233) is amended by striking ''reference'' and inserting ''referenced''.

SEC. 813. NATIONAL HISTORIC PRESERVATION ACT.

Section 5(a)(8) of the National Historic Preservation Act Amendments of 2000 (P.L. 106–208; 114 Stat. 319) is amended by striking ''section 110(1)'' and inserting ''section 110(1)''.

SEC. 814. ADDITIONAL TECHNICAL AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT.

The National Trails System Act (16 U.S.C. 1241) is amended—

(1) in section 5(c)(19), by striking ''Kissimme'' and inserting ''Kissimmee'';

(2) in section 5(c)(40)(D) by striking ''later that'' and inserting ''later than'';

(3) in the first sentence of section 5(d) by striking ''establishment.''; and

(4) in section 10(c)(1) by striking ''The Ice Age'' and inserting ''the Ice Age''.''.

TITLE IX—GOLDEN CHAIN HIGHWAY NATIONAL HERITAGE CORRIDOR STUDY

SEC. 401. GOLDEN CHAIN HIGHWAY STUDY.

(a) STUDY.—Not later than 3 years after the date that funds are made available for this section, the Secretary of the Interior, in consultation with affected local governments, the State of California, State and local historic preservation offices, community organizations, and the Golden Chain Council, shall complete a special resource study of the national significance, suitability, and feasibility of establishing Highway 49 in California, known as the ''Golden Chain Highway'', as a National Heritage Corridor.

(b) CONTENTS.—The study shall include an analysis of—

(1) the significance of Highway 49 in American history;

(2) options for preservation and use of the highway;

(3) options for interpretation of significant features associated with the highway; and

(4) private sector preservation alternatives.

(c) BOUNDARIES OF STUDY AREA.—The area studied under this section shall be comprised of Highway 49 in California extending from the city of Oakhurst in Madera County to the city of Tuttletown in Tuolumne County, and lands, structures, and cultural resources within the immediate vicinity of the highway.

(d) REPORT.—Not later than 30 days after completion of the study required by this section, the Secretary shall submit a report describing the results of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

TITLE X—AMENDMENTS TO THE VALLES CALDERA PRESERVATION ACT

SEC. 1001. AMENDMENTS TO THE VALLES CALDERA PRESERVATION ACT.

The Valles Caldera Preservation Act (16 U.S.C. 698v) is amended—

(1) in section 106(d)(1) by inserting after the first full sentence the following—

''Employees of the Trust may be employed under contract or employment agreement, the terms and conditions of which shall be determined by the Trust in conformance with this subsection.'';

(2) in section 106(d)(2) by adding at the end the following

''(C) RETURN TO COMPETITIVE SERVICE.—Employees of the Trust who have previous service in the competitive service shall not be precluded from consideration for any position open generally to other Federal employees. In considering an employee of the Trust for a position within the competitive service, the employing agency shall consider a position with the Trust to be comparable to a similar position within the competitive service as it relates to classification and General Schedule pay rates.'';

(3) by modifying section 108(g) to read as follows—

''(g) LAW ENFORCEMENT AND FIRE MANAGEMENT.—

''(1) LAW ENFORCEMENT.—The Secretary shall provide law enforcement services under a cooperative agreement with the Trust to the extent generally authorized in other units of the National Forest System. The Trust shall be deemed a Federal agency for purposes of the law enforcement authorities of the Secretary within the meaning of section 15008 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559(g).'';

''(2) FIRE MANAGEMENT.—The Secretary shall provide fire suppression and rehabilitation services under a cooperative agreement with the Trust to the extent generally authorized on other units of the National Forest System. At the request of the Trust, the Secretary may provide fire presuppression services; except that the Trust shall reimburse the Secretary for salaries and expenses of fire management personnel, commensurate with services provided.''; and

(4) by modifying section 107(e)(2) to read as follows

''(2) COMPENSATION OF TRUSTEES.—Trustees may receive, upon request, compensation for each day (including travel time) that they are engaged in the performance of functions of the Board. Compensation shall not exceed the daily equivalent of the annual rate in effect for members of the Senior Executive Service at the ES–1 level, and shall be in addition to any reimbursement for travel, subsistence and other necessary expenses incurred by them in the performance of their duties. Members of the Board who are officers or employees of the United States shall not receive any additional compensation by reason of service on the Board.''.

TITLE XI—UTAH MUSEUM OF NATURAL HISTORY

SEC. 1101. SHORT TITLE.

This title may be cited as the ''Utah Public Lands Artifact Preservation Act''.

SEC. 1102. FINDINGS.

Congress finds that—

(1) the collection of the Utah Museum of Natural History in Salt Lake City, Utah, includes more than 1,000,000 archaeological, paleontological, zoological, geological, and botanical artifacts;

(2) the collection of items housed by the Museum contains artifacts from land managed by—

(A) the Bureau of Land Management;

(B) the Bureau of Reclamation;

(C) the National Park Service;

(D) the United States Fish and Wildlife Service; and

(E) the Forest Service;

(3) more than 75 percent of the Museum's collection was recovered from federally managed public land; and

(4) the Museum has been designated by the legislature of the State of Utah as the State museum of natural history.

SEC. 1103. DEFINITIONS.

In this title:

(1) MUSEUM.—The term ''Museum'' means the University of Utah Museum of Natural History in Salt Lake City, Utah.

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

SEC. 1104. ASSISTANCE FOR UNIVERSITY OF UTAH MUSEUM OF NATURAL HISTORY.

(a) ASSISTANCE FOR MUSEUM.—The Secretary shall make a grant to the University of Utah in Salt Lake City, Utah, to pay the Federal share of the costs of construction of a new facility for the Museum, including the design, planning, furnishing, and equipping of the Museum.

(b) GRANT REQUIREMENTS.—

(1) IN GENERAL.—To receive a grant under subsection (b), the Museum shall submit to the Secretary a proposal for the use of the grant.

(2) FEDERAL SHARE.—The Federal share of the costs described in subsection (a) shall not exceed 25 percent.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000, to remain available until expended.

SA 4972. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 1894, to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

TITLE I—MIAMI CIRCLE SITE SPECIAL RESOURCE STUDY

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Tequesta Indians were one of the earliest groups to establish permanent villages in southeast Florida;

(2) the Tequestas had one of only two North American civilizations that thrived and developed into a complex social chiefdom without an agricultural base;

(3) the Tequesta sites that remain preserved today are rare;

(4) the discovery of the Miami Circle, occupied by the Tequesta approximately 2,000 years ago, presents a valuable new opportunity to learn more about the Tequesta culture; and

(5) Biscayne National Park also contains and protects several prehistoric Tequesta sites.

(b) PURPOSE.—The purpose of this title is to direct the Secretary to conduct a special resource study to determine the national significance of the Miami Circle site as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park.

SEC. 102. DEFINITIONS.

In this title:

(1) MIAMI CIRCLE.—The term ''Miami Circle'' means the Miami Circle archaeological site in Miami-Dade County, Florida.

(2) PARK.—The term ''Park'' means Biscayne National Park in the State of Florida.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 103. SPECIAL RESOURCE STUDY.

(a) IN GENERAL.—Not later than one year after the date funds are made available, the Secretary shall conduct a special resource study as described in subsection (b). In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) COMPONENTS.—In addition to a determination of national significance, feasibility, and suitability, the special resource study shall include the analysis and recommendations of the Secretary with respect to—

(1) which, if any, particular areas of or surrounding the Miami Circle should be included in the Park;

(2) whether any additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of the Park; and (3) any impact on the local area that would result from the inclusion of Miami Circle in the Park.

(c) REPORT.—Not later than 30 days after completion of the study, the Secretary shall submit a report describing the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE II—MOUNT NEBO WILDERNESS BOUNDARY ADJUSTMENTS

SEC. 201. BOUNDARY ADJUSTMENTS, MOUNT NEBO WILDERNESS, UTAH.

(a) LANDS REMOVED.—The boundary of the Mount Nebo Wilderness is adjusted to exclude the following:

(1) MONUMENT SPRINGS.—The approximately 8.4 acres of land depicted on the Map as ''Monument Springs''.

(2) GARDNER CANYON.—The approximately 177.8 acres of land depicted on the Map as ''Gardner Canyon''.

(3) BIRCH CREEK.—The approximately 5.0 acres of land depicted on the Map as ''Birch Creek''.

(4) INGRAM CANYON.—The approximately 15.4 acres of land depicted on the Map as ''Ingram Canyon''.

(5) WILLOW NORTH A.—The approximately 3.4 acres of land depicted on the Map as ''Willow North A''.

(6) WILLOW NORTH B.—The approximately 6.6 acres of land depicted on the Map as ''Willow North B''.

(7) WILLOW SOUTH.—The approximately 21.5 acres of land depicted on the Map as ''Willow South''.

(8) MENDENHALL CANYON.—The approximately 9.8 acres of land depicted on the Map as ''Mendenhall Canyon''.

(9) WASH CANYON.—The approximately 31.4 acres of land depicted on the Map as ''Wash Canyon''.

(b) LANDS ADDED.—Subject to valid existing rights, the boundary of the Mount Nebo Wilderness is adjusted to include the approximately 293.2 acres of land depicted on the Map for addition to the Mount Nebo Wilderness. The Utah Wilderness Act of 1984 (Public Law 94–428) shall apply to the land added to the Mount Nebo Wilderness pursuant to this subsection.

SEC. 202. MAP.

(a) DEFINITION.—In this title, the term ''Map'' means the map entitled ''Mt. Nebo Wilderness Boundary Adjustment'', numbered 531, and dated May 29, 2001.

(b) MAP ON FILE.—The Map and the final document entitled ''Mount Nebo, Proposed Boundary Adjustments, Parcel Descriptions (See Map #531)'' and dated June 4, 2001, shall be on file and available for inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(c) CORRECTIONS.—The Secretary of Agriculture may make technical corrections to the Map.

SEC. 203. TECHNICAL BOUNDARY ADJUSTMENT.

The boundary of the Mount Nebo Wilderness is adjusted to exclude the approximately 21.26 acres of private property located in Andrews Canyon, Utah, and depicted on the Map as ''Dale''.

TITLE III—BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL SPECIAL RESOURCE STUDY

SEC. 301. FINDINGS.

The Congress finds the following:

(1) During World War II on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, setting in motion the forced exile of more than 110,000 Japanese Americans.

(2) In Washington State, 12,892 men, women and children of Japanese ancestry experienced three years of incarceration, an incarceration violating the most basic freedoms of American citizens.

(3) On March 30, 1942, 227 Bainbridge Island residents were the first Japanese Americans in United States history to be forcibly removed from their homes by the U.S. Army and sent to internment camps. They boarded the ferry Kehloken from the former Eagledale Ferry Dock, located at the end of Taylor Avenue, in the city of Bainbridge Island, Washington State.

(4) The city of Bainbridge Island has adopted a resolution stating that this site should be a National Memorial, and similar resolutions have been introduced in the Washington State Legislature.

(5) Both the Minidoka National Monument and Manzanar National Historic Site can clearly tell the story of a time in our Nation's history when constitutional rights were ignored. These camps by design were placed in very remote places and are not easily accessible. Bainbridge Island is a short ferry ride from Seattle and the site would be within easy reach of many more people.

(6) This is a unique opportunity to create a site that will honor those who suffered, cherish the friends and community who stood beside them and welcomed them home, and inspire all to stand firm in the event our Nation again succumbs to similar fears.

(7) The site should be recognized by the National Park Service based on its high degree of national significance, association with significant events, and integrity of its location and setting. This site is critical as an anchor for future efforts to identify, interpret, serve, and ultimately honor the Nikkei-persons of Japanese ancestry-influence on Bainbridge Island.

SEC. 302. EAGLEDALE FERRY DOCK LOCATION AT TAYLOR AVENUE STUDY AND REPORT.

(a) STUDY.—The Secretary of the Interior shall carry out a special resource study regarding the national significance, suitability, and feasibility of designating as a unit of the National Park System the property commonly known as the Eagledale Ferry Dock at Taylor Avenue and the historical events associated with it, located in the town of Bainbridge Island, Kitsap County, Washington.

(b) REPORT.—Not later than three years after funds are first made available for the study under subsection (a), the Secretary of the Interior shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the findings, conclusions, and recommendations of the study.

(c) REQUIREMENTS FOR STUDY.—Except as otherwise provided in this section, the study under subsection (a) shall be conducted in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)).

TITLE IV—AMENDMENTS TO HAWAII HOMES COMMISSION ACT

SEC. 401. CONSENT TO AMENDMENTS TO HAWAII HOMES COMMISSION ACT, 1920.

In accordance with section 4 of Public Law 86–3 (73 Stat. 4), the United States consents to the following amendment to the Hawaii Homes Commission Act, 1920:

(1) Act 107 of the Session Laws of Hawaii, 2001.

TITLE V—WIND CAVE NATIONAL PARK BOUNDARY REVISION

SEC. 501. SHORT TITLE.

This title may be cited as the ''Wind Cave National Park Boundary Revision Act of 2002''.

SEC. 502. DEFINITIONS.

In this title:

(1) MAP.—The term ''map'' means the map entitled 'Wind Cave National Park Boundary Revision'', numbered 108/80,030, and dated June 2002.

(2) PARK.—The term ''Park'' means the Wind Cave National Park in the State.

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

(4) STATE.—The term ''State'' means the State of South Dakota.

SEC. 503. LAND ACQUISITION.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) MEANS.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) BOUNDARY.—

(1) MAP AND ACREAGE.—The land referred to in subsection (a)(1) shall consist of approximately 5,675 acres, as generally depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) REVISION.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

SEC. 504. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer any land acquired under section 503(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(1) IN GENERAL.—The Secretary shall transfer from the Director of the Bureau of Land Management to the Director of the National Park Service administrative jurisdiction over the land described in paragraph (2).

(2) MAP AND ACREAGE.—The land referred to in paragraph (1) consists of the approximately 80 acres of land identified on the map as ''Bureau of Land Management land''.

SEC. 505. GRAZING.

(a) GRAZING PERMITTED.—Subject to any permits or leases in existence as of the date of acquisition, the Secretary may permit the continuation of livestock grazing on land acquired under section 503(a)(1).

(b) LIMITATION.—Grazing under subsection (a) shall be at not more than the level existing on the date on which the land is acquired under section 503(a)(1).

(c) PURCHASE OF PERMIT OR LEASE.—The Secretary may purchase the outstanding portion of a grazing permit or lease on any land acquired under section 503(a)(1).

(d) TERMINATION OF LEASES OR PERMITS.—The Secretary may accept the voluntary termination of a permit or lease for grazing on any acquired land.

TITLE VI—GUNNISON NATIONAL PARK AND GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION

SEC. 601. SHORT TITLE.

This title may be cited as the ''Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002''.

SEC. 602. BLACK CANYON OF THE GUNNISON NATIONAL PARK BOUNDARY REVISION.

(a) ESTABLISHMENT.—Section 4(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–2(a)) is amended—

(1) by striking ''There is hereby established'' and inserting the following:

''(1) IN GENERAL.—There is established''; and

(2) by adding at the end the following:

''(2) BOUNDARY REVISION.—The boundary of the Park is revised to include the addition of not more than 2,725 acres, as depicted on the map entitled 'Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications' and dated June 13, 2002.''.

(b) ADMINISTRATION.—Section 4(b) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–2(b)) is amended—

(1) by striking ''Upon'' and inserting the following:

''(1) LAND TRANSFER.—

''(A) IN GENERAL.—On''; and

(2) by striking ''The Secretary shall'' and inserting the following:

''(B) ADDITIONAL LAND.—On the date of enactment of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002, the Secretary shall transfer the land under the jurisdiction of the Bureau of Land Management identified as 'Tract C' on the map described in subsection (a)(2) to the administrative jurisdiction of the National Park Service for inclusion in the Park.

''(2) AUTHORITY.—The Secretary shall''.

SEC. 603. GRAZING PRIVILEGES AT BLACK CANYON OF THE GUNNISON NATIONAL PARK.

Section 4(e) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–2(e)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(B) by inserting after subparagraph (A) the following:

''(B) TRANSFER.—If land authorized for grazing under subparagraph (A) is exchanged for private land under this Act, the Secretary shall transfer any grazing privileges to the private land acquired in the exchange in accordance with this section.''; and

(2) in paragraph (3)—

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

(B) by redesignating subparagraph (B) as subparagraph (D);

(C) by inserting after subparagraph (A) the following:

''(B) with respect to the permit or lease issued to LeValley Ranch Ltd., a partnership, for the lifetime of the 2 limited partners as of October 21, 1999;

''(C) with respect to the permit or lease issued to Sanburg Herefords, L.L.P., a partnership, for the lifetime of the 2 general partners as of October 21, 1999; and''; and

(D) in subparagraph (D) (as redesignated by subparagraph (B))—

(i) by striking ''partnership, corporation, or'' in each place it appears and inserting ''corporation or''; and

(ii) by striking ''subparagraph (A)'' and inserting ''subparagraphs (A), (B), or (C)''.

SEC. 604. ACQUISITION OF LAND.

(a) AUTHORITY TO ACQUIRE LAND.—Section 5(a)(1) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–3(a)(1)) is amended by inserting ''or the map described in section 4(a)(2)'' after ''the Map''.

(b) METHOD OF ACQUISITION.—

(1) IN GENERAL.—Land or interest in land acquired under the amendments made by this title shall be made in accordance with section 5(a)(2)(A) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–3(a)(2)(A)).

(2) CONSENT.—No land or interest in land may be acquired without the consent of the landowner.

SEC. 605. GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION.

Section 7(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–5(a)) is amended—

(1) by striking ''(a) IN GENERAL.—There is established'' and inserting the following:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established''; and

(2) by adding at the end the following:

''(2) BOUNDARY REVISION.—The boundary of the Conservation Area is revised to include the addition of not more than 7,100 acres, as depicted on the map entitled 'Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications' and dated June 13, 2002.''.

TITLE VII—FRENCH COLONIAL NATIONAL PARK STUDY

SEC. 701. STUDY.

Not later than 3 years after the date of which funds are made available to carry out this title, the Secretary of the Interior shall, in consultation with the State of Missouri, complete a study on the suitability and feasibility of designating the French Colonial Historic District, including the Bequette-Ribault, St. Gemme-Amoureaux, and Wilhauk homes and the related and supporting historical assets in Ste. Genevieve County, Missouri, as a unit of the National Park System, and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report describing the findings of the study.

SEC. 702. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE VIII—COLTSVILLE NATIONAL PARK STUDY

SEC. 801. SHORT TITLE.

This title may be cited as the ''Coltsville Study Act of 2002''.

SEC. 802. FINDINGS.

Congress finds that—

(1) Hartford, Connecticut, home to Colt Manufacturing Company (referred to in this title as ''Colt''), played a major role in the Industrial Revolution;

(2) Samuel Colt, founder of Colt, and his wife, Elizabeth Colt, inspired Coltsville, a community in the State of Connecticut that flourished during the Industrial Revolution and included Victorian mansions, an open green area, botanical gardens, and a deer park;

(3) the residence of Samuel and Elizabeth Colt in Hartford, Connecticut, known as ''Armsmear'', is a national historic landmark, and the distinctive Colt factory is a prominent feature of the Hartford, Connecticut, skyline;

(4) the Colt legacy is not only about firearms, but also about industrial innovation and the development of technology that would change the way of life in the United States, including—

(A) the development of telegraph technology; and

(B) advancements in jet engine technology by Francis Pratt and Amos Whitney, who served as apprentices at Colt;

(5) the influence of Colt extended beyond the United States when Samuel Colt was the first resident of the United States to open a manufacturing plant overseas;

(6) Coltsville—

(A) set the standard for excellence during the Industrial Revolution; and (B) continues to prove significant—

(i) as a place in which people of the United States can learn about that important period in history; and

(ii) by reason of the close proximity of Coltsville to the Mark Twain House, Trinity College, Old North Cemetery, and many historic homesteads and architecturally renowned buildings;

(7) in 1998, the National Park Service conducted a special resource reconnaissance study of the Connecticut River Valley to evaluate the significance of precision manufacturing sites; and

(8) the report on the study stated that—

(A) no other region of the United States contains an equal concentration of resources relating to the precision manufacturing theme that began with firearms production;

(B) properties relating to precision manufacturing encompass more than merely factories; and

(C) further study, which should be undertaken, may recommend inclusion of churches and other social institutions.

SEC. 803. STUDY.

(a) IN GENERAL.—Not later than three years after the date on which funds are made available to carry out this title, the Secretary of the Interior (referred to in this title as the ''Secretary'') shall complete a study of the site in the State of Connecticut commonly known as ''Coltsville'' to evaluate—

(1) the national significance of the site and surrounding area;

(2) the suitability and feasibility of designating the site and surrounding area as a unit of the National Park System; and

(3) the importance of the site to the history of precision manufacturing.

(b) APPLICABLE LAW.—The study required under subsection (a) shall be conducted in accordance with Public Law 91–383 (16 U.S.C. 1a–1 et seq.).

SEC. 804. REPORT.

Not later than 30 days after the date on which the study under section 803(a) is completed, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes—

(1) the findings of the study; and

(2) any conclusions and recommendations of the Secretary.

SEC. 805. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE IX—BEAUFORT NATIONAL PARK STUDY

SEC. 901. SHORT TITLE.

This title may be cited as the ''Beaufort, South Carolina Study Act of 2002''.

SEC. 902. DEFINITIONS.

In this title:

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

(2) STUDY AREA.—The term ''study area'' means the area comprised of historical sites in Beaufort County, South Carolina, relating to the Reconstruction Era, and includes the following sites—

(A) the Penn School;

(B) the Old Fort Plantation on the Beaufort River;

(C) the Freedmen's Bureau in Beaufort College;

(D) the First Freedmen's Village of Mitchellville on Hilton Head Island;

(E) various historic buildings and archaeological sites associated with Robert Smalls;

(F) the Beaufort Arsenal; and

(G) other significant sites relating to the Reconstruction Era.

SEC. 903. SPECIAL RESOURCE STUDY.

(a) IN GENERAL.—The Secretary shall conduct a special resource study to determine whether the study area or individual sites within it are suitable and feasible for inclusion in the National Park System.

(b) APPLICABLE LAW.—The study required under subsection (a) shall be conducted in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)).

(c) REPORT.—Not later than 3 years after the date on which funds are made available for the study under subsection (a), the Secretary shall submit the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

SEC. 904. THEME STUDY.

(a) IN GENERAL.—The Secretary shall conduct a National Historic Landmark theme study to identify sites and resources throughout the United States that are significant to the Reconstruction Era.

(b) CONTENTS.—The theme study shall include recommendations for commemorating and interpreting sites and resources identified by the theme study, including sites for which new national historic landmarks should be nominated, and sites for which further study for potential inclusion in the National Park System is needed.

(c) REPORT.—Not later than 3 years after the date on which funds are made available for the study under subsection (a), the Secretary submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the findings, conclusions, and recommendations of the study.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this title.

TITLE X—COLD WAR SITES STUDY

SEC. 1001. COLD WAR STUDY.

(a) SUBJECT OF STUDY.—The Secretary of the Interior, in consultation with the Secretary of Defense, State historic preservation offices, State and local officials, Cold War scholars, and other interested organizations and individuals, shall conduct a National Historic Landmark theme study to identify sites and resources in the United States that are significant to the Cold War. In conducting the study, the Secretary of the Interior shall—

(1) consider the inventory of sites and resources associated with the Cold War completed by the Secretary of Defense pursuant to section 8120(b)(9) of the Department of Defense Appropriations Act, 1991 (Public Law 101–511; 104 Stat. 1906);

(2) consider historical studies and research of Cold War sites and resources such as intercontinental ballistic missiles, nuclear weapons sites (such as the Nevada test site), flight training centers, manufacturing facilities, communications and command centers (such as Cheyenne Mountain, Colorado), defensive radar networks (such as the Distant Early Warning Line), and strategic and tactical aircraft; and

(3) inventory and consider nonmilitary sites and resources associated with the people, events, and social aspects of the Cold War.

(b) CONTENTS.—The study shall include—

(1) recommendations for commemorating and interpreting sites and resources identified by the study, including—

(A) sites for which studies for potential inclusion in the National Park System should be authorized;

(B) sites for which new national historic landmarks should be nominated; and

(C) recommendations on the suitability and feasibility of establishing a central repository for Cold War artifacts and information; and

(D) other appropriate designations;

(2) recommendations for cooperative arrangements with State and local governments, local historical organizations, and other entities; and

(3) cost estimates for carrying out each of those recommendations.

(c) GUIDELINES.—THE STUDY SHALL BE—

(1) conducted with public involvement; and

(2) submitted to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate no later than 3 years after the date that funds are made available for the study.

SEC. 1002. INTERPRETIVE HANDBOOK ON THE COLD WAR.

Not later than 4 years after funds are made available for that purpose, the Secretary of the Interior shall prepare and publish an interpretive handbook on the Cold War and shall disseminate information gathered through the study through appropriate means in addition to the handbook.

SEC. 1003. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $300,000 to carry out this title.

TITLE XI—PEOPLING OF AMERICA THEME STUDY

SEC. 1101. SHORT TITLE.

This title may be cited as the ''Peopling of America Theme Study Act''.

SEC. 1102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) an important facet of the history of the United States is the story of how the United States was populated;

(2) the migration, immigration, and settlement of the population of the United States—

(A) is broadly termed the ''peopling of America''; and

(B) is characterized by—

(i) the movement of groups of people across external and internal boundaries of the United States and territories of the United States; and

(ii) the interactions of those groups with each other and with other populations;

(3) each of those groups has made unique, important contributions to American history, culture, art, and life;

(4) the spiritual, intellectual, cultural, political, and economic vitality of the United States is a result of the pluralism and diversity of the American population;

(5) the success of the United States in embracing and accommodating diversity has strengthened the national fabric and unified the United States in its values, institutions, experiences, goals, and accomplishments;

(6)(A) the National Park Service's official thematic framework, revised in 1996, responds to the requirement of section 1209 of the Civil War Sites Study Act of 1990 (16 U.S.C. 1a–5 note; title XII of Public Law 101–628), that ''the Secretary shall ensure that the full diversity of American history and prehistory are represented'' in the identification and interpretation of historic properties by the National Park Service; and

(B) the thematic framework recognizes that ''people are the primary agents of change'' and establishes the theme of human population movement and change—or ''peopling places''—as a primary thematic category for interpretation and preservation; and

(7) although there are approximately 70,000 listings on the National Register of Historic Places, sites associated with the exploration and settlement of the United States by a broad range of cultures are not well represented.

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

(1) to foster a much-needed understanding of the diversity and contribution of the breadth of groups who have peopled the United States; and

(2) to strengthen the ability of the National Park Service to include groups and events otherwise not recognized in the peopling of the United States.

SEC. 1103. DEFINITIONS.

In this title:

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

(2) THEME STUDY.—The term ''theme study'' means the national historic landmark theme study required under section 1104.

(3) PEOPLING OF AMERICA.—The term ''peopling of America'' means the migration, immigration, and settlement of the population of the United States.

SEC. 1104. NATIONAL HISTORIC LANDMARK THEME STUDY ON THE PEOPLING OF AMERICA.

(a) THEME STUDY REQUIRED.—The Secretary shall prepare and submit to Congress a national historic landmark theme study on the peopling of America.

(b) PURPOSE.—The purpose of the theme study shall be to identify regions, areas, trails, districts, communities, sites, buildings, structures, objects, organizations, societies, and cultures that—

(1) best illustrate and commemorate key events or decisions affecting the peopling of America; and

(2) can provide a basis for the preservation and interpretation of the peopling of America that has shaped the culture and society of the United States.

(c) IDENTIFICATION AND DESIGNATION OF POTENTIAL NEW NATIONAL HISTORIC LANDMARKS.—

(1) IN GENERAL.—The theme study shall identify and recommend for designation new national historic landmarks.

(2) LIST OF APPROPRIATE SITES.—The theme study shall—

(A) include a list, in order of importance or merit, of the most appropriate sites for national historic landmark designation; and

(B) encourage the nomination of other properties to the National Register of Historic Places.

(3) DESIGNATION.—On the basis of the theme study, the Secretary shall designate new national historic landmarks.

(d) NATIONAL PARK SYSTEM.—

(1) IDENTIFICATION OF SITES WITHIN CURRENT UNITS.—The theme study shall identify appropriate sites within units of the National Park System at which the peopling of America may be interpreted.

(2) IDENTIFICATION OF NEW SITES.—On the basis of the theme study, the Secretary shall recommend to Congress sites for which studies for potential inclusion in the National Park System should be authorized.

(e) CONTINUING AUTHORITY.—After the date of submission to Congress of the theme study, the Secretary shall, on a continuing basis, as appropriate to interpret the peopling of America—

(1) evaluate, identify, and designate new national historic landmarks; and

(2) evaluate, identify, and recommend to Congress sites for which studies for potential inclusion in the National Park System should be authorized.

(f) PUBLIC EDUCATION AND RESEARCH.—

(1) LINKAGES.—

(A) ESTABLISHMENT.—On the basis of the theme study, the Secretary may identify appropriate means for establishing linkages—

(i) between—

(I) regions, areas, trails, districts, communities, sites, buildings, structures, objects, organizations, societies, and cultures identified under subsections (b) and (d); and

(II) groups of people; and

(ii) between—

(I) regions, areas, trails, districts, communities, sites, buildings, structures, objects, organizations, societies, and cultures identified under subsection (b); and

(II) units of the National Park System identified under subsection (d).

(B) PURPOSE.—The purpose of the linkages shall be to maximize opportunities for public education and scholarly research on the peopling of America.

(2) COOPERATIVE ARRANGEMENTS.—On the basis of the theme study, the Secretary shall, subject to the availability of funds, enter into cooperative arrangements with State and local governments, educational institutions, local historical organizations, communities, and other appropriate entities to preserve and interpret key sites in the peopling of America.

(3) EDUCATIONAL INITIATIVES.—

(A) IN GENERAL.—The documentation in the theme study shall be used for broad educational initiatives such as—

(i) popular publications;

(ii) curriculum material such as the Teaching with Historic Places program;

(iii) heritage tourism products such as the National Register of Historic Places Travel Itineraries program; and

(iv) oral history and ethnographic programs.

(B) COOPERATIVE PROGRAMS.—On the basis of the theme study, the Secretary shall implement cooperative programs to encourage the preservation and interpretation of the peopling of America.

SEC. 1105. COOPERATIVE AGREEMENTS.

The Secretary may enter into cooperative agreements with educational institutions, professional associations, or other entities knowledgeable about the peopling of America—

(1) to prepare the theme study;

(2) to ensure that the theme study is prepared in accordance with generally accepted scholarly standards; and

(3) to promote cooperative arrangements and programs relating to the peopling of America.

SEC. 1106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SA 4973. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 980, an act to establish the Moccasin Bend National Archeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Park; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—MOCCASIN BEND NATIONAL ARCHEOLOGICAL DISTRICT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Moccasin Bend National Archeological District Act''.

SEC. 102. DEFINITIONS.

As used in this title:

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

(2) ARCHEOLOGICAL DISTRICT.—The term ''archeological district'' means the Moccasin Bend National Archeological District.

(3) STATE.—The term ''State'' means the State of Tennessee.

(4) MAP.—The term ''Map'' means the map entitled ''Boundary Map, Moccasin Bend National Archeological District'', numbered 301/80098, and dated September 2002.

SEC. 103. ESTABLISHMENT.

(a) IN GENERAL.—In order to preserve, protect, and interpret for the benefit of the public the nationally significant archeological and historic resources located on the peninsula known as Moccasin Bend, Tennessee, there is established as a unit of Chickamauga and Chattanooga National Military Park, the Moccasin Bend National Archeological District.

(b) BOUNDARIES.—The archeological district shall consist of approximately 780 acres generally depicted on the Map. The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(c) ACQUISITION OF LAND AND INTERESTS IN LAND.—

(1) IN GENERAL.—The Secretary may acquire by donation, purchase from willing sellers using donated or appropriated funds, or exchange, lands and interests in lands within the exterior boundary of the archeological district. The Secretary may acquire the State, county and city-owned land and interests in land for inclusion in the archeological district only by donation.

(2) EASEMENT OUTSIDE BOUNDARY.—To allow access between areas of the archeological district that on the date of enactment of this title are noncontiguous, the Secretary may acquire by donation or purchase from willing owners using donated or appropriated funds, or exchange, easements connecting the areas generally depicted on the Map.

SEC. 104. ADMINISTRATION.

(a) IN GENERAL.—The archeological district shall be administered by the Secretary in accordance with this title, with laws applicable to Chickamauga and Chattanooga National Military Park, and with the laws generally applicable to units of the National Park System.

(b) COOPERATIVE AGREEMENT.—The Secretary may consult and enter into cooperative agreements with culturally affiliated federally recognized Indian tribes, governmental entities, and interested persons to provide for the restoration, preservation, development, interpretation, and use of the archeological district.

(c) VISITOR INTERPRETIVE CENTER.—For purposes of interpreting the historical themes and cultural resources of the archeological district, the Secretary may establish and administer a visitor center in the archeological district.

(d) GENERAL MANAGEMENT PLAN.—Not later than three years after funds are made available for this purpose, the Secretary shall develop a general management plan for the archeological district. The general management plan shall describe the appropriate protection and preservation of natural, cultural, and scenic resources, visitor use, and facility development within the archeological district consistent with the purposes of this title, while ensuring continued access to private landowners to their property.

SEC. 105. REPEAL OF PREVIOUS ACQUISITION AUTHORITY.

The Act of August 3, 1950 (Chapter 532; 16 U.S.C. 424a–4), is repealed.

TITLE II—FORT BAYARD NATIONAL HISTORIC LANDMARK ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Fort Bayard National Historic Landmark Act''.

SEC. 202. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) Fort Bayard, located in southwest New Mexico, was an Army post from 1866 until 1899, and served an important role in the settlement of New Mexico;

(2) among the troops stationed at the fort were several 'Buffalo Soldier' units who fought in the Apache Wars;

(3) following its closure as a military post, Fort Bayard was established by the War Department as general hospital for use as a military sanatorium;

(4) in 1965 the State of New Mexico assumed management of the site and currently operates the Fort Bayard State Hospital;

(5) the Fort Bayard historic site has been listed on the National Register of Historic Places in recognition of the national significance of its history, both as a military fort and as an historic medical facility.

SEC. 203. FORT BAYARD NATIONAL HISTORIC LANDMARK.

(a) DESIGNATION.—The Fort Bayard Historic District in Grant County, New Mexico, as listed on the National Register of Historic Places, is hereby designated as the Fort Bayard National Historic Landmark.

(b) ADMINISTRATION.—

(1) Consistent with the Department of the Interior's regulations concerning National Historic Landmarks (36 CFR Part 65), designation of the Fort Bayard Historic District as a National Historic Landmark shall not prohibit under Federal law or regulations any actions which may otherwise be taken by the property owner with respect to the property.

(2) Nothing in this title shall affect the administration of the Fort Bayard Historic District by the State of New Mexico.

SEC. 204. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary, in consultation with the State of New Mexico, may enter into cooperative agreements with appropriate public or private entities, for the

purposes of protecting historic resources at Fort Bayard and providing educational and interpretive facilities and programs for the public. The Secretary shall not enter into any agreement or provide assistance to any activity affecting Fort Bayard State Hospital without the concurrence of the State of New Mexico.

(b) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may provide technical and financial assistance with any entity with which the Secretary has entered into a cooperative agreement under subsection (a) in furtherance of the agreement.

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE III—VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE

SEC. 301. SHORT TITLE.

This title may be cited as the ''Virgin River Dinosaur Footprint Preserve Act''.

SEC. 302. VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.

(a) AUTHORIZATION FOR GRANT TO PURCHASE PRESERVE.—Of the funds appropriated in the section entitled ''Land Acquisition'' of the Fiscal Year 2002 Interior and Related Agencies Appropriations Act, Public Law 107–63, the Secretary of the Interior shall grant $500,000 to the City for—

(1) the purchase of up to 10 acres of land within the area generally depicted as the ''Preserve Acquisition Area'' on the map entitled ''Map B'' and dated May 9, 2002; and

(2) the preservation of such land and paleontological resources.

(b) CONDITIONS OF GRANT.—The grant under subsection (a) shall be made only after the City agrees to the following conditions:

(1) USE OF LAND.—The City shall use the Virgin River Dinosaur Footprint Preserve in a manner that accomplishes the following:

(A) Preserves and protects the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve.

(B) Provides opportunities for scientific research in a manner compatible with subparagraph (A).

(C) Provides the public with opportunities for educational activities in a manner compatible with subparagraph (A).

(2) REVERTER.—If at any time after the City acquires the Virgin River Dinosaur Footprint Preserve, the Secretary determines that the City is not substantially in compliance with the conditions described in paragraph (1), all right, title, and interest in and to the Virgin River Dinosaur Footprint Preserve shall immediately revert to the United States, with no further consideration on the part of the United States, and such property shall then be under the administrative jurisdiction of the Secretary of the Interior.

(3) CONDITIONS TO BE CONTAINED IN DEED.—If the City attempts to transfer title to the Virgin River Dinosaur Footprint Preserve (in whole or in part), the conditions set forth in this subsection shall transfer with such title and shall be enforceable against any subsequent owner of the Virgin River Dinosaur Footprint Preserve (in whole or in part).

(c) COOPERATIVE AGREEMENT AND ASSISTANCE.—

(1) ASSISTANCE.—The Secretary may provide to the City—

(A) financial assistance, if the Secretary determines that such assistance is necessary for protection of the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve; and

(B) technical assistance to assist the City in complying with subparagraphs (A) through (C) of subsection (b)(1).

(2) ADDITIONAL GRANTS.—

(A) IN GENERAL.—In addition to funds made available under subsection (a) and paragraph (2) of this subsection, the Secretary may provide grants to the City to carry out its duties under the cooperative agreement entered into under paragraph (1).

(B) LIMITATION ON AMOUNT; REQUIRED NONGEDERAL MATCH.—Grants under subparagraph (A) shall not exceed $500,000 and shall be provided only to the extent that the City matches the amount of such grants with non-Federal contributions (including in-kind contributions).

(d) MAP ON FILE.—The map shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.

(e) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) CITY.—The term ''City'' means the city of St. George, Utah.

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

(3) VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.—The term ''Virgin River Dinosaur Footprint Preserve'' means the property (and all facilities and other appurtenances thereon) described in subsection (a).

TITLE IV—ARCHEOLOGICAL AND CULTURAL HERITAGE PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Enhanced Protection of Our Cultural Heritage Act of 2002''.

SEC. 402. ENHANCED PENALTIES FOR CULTURAL HERITAGE CRIMES.

(a) ENHANCED PENALTY FOR ARCHAEOLOGICAL RESOURCES.—Section 6(d) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ee(d)) is amended by striking ''not more than 10,000'' and all that follows through the end of the subsection and inserting ''in accordance with title 18, United States Code, or imprisoned not more than ten years or both; but if the sum of the commercial and archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both.''.

(b) ENHANCED PENALTY FOR EMBEZZLEMENT AND THEFT FROM INDIAN TRIBAL ORGANIZATIONS.—Section 1163 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(c) ENHANCED PENALTY FOR ILLEGAL TRAFFICKING IN NATIVE AMERICAN HUMAN REMAINS AND CULTURAL ITEMS.—Section 1170 of title 18, United States Code, is amended—

(1) in subsection (a), by striking ''or imprisoned not more than 12 months, or both, and in the case of second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years'' and inserting ''imprisoned not more than 10 years''; and

(2) in subsection (b), by striking ''imprisoned not more than one year'' and all that follows through the end of the subsection and inserting ''imprisoned not more than 10 years, or both; but if the sum of the commercial and archaeological value of the cultural items involved and the cost of restoration and repair of such items does not exceed $500, such person shall be fined in accordance with this title, imprisoned not more than one year, or both.''.

TITLE V—PALEONTOLOGICAL RESOURCES PRESERVATION ACT

SEC. 501. SHORT TITLE.

This title may be cited as the ''Paleontological Resources Preservation Act''.

SEC. 502. FINDINGS.

The Congress finds the following:

(1) Paleontological resources are nonrenewable. Such resources on Federal lands are an accessible and irreplaceable part of the heritage of the United States and offer significant educational opportunities to all citizens.

(2) Existing Federal laws, statutes, and other provisions that manage paleontological resources are not articulated in a unified national policy for Federal land management agencies and the public. Such a policy is needed to improve scientific understanding, to promote responsible stewardship, and to facilitate the enhancement of responsible paleontological collecting activities on Federal lands.

(3) Consistent with the statutory provisions applicable to each Federal land management system, reasonable access to paleontological resources on Federal lands should be provided for scientific, educational, and recreational purposes.

SEC. 503. PURPOSE.

The purpose of this title is to establish a comprehensive national policy for preserving and managing paleontological resources on Federal lands.

SEC. 504. DEFINITIONS.

As used in this title:

(1) CASUAL COLLECTING.—The term ''casual collecting'' means the collecting of a reasonable amount of common invertebrate and plant paleontological resources for personal, scientific, educational or recreational use, either by surface collection or using nonpowered hand tools resulting in only negligible disturbance to the Earth's surface and other resources.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior with respect to lands administered by the Secretary of the Interior or the Secretary of Agriculture with respect to National Forest System Lands administered by the Secretary of Agriculture.

(3) FEDERAL LANDS.—The term ''Federal lands'' means lands administered by the Secretary of the Interior, except Indian lands, or National Forest System Lands administered by the Secretary of Agriculture.

(4) INDIAN LANDS.—The term ''Indian Lands'' means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(5) STATE.—The term ''State'' means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(6) PALEONTOLOGICAL RESOURCE.—The term ''paleontological resource'' means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest and that provide information about the history of life on earth, except that the term does not include—

(A) any materials associated with an archaeological resource (as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(B) any cultural item (as defined in section 2 of the Native American Graves Protection and Rehabilitation Act (25 U.S.C. 3001)).

SEC. 505. MANAGEMENT.

(a) IN GENERAL.—The Secretary shall manage and protect paleontological resources on Federal lands using scientific principles and expertise. The Secretary shall develop appropriate plans for inventory, monitoring, and

the scientific and educational use of paleontological resources, in accordance with applicable agency laws, regulations, and policies. These plans shall emphasize interagency coordination and collaborative efforts where possible with non-Federal partners, the scientific community, and the general public.

(b) COORDINATION OF IMPLEMENTATION.—To the extent possible, the Secretary of the Interior and the Secretary of Agriculture shall coordinate in the implementation of this title.

SEC. 506. PUBLIC AWARENESS AND EDUCATION PROGRAM.

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 507. COLLECTION OF PALEONTOLOGICAL RESOURCES.

(a) PERMIT REQUIREMENT.—

(1) IN GENERAL.—Except as provided in this title, a paleontological resource may not be collected from Federal lands without a permit issued under this Title by the Secretary.

(2) CASUAL COLLECTING EXCEPTION.—The Secretary may allow casual collecting without a permit on Federal lands administered by the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Forest Service, where such collection is not inconsistent with the laws governing the management of those Federal lands and this title.

(3) PREVIOUS PERMIT EXCEPTION.—Nothing in this section shall affect a valid permit issued prior to the date of enactment of this title.

(b) CRITERIA FOR ISSUANCE OF A PERMIT.—The Secretary may issue a permit for the collection of a paleontological resource pursuant to an application if the Secretary determines that—

(1) the applicant is qualified to carry out the permitted activity;

(2) the permitted activity is undertaken for the purpose of furthering paleontological knowledge or for public education;

(3) the permitted activity is consistent with any management plan applicable to the Federal lands concerned; and

(4) the proposed methods of collecting will not threaten significant natural or cultural resources.

(c) PERMIT SPECIFICATIONS.—A permit for the collection of a paleontological resource issued under this section shall contain such terms and conditions as the Secretary deems necessary to carry out the purposes of this title. Every permit shall include requirements that—

(1) the paleontological resource that is collected from Federal lands under the permit will remain the property of the United States;

(2) the paleontological resource and copies of associated records will be preserved for the public in an approved repository, to be made available for scientific research and public education; and

(3) specific locality data will not be released by the permittee or repository without the written permission of the Secretary.

(d) MODIFICATION, SUSPENSION, AND REVOCATION OF PERMITS.—

(1) The Secretary may modify, suspend, or revoke a permit issued under this section—

(A) for resource, safety, or other management considerations; or

(B) when there is a violation of term or condition of a permit issued pursuant to this section.

(2) The permit shall be revoked if any person working under the authority of the permit is convicted under section 509 or is assessed a civil penalty under section 510 of this title.

(e) AREA CLOSURES.—In order to protect paleontological or other resources and to provide for public safety, the Secretary may restrict access to or close areas under the Secretary's jurisdiction to the collection of paleontological resources.

SEC. 508. CURATION OF RESOURCES.

Any paleontological resource, and any data and records associated with the resource, collected under a permit, shall be deposited in an approved repository. The Secretary may enter into agreements with non-Federal repositories regarding the curation of these resources, data, and records.

SEC. 509. PROHIBITED ACTS; PENALTIES.

(a) IN GENERAL.—A person may not—

(1) excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on Federal lands unless such activity is conducted in accordance with this title;

(2) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, exchanged, transported, or received from Federal lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Title; or

(3) sell or purchase or offer to sell or purchase any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal lands.

(b) FALSE LABELING OFFENSES.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal lands.

(c) —PENALTIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon conviction, be guilty of a class A misdemeanor.

(2) DAMAGE OVER $1,000.—If the sum of the scientific or fair market value of the paleontological resources involved and the cost of restoration and repair of such resources exceeds the sum of $1,000, such person shall, upon conviction, be guilty of a class E felony.

(3) MULTIPLE OFFENSES.—In the case of a second or subsequent such violation, such person shall, upon conviction, be guilty of a class D felony.

(d) GENERAL EXCEPTION.—Nothing in subsection (a) shall apply to any person with respect to any paleontological resource which was in the lawful possession of such person prior to the date of the enactment of this title.

SEC. 510. CIVIL PENALTIES FOR VIOLATIONS OF REGULATIONS OR PERMIT CONDITIONS.

(a) IN GENERAL.—

(1) HEARING.—A person who violates any prohibition contained in an applicable regulation or permit issued under this Title may be assessed a penalty by the Secretary after the person is given notice and opportunity for a hearing with respect to the violation. Each violation shall be considered a separate offense for purposes of this section.

(2) AMOUNT OF PENALTY.—The amount of such penalty assessed under paragraph (1) shall be determined under regulations promulgated pursuant to this title, taking into account the following factors:

(A) The scientific or fair market value, whichever is greater, of the paleontological resource involved.

(B) The cost of response, restoration, and repair of the resource and the paleontological site involved.

(C) Any other factors considered relevant by the Secretary assessing the penalty.

(3) MULTIPLE OFFENSES.—In the case of a second or subsequent violation by the same person, the amount of a penalty assessed under paragraph (2) may be doubled.

(4) LIMITATION.—The amount of any penalty assessed under this subsection for any one violation shall not exceed an amount equal to double the cost of response, restoration, and repair of resources and paleontological site damage plus double the scientific or fair market value of resources destroyed or not recovered.

(b) PETITION FOR JUDICIAL REVIEW; COLLECTION OF UNPAID ASSESSMENTS.—Any person against whom an order is issued assessing a penalty under subsection (a) may file a petition for judicial review of the order with an appropriate Federal district court within the 30-day period beginning on the date the order making the assessment was issued. The court shall hear the action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(c) HEARINGS.—Hearings held during proceedings instituted under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code.

(d) USE OF RECOVERED AMOUNTS.—No penalties collected under this section shall be available to the Secretary and without further appropriation may be used only as follows:

(1) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, or to acquire sites with equivalent resources, and to protect, monitor, and study the resources and sites. Any acquisition shall be subject to any limitations contained in the organic legislation for such Federal lands.

(2) To provide educational materials to the public about paleontological resources and sites.

(3) To provide for the payment of Rewards as provided in section 511.

SEC. 511. REWARDS FORFEITURE.

(a) REWARDS.—The Secretary may pay from penalties collected under section 509 or 510 of this title an amount equal to the lesser of one-half of the penalty or $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid. If several persons provided the information, the amount shall be divided among the persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) FORFEITURE.—All paleontological resources with respect to which a violation under section 509 or 510 occurred and which are in the possession of any person, and all vehicles and equipment of any person that were used in connection with the violation, may be subject to forfeiture to the United States upon—

(1) the person's conviction of the violation under section 509;

(2) assessment of a civil penalty against any person under section 510 with respect to the violation; or

(3) a determination by any court that the paleontological resources, vehicles, or equipment were involved in the violation.

SEC. 512. CONFIDENTIALITY.

Information concerning the nature and specific location of a paleontological resource the collection of which requires a permit under this Title or under any other provision of Federal law shall be withheld from the public under subchapter II of chapter 5 of

title 5, United States Code, or under any other provision of law unless the responsible Secretary determines that disclosure would—

(1) further the purposes of this title;

(2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and

(3) be in accordance with other applicable laws.

SEC. 513. REGULATIONS.

As soon as practical after the date of the enactment of this title, the Secretary shall issue such regulations as are appropriate to carry out this title, providing opportunities for public notice and comment.

SEC. 514. SAVINGS PROVISIONS.

Nothing in this title shall be construed to—

(1) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under the general mining laws, the mineral or geothermal leasing laws, laws providing for minerals materials disposal, or laws providing for the management or regulation of the activities authorized by the aforementioned laws including but not limited to the Federal Land Policy Management Act (43 U.S.C. 1701–1784), the Mining in the Parks Act, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1358), and the Organic Administration Act (16 U.S.C. 478, 482, 551);

(2) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time existing laws and authorities relating to reclamation and multiple uses of the public lands;

(3) apply to, or require a permit for, amateur collecting of a rock, mineral, or invertebrate or plant fossil that is not protected under this title;

(4) affect any lands other than Federal lands or affect the lawful recovery, collection, or sale of paleontological resources from lands other than Federal lands;

(5) alter or diminish the authority of a Federal agency under any other law to provide protection for paleontological resources on Federal lands in addition to the protection provided under this title; or

(6) create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this title.

SEC. 515. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

SA 4974. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 37, to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—NATIONAL HISTORIC TRAILS STUDIES

SEC. 101. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING NATIONAL HISTORIC TRAILS.

Section 5 of the National Trails System Act (16 U.S.C. 1244) is amended by inserting the following new subsection:

''(g) The Secretary shall revise the feasibility and suitability studies for certain national trails for consideration of possible additions to the trails.

''(1) IN GENERAL.—

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

''(i) ROUTE.—The term 'route' includes a trail segment common known as a cutoff.

''(ii) SHARED ROUTE.—The term 'shared' route means a route that was a segment of more than one historic trail, including a route shared with an existing national historic trail.

''(B) STUDY REQUIREMENTS AND OBJECTIVES.—The study requirements and objectives specified in subsection (b) shall apply to a study required by this subsection.

''(C) COMPLETION AND SUBMISSION OF STUDY.—A study listed in this subsection shall be completed and submitted to the Congress not later than three complete fiscal years from the date of the enactment of this subsection, or from the date of the enactment of the addition of the study to this subsection, whichever is later.

''(2) OREGON NATIONAL HISTORIC TRAIL.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other routes of the Oregon Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Oregon National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) Whitman Mission route.—

''(ii) Upper Columbia River.

''(iii) Cowlitz River route.

''(iv) Meek cutoff.

''(v) Free Emigrant Road.

''(vi) North Alternate Oregon Trail.

''(vii) Goodale's cutoff.

''(viii) North Side alternate route.

''(ix) Cutoff to Barlow Road.

''(x) Naches Pass Trail.

''(3) PONY EXPRESS NATIONAL HISTORIC TRAIL.—The Secretary of the Interior shall undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such other routes of the Pony Express Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Pony Express National Historic Trail.

''(4) CALIFORNIA NATIONAL HISTORIC TRAIL.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other and shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the California National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) MISSOURI VALLEY ROUTES.—

''(I) Blue Mills-Independence Road.

''(II) Westport Landing Road.

''(III) Westport-Lawrence Road.

''(IV) Fort Leavenworth-Blue River route.

''(V) Road to Amazonia.

''(VI) Union Ferry Route.

''(VII) Old Wyoming-Nebraska City cutoff.

''(VIII) Lower Plattsmouth Route.

''(IX) Lower Bellevue Route.

''(X) Woodbury cutoff.

''(XI) Blue Ridge cutoff.

''(XII) Westport Road.

''(XIII) Gum Springs-Fort Leavenworth route.

''(XIV) Atchison/Independence Creek routes.

''(XV) Fort Leavenworth-Kansas River route.

''(XVI) Nebraska City cutoff routes.

''(XVII) Minersville-Nebraska City Road.

''(XVIII) Upper Plattsmouth route.

''(XIX) Upper Bellevue route.

''(ii) CENTRAL ROUTES.—

''(I) Cherokee Trail, including splits.

''(II) Weber Canyon route of Hastings cutoff.

''(III) Bishop Creek cutoff.

''(IV) McAuley cutoff.

''(V) Diamond Springs cutoff.

''(VI) Secret Pass.

''(VII) Greenhorn cutoff.

''(VIII) Central Overland Trail.

''(iii) WESTERN ROUTES.—

''(I) Bidwell-Bartleson route.

''(II) Georgetown/Dagget Pass Trail.

''(III) Big Trees Road.

''(IV) Grizzly Flat cutoff.

''(V) Nevada City Road.

''(VI) Yreka Trail.

''(VII) Henness Pass route.

''(VIII) Johnson cutoff.

''(IX) Luther Pass Trail.

''(X) Volcano Road.

''(XI) Sacramento-Coloma Wagon Road.

''(XII) Burnett cutoff.

''(XIII) Placer County Road to Auburn.

''(5) MORMON PIONEER NATIONAL HISTORIC TRAIL.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Mormon Pioneer Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other routes of the Mormon Pioneer Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Mormon Pioneer National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

''(ii) 1856–57 Handcart route (Iowa City to Council Bluffs).

''(iii) Keokuk route (Iowa).

''(iv) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

''(v) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon and California Trail routes used by Mormon emigrants).

''(vi) 1850 Golden Pass Road in Utah.

''(6) SHARED CALIFORNIA AND OREGON TRAIL ROUTES.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) St. Joe Road.

''(ii) Council Bluffs Road.

''(iii) Sublette cutoff.

''(iv) Applegate route.

''(v) Old Fort Kearny Road (Oxbow Trail).
''(vi) Childs cutoff.
''(vii) Raft River to Applegate.''

TITLE II—NATIONAL TRAILS SYSTEM ACQUISITION AUTHORITIES

SEC. 201. SHORT TITLE.

This title may be cited as the ''National Trails System Willing Seller Act''.

SEC. 202. FINDINGS.

The Congress finds the following:

(1) In spite of commendable efforts by State and local governments and private volunteer trail groups to develop, operate, and maintain the national scenic and national historic trails designated by Act of Congress in section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)), the rate of progress towards developing and completing the trails is slower than anticipated.

(2) Nine of the twelve national scenic and historic trails designated between 1978 and 1986 are subject to restrictions totally excluding Federal authority for land acquisition outside the exterior boundaries of any federally administered area, including the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail.

(3) To complete the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail as intended by Congress, acquisition authority to secure necessary rights-of-way and historic sites and segments, limited to acquisition from willing sellers only, and specifically excluding the use of condemnation, should be extended to the Secretary of the Federal department administering these trails.

SEC. 203. SENSE OF THE CONGRESS REGARDING MULTIJURISDICTIONAL AUTHORITY OVER THE NATIONAL TRAILS SYSTEM.

It is the sense of the Congress that in order to address the problems involving multijurisdictional authority over the National Trails System, the Secretary of the Federal department with jurisdiction over a national scenic or historic trail should—

(1) cooperate with appropriate officials of each State and political subdivisions of each State in which the trail is located and private persons with an interest in the trail to pursue the development of the trail; and

(2) be granted sufficient authority to purchase lands and interests in lands from willing sellers that are critical to the completion of the trail.

SEC. 204. AUTHORITY TO ACQUIRE LANDS FROM WILLING SELLERS FOR CERTAIN TRAILS OF THE NATIONAL TRAILS SYSTEM ACT.

(a) LIMITED ACQUISITION AUTHORITY.—

(1) NORTH COUNTRY NATIONAL SCENIC TRAIL.—Section 5(a)(8) of the National Trails System Act (16 U.S.C. 1244(a)(8)) is amended by adding at the end: ''No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner thereof.''.

(2) ICE AGE NATIONAL SCENIC TRAIL.—Section 5(a)(10) of the National Trails System Act (16 U.S.C. 1244(a)(10)) is amended by adding at the end: ''No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner thereof.''.

(3) POTOMAC HERITAGE NATIONAL SCENIC TRAIL.—Section 5(a)(11) of the National Trails System Act (16 U.S.C. 1244(a)(11)) is amended by adding at the end: ''No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner thereof.''.

(b) CONFORMING AMENDMENT.—Section 10(c)(1) of the National Trails System Act (16 U.S.C. 1249(c)(1)) is amended by striking ''the North Country National Scenic Trail, The Ice Age National Scenic Trail.''.

TITLE III—OLD SPANISH TRAIL NATIONAL HISTORIC TRAIL

SEC. 301. SHORT TITLE.

This title may be cited as the ''Old Spanish Trail Recognition Act of 2002''.

SEC. 302. AUTHORIZATION AND ADMINISTRATION.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended—

(1) by redesignating the second paragraph (21) as paragraph (22); and

(2) by adding at the end the following:

''(23) OLD SPANISH NATIONAL HISTORIC TRAIL.—

''(A) IN GENERAL.—The Old Spanish National Historic Trail, an approximately 2,700 mile long trail extending from Santa Fe, New Mexico, to Los Angeles, California, that served as a major trade route between 1829 and 1848, as generally depicted on the maps numbered 1 through 9, as contained in the report entitled 'Old Spanish Trail National Historic Trail Feasibility Study', dated July 2001, including the Armijo Route, Northern Route, North Branch, and Mojave Road''.

''(B) MAP.—A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.''.

''(C) ADMINISTRATION.—The trail shall be administered by the Secretary of the Interior (referred to in this paragraph as the 'Secretary').

''(D) LAND ACQUISITION.—The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

''(E) CONSULTATION.—The Secretary shall consult with other Federal, State, local, and tribal agencies in the administration of the trail.

''(F) ADDITIONAL ROUTES.—The Secretary may designate additional routes to the trail if—

''(i) the additional routes were included in the Old Spanish Trail National Historic Trail Feasibility Study, but were not recommended for designation as a national historic trail; and

''(ii) the Secretary determines that the additional routes were used for trade and commerce between 1829 and 1848.''.

TITLE IV—LEWIS AND CLARK NATIONAL HISTORIC TRAIL ADDITION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Lewis and Clark National Historic Trail Amendments Act of 2002''.

SEC. 402. FINDINGS.

Congress finds that—

(1) the National Trails System—

(A) was established in 1968 to—

(i) provide additional recreational opportunities to the people of the United States; and

(ii) preserve access to outdoor areas and historical resources of the United States; and

(B) since 1968, has been modified to—

(i) recognize new categories of trails; and

(ii) expand trails;

(2) the Lewis and Clark National Historic Trail, as designated in 1978, omits several historically significant sites relating to the Lewis and Clark Expedition;

(3) Meriwether Lewis and William Clark gathered at the Falls of the Ohio, located in Clarksville, Indiana, and Louisville, Kentucky, to plan and prepare for the expedition;

(4) the Falls of the Ohio was also the site at which—

(A) Lewis and Clark selected the first enlisted members of the expedition; and

(B) those members were sworn into the Army at a ceremony witnessed by General George Rogers Clark;

(5) on July 13, 2001, the National Park Service certified the Falls of the Ohio as an official Lewis and Clark site associated with the Lewis and Clark National Historic Trail;

(6) on July 22, 2002, the National Park Service certified historic Locust Grove in Louisville, Kentucky, as an official Lewis and Clark site associated with the Lewis and Clark National Historic Trail;

(7) the National Council of the Lewis and Clark Bicentennial has designated the Falls of the Ohio as a national signature event site at which to commemorate, during October 2003, the bicentennial of events in the area relating to the Lewis and Clark Expedition; and

(8) the areas in and around Clarksville, Indiana, and Louisville, Kentucky, including the Falls of the Ohio—

(A) are the sites of events that were significant to the Lewis and Clark Expedition; and

(B) should be recognized and protected as components of the Lewis and Clark National Historic Trail.

SEC. 403. EXTENSION OF LEWIS AND CLARK NATIONAL HISTORIC TRAIL.

Section 5(a)(6) of the National Trails System Act (16 U.S.C. 1244(a)(6)) is amended—

(1) by striking ''(6) The'' and inserting the following:

''(6) LEWIS AND CLARK NATIONAL HISTORIC TRAIL.—

''(A) IN GENERAL.—The''; and

(2) by inserting after subparagraph (A) (as designated by paragraph (1)) the following:

''(B) ADDITIONAL ROUTE.—In addition to the route described in subparagraph (A), the Lewis and Clark National Historic Trail shall include the route traveled by Meriwether Lewis and William Clark from the Falls of the Ohio, located in Clarksville, Indiana, and Louisville, Kentucky, to Wood River, Illinois.''.

SA 4975. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 198, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land; as follows:

Strike all after the enacting clause and insert the following:

TITLE I.—NOXIOUS WEED CONTROL ACT OF 2002

SEC. 101. SHORT TITLE.

This title may be cited as the ''Noxious Weed Control Act of 2002''.

SEC. 102. DEFINITIONS.

In this title:

(1) NOXIOUS WEED.—The term ''noxious weed'' has the same meaning as in the Plant Protection Act (7 U.S.C. 7702(10)).

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

(3) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

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

(5) WEED MANAGEMENT ENTITY.—The term ''weed management entity'' means an entity that—

(A) is recognized by the State in which it is established;

(C) is established for the purpose of controlling or eradicating harmful, invasive

weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds; and

(D) is multijurisdictional and multidisciplinary in nature.

SEC. 103. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program to provide financial assistance through States to eligible weed management entities to control or eradicate weeds. In developing the program, the Secretary shall consult with the National Invasive Species Council, the Invasive Species Advisory Committee, representatives from States and Indian tribes with weed management entities or that have particular problems with noxious weeds, and public and private entities with experience in noxious weed management.

SEC. 104. ALLOCATION OF FUNDS TO STATES AND INDIAN TRIBES.

The Secretary shall allocate funds to States to provide funding to weed management entities to carry out projects approved by States to control or eradicate weeds on the basis of the severity or potential severity of the noxious weed problem, the extent to which the Federal funds will be used to leverage non-Federal funds, the extent to which the State has made progress in addressing noxious weed problems, and such other factors as the Secretary deems relevant. The Secretary shall provide special consideration for States with approved weed management entities established by Indian tribes, and may provide an additional allocation to a State to meet the particular needs and projects that such a weed management entity will address.

SEC. 105. ELIGIBILITY AND USE OF FUNDS.

(a) REQUIREMENTS.—The Secretary shall prescribe requirements for applications by States for funding, including provisions for auditing of and reporting on the use of funds and criteria to ensure that weed management entities recognized by the States are capable of carrying out projects, monitoring and reporting on the use of funds, and are knowledgeable about and experienced in noxious weed management and represent private and public interests adversely affected by noxious weeds. Eligible activities for funding shall include—

(1) applied research to solve locally significant weed management problems and solutions, except that such research may not exceed 8 percent of the available funds in any year;

(2) incentive payments to encourage the formation of new weed management entities, except that such payments may not exceed 25 percent of the available funds in any year; and

(3) projects relating to the control or eradication of noxious weeds, including education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment that promote such control or eradication, and other activities to promote such control or eradication, if the results of the activities are disseminated to the public.

(b) PROJECT SELECTION.—A State shall select projects for funding to a weed management entity on a competitive basis considering—

(1) the seriousness of the noxious weed problem or potential problem addressed by the project;

(2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

(3) the extent to which the payment will leverage non-Federal funds to address the noxious weed problem addressed by the project;

(4) the extent to which the weed management entity has made progress in addressing noxious weed problems;

(5) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(6) the extent to which the project will reduce the total population of a noxious weed;

(7) the extent to which the project uses the principles of integrated vegetation management and sound science; and

(8) such other factors that the State determines to be relevant.

(c) INFORMATION AND REPORT.—As a condition of the receipt of funding, States shall require such information from grant recipients as necessary and shall submit to the Secretary a report that describes the purposes and results of each project for which the payment or award was used, by not later than 6 months after completion of the projects.

(d) FEDERAL SHARE.—The Federal share of any project or activity approved by a State or Indian tribe under this title may not exceed 50 percent unless the State meets criteria established by the Secretary that accommodates situations where a higher percentage is necessary to meet the needs of an underserved area or addresses a critical need that cannot be met otherwise.

SEC. 106. LIMITATIONS.

(a) LANDOWNER CONSENT; LAND UNDER CULTIVATION.—Any activity involving real property, either private or public, may be carried out under this title only with the consent of the landowner and no project may be undertaken on property that is devoted to the cultivation of row crops, fruits, or vegetables.

(b) COMPLIANCE WITH STATE LAW.—A weed management entity may carry out a project to address the noxious weed problem in more than one State only if the entity meets the requirements of the State laws in all States in which the entity will undertake the project.

(c) USE OF FUNDS.—Funding under this title may not be used to carry out a project—

(1) to control or eradicate animals, pests, or submerged or floating noxious aquatic weeds; or

(2) to protect an agricultural commodity (as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602)) other than—

(A) livestock (as defined in section 602 of the Agricultural Trade Act of 1949 (7 U.S.C. 1471); or

(B) an animal- or insect-based product.

SEC. 107. RELATIONSHIP TO OTHER PROGRAMS.

Assistance authorized under this title is intended to supplement, and not replace, assistance available to weed management entities, areas, and districts for control or eradication of harmful, invasive weeds on public lands and private lands, including funding available under the Pulling Together Initiative of the National Fish and Wildlife Foundation; and the provision of funds to any entity under this title shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code (commonly known as the Payments in Lieu of Taxes Act).

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

To carry out this title there is authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2002 through 2006, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.

TITLE III—NEWTOK LAND EXCHANGE

SEC. 301. FINDINGS.

Congress finds that:

(1) The continued existence of the village of Newtok, Alaska is threatened by the eroding banks of the Ninglick River.

(2) A relocation of the village will become necessary for the health and safety of the residents of Newtok within the next 8 years.

(3) Lands previously conveyed to the Newtok Native Corporation contain habitat of high value for waterfowl.

(4) An opportunity exists for an exchange of lands between the Newtok Native Corporation and the Yukon Delta National Wildlife Refuge that would address the relocation needs of the village while enhancing the quality of waterfowl habitat within the boundaries of the Refuge.

(5) An exchange of lands between Newtok and the United States on an other than equal value basis pursuant to the terms of this Act is in the public interest.

SEC. 302. DEFINITIONS.

For the purposes of this title, the term

(1) ''ANCSA'' means the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.);

(2) ''ANILCA'' means the Alaska National Interest Lands Conservation Act of 1980 (16 USC 410hh–3233, 43 USC 1602 et seq.);

(3) ''Calista'' means the Calista Corporation, an Alaska Native Regional Corporation established pursuant to ANCSA;

(4) ''Identified Lands'' means approximately 10,943 acres of lands (including surface and subsurface) designated as ''Proposed Village Site'' upon a map entitled ''Proposed Newtok Exchange,'' dated September, 2002, and available for inspection in the Anchorage office of the United States Fish and Wildlife Service;

(5) ''limited warranty deed'' means a warranty deed which is, with respect to its warranties, limited to that portion of the chain of title from the moment of conveyance from the United States to Newtok to and including the moment at which such title is validly reconveyed to the United States of America and its assigns;

(6) ''Newtok'' means the Newtok Native Corporation, an Alaska Native Village Corporation established pursuant to ANCSA;

(7) ''Newtok lands'' means approximately 12,101 acres of surface estate comprising conveyed lands and selected lands identified as Aknerkochik on the map referred to in paragraph (4) and that surface estate selected by Newtok on Baird Inlet Island as shown on said map; and

(8) ''Secretary'' means the Secretary of the Interior.

SEC. 303. LANDS TO BE EXCHANGED.

(a) LANDS EXCHANGED TO THE UNITED STATES.—If, within 180 days after the date of enactment of this title, Newtok expresses to the Secretary in writing its intent to enter into a land exchange with the United States, the Secretary shall accept from Newtok a valid, unencumbered conveyance, by limited warranty deed, of the Newtok lands previously conveyed to Newtok. The Secretary shall also accept from Newtok a relinquishment of irrevocable prioritized selections for approximately 4,956 acres for those validly selected lands not yet conveyed to Newtok. The reconveyance of lands by Newtok to the United States and the prioritized, relinquished selections shall be 1.1 times the number of acres conveyed to Newtok under this title. The number of acres reconveyed to the United States and the prioritized, relinquished selections shall be charged to the entitlement of Newtok.

(b) LANDS EXCHANGED TO NEWTOK.—(1) In exchange for the Newtok lands conveyed and selections relinquished under subsection (a), the Secretary shall, subject to valid existing rights and notwithstanding section 14(f) of ANCSA, convey to Newtok the surface and subsurface estate of the Identified Lands. The conveyance shall be by interim conveyance. Subsequent to the interim conveyance,

the Secretary shall survey the Identified Lands at no cost to Newtok and issue a patent to the Identified Lands subject to the provisions of ANCSA and this title. At the time of survey the charge against Newtok's entitlement for acres conveyed or irrevocable priorities relinquished by Newtok may be adjusted to conform to the standard of 1.1 acres relinquished by Newtok for each one acre received.

SEC. 304. CONVEYANCE.

(a) TIMING.—The Secretary shall issue interim conveyances pursuant to subsection 303(b) at the earliest possible time after acceptance of the Newtok conveyance and relinquishment of selections under subsection 303(a).

(b) RELATIONSHIP TO ANCSA.—Lands conveyed to Newtok under this title shall be deemed to have been conveyed under the provisions of ANCSA, except that the provisions of 14(c) of ANCSA shall not apply to these lands, and to the extent that section 22(g) of ANCSA would otherwise be applicable to these lands, the provisions of 22(g) of ANCSA shall also not apply to these lands. Consistent with section 103(c) of ANILCA, these lands shall not be deemed to be included as a portion of the Yukon National Wildlife Refuge and shall not be subject to regulations applicable solely to public lands within this Conservation System Unit.

(c) EFFECT ON ENTITLEMENT.—Nothing in this title shall be construed to change the total acreage of land to which Newtok is entitled under ANCSA.

(d) EFFECT ON NEWTOK LANDS.—The Newtok Lands shall be included in the Yukon Delta National Wildlife Refuge as of the date of acceptance of the conveyance of those lands from Newtok, except that residents of the Village of Newtok, Alaska, shall retain access rights to subsistence resources on those public lands as guaranteed under ANILCA section 811 (16 U.S.C. 3121), and to subsistence uses, such as traditional subsistence fishing, hunting and gathering, consistent with ANILCA section 803 (16 U.S.C. 3113).

(e) ADJUSTMENT TO CALISTA CORPORATION ANCSA ENTITLEMENT FOR RELINQUISHED NEWTOK SELECTIONS.—To the extent that Calista subsurface rights are affected by this title, Calista shall be entitled to an equivalent acreage of in-lieu subsurface entitlement for the Newtok selections relinquished in the exchange as set forth in subsection 303(a) of this title. This additional entitlement shall come from subsurface lands already selected by Calista, but which have not been conveyed. If Calista does not have sufficient subsurface selections to accommodate this additional entitlement, Calista Corporation is hereby authorized to make an additional in lieu selection for the deficient acreage.

(f) ADJUSTMENT TO EXCHANGE.—If requested by Newtok, the Secretary is authorized to consider and make adjustments to the original exchange to meet the purposes of this title, subject to all the same terms and conditions of this title.

TITLE IV FLORIDA NATIONAL FOREST LAND MANAGEMENT ACT

SEC. 401. SHORT TITLE.

This title may be cited as the ''Florida National Forest Land Management Act of 2002''.

SEC. 402. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(2) STATE.—The term ''State'' means the State of Florida.

SEC. 403. SALE OR EXCHANGE OF LAND.

(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the parcels of Federal land in the State described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcels of Federal land in the State referred to in subsection (a) consist of—

(1) tract A–942a, East Bay, Santa Rosa County, consisting of approximately 61 acres, and more particularly described as T. 1 S., R. 27 W., Sec. 31, W ½ of SW ¼ ;

(2) tract A–942b, East Bay, Santa Rosa County, consisting of approximately 40 acres, and more particularly described as T. 1 S., R. 27 W., Sec. 38;

(3) tract A–942c, Ft. Walton, Okaloosa County, located southeast of the intersection of and adjacent to State Road 86 and Mooney Road, consisting of approximately 0.59 acres, and more particularly described as T. 1 S., R. 24 W., Sec. 26;

(4) tract A–942d, located southeast of Crestview, Okaloosa County, consisting of approximately 79.90 acres, and more particularly described as T. 2 N., R. 23 W., Sec. 2, NW ¼ NE ¼ and NE ¼ NW ¼;

(5) tract A–943, Okaloosa County Fairgrounds, Ft. Walton, Okaloosa County, consisting of approximately 30.14 acres, and more particularly described as T. 1 S., R. 24 W., Sec. 26, S ½;

(6) tract A–944, City Ball Park—Ft. Walton, Okaloosa County, consisting of approximately 12.43 acres, and more particularly described as T. 1 S., R. 24 W., Sec. 26, S ½;

(7) tract A–945, Landfill-Golf Course Driving Range, located southeast of Crestview, Okaloosa County, consisting of approximately 40.85 acres, and more particularly described as T. 2 N., R. 23 W., Sec. 4, NW ¼ NE ¼;

(8) tract A–959, 2 vacant lots on the north side of Micheaux Road in Bristol, Liberty County, consisting of approximately 0.5 acres, and more particularly described as T. 1 S., R. 7 W., Sec. 6;

(9) tract C–3m-d, located southwest of Astor in Lake County, consisting of approximately 15.0 acres, and more particularly described as T. 15 S., R. 28 E., Sec. 37;

(10) tract C–691, Lake County, consisting of the subsurface rights to approximately 40.76 acres of land, and more particularly described as T. 17 S., R. 29 E., Sec. 25, SE ¼ NW ¼;

(11) tract C–2208b, Lake County, consisting of approximately 39.99 acres, and more particularly described as T. 17 S., R. 28 E., Sec. 28, NW ¼ SE ¼;

(12) tract C–2209, Lake County, consisting of approximately 127.2 acres, as depicted on the map, and more particularly described as T. 17 S., R. 28 E., Sec. 21, NE ¼ SW ¼, SE ¼ NW ¼, and SE ¼ NE ¼;

(13) tract C–2209b, Lake County, consisting of approximately 39.41 acres, and more particularly described as T. 17 S., R. 29 E., Sec. 32, NE ¼ SE ¼;

(14) tract C–2209c, Lake County, consisting of approximately 40.09 acres, and more particularly described as T. 18 S., R. 28 E., Sec. 14, SE ¼ SW ¼;

(15) tract C–2209d, Lake County, consisting of approximately 79.58 acres, and more particularly described as T. 18 S., R. 29 E., Sec. 5, SE ¼ NW ¼, NE ¼ SW ¼;

(16) tract C–2210, government lot 1, 20 recreational residential lots, and adjacent land on Lake Kerr, Marion County, consisting of approximately 30 acres, and more particularly described as T. 13 S., R. 25 E., Sec. 22;

(17) tract C–2213, located in the F.M. Arrendondo grant, East of Ocala, Marion County, and including a portion of the land located east of the western right-of-way of State Highway 19, consisting of approximately 15.0 acres, and more particularly described as T. 14 and 15 S., R. 26 E., Sec. 36, 38, and 40; and

(18) all improvements on the parcels described in paragraphs (1) through (18).

(c) LEGAL DESCRIPTION MODIFICATION.—The Secretary may, for the purposes of soliciting offers for the sale or exchange of land under subsection (d), modify the descriptions of land specified in subsection (b) based on—

(1) a survey; or

(2) a determination by the Secretary that the modification would be in the best interest of the public.

(d) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—Subject to such terms and conditions as the Secretary may prescribe, the Secretary may solicit offers for the sale or exchange of land described in subsection (b).

(2) REJECTION OF OFFERS.—The Secretary may reject any offer received under this section if the Secretary determines that the offer—

(A) is not adequate; or

(B) is not in the public interest.

(e) METHODS OF SALE.—The Secretary may sell the land described in subsection (b) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be appropriate.

(f) BROKERS.—In any sale or exchange of land described in subsection (b), the Secretary may—

(1) use a real estate broker; and

(2) pay the real estate broker a commission in an amount that is comparable to the amounts of commission generally paid for real estate transactions in the area.

(g) CONCURRENCE OF THE SECRETARY OF THE AIR FORCE.—A parcel of land described in paragraphs (1) through (7) of subsection (b) shall not be sold or exchanged by the Secretary without the concurrence of the Secretary of the Air Force.

(h) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), if the value of non-Federal land for which Federal land is exchanged under this section is less than the value of the Federal land exchanged, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the Federal land.

(i) DISPOSITION OF PROCEEDS.—

(1) IN GENERAL.—The net proceeds derived from any sale or exchange under this Act shall be deposited in the fund established by Public Law 90–171 (commonly known as the 'Sisk Act') (16 U.S.C. 484a).

(2) USE.—Amounts deposited under paragraph (1) shall be available to the Secretary for expenditure, without further appropriation, for—

(A) acquisition of land and interests in land for inclusion as units of the National Forest System in the State; and

(B) reimbursement of costs incurred by the Secretary in carrying out land sales and exchanges under this title, including the payment of real estate broker commissions under subsection (f).

SEC. 404. ADMINISTRATION.

(a) IN GENERAL.—Land acquired by the United States under this title shall be—

(1) subject to the Act of March 1, 1911 (commonly known as the 'Weeks Act') (16 U.S.C. 480 et seq.); and

(2) administered in accordance with laws (including regulations) applicable to the National Forest System.

(b) APPLICABLE LAW.—The land described in section 403(b) shall not be subject to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(c) WITHDRAWAL.—Subject to valid existing rights, the land described in section 403(b) is withdrawn from location, entry, and patent under the public land laws, mining laws, and mineral leasing laws (including geothermal leasing laws).

TITLE V—AMERICAN FORK CANYON VISITORS CENTER

SEC. 501. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in one facility would—

(A) facilitate interagency coordination;

(B) serve the public better; and

(C) improve cost effectiveness.

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

(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

SEC. 502. DEFINITIONS.

In this title:

(1) FACILITY.—The term ''facility'' means the facility constructed under section 506 to house—

(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

(2) FEDERAL LAND.—The term ''Federal land'' means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW ¼, NE ¼, E ½, NW ¼ and E ½, SW ¼, as depicted on the map entitled ''Long Hollow-Provo Canyon Parcel'', dated March 12, 2001;

(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW ¼, as depicted on the map entitled ''Provo Sign and Radio Shop'', dated March 12, 2001;

(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE ¼, as depicted on the map entitled ''Corner Canyon Parcel'', dated March 12, 2001;

(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S ½, as depicted on the map entitled ''Beaver Administrative Site'', dated March 12, 2001;

(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE ¼, SW ¼, NE ¼, as depicted on the map entitled ''Springville Parcel'', dated March 12, 2001; and

(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled ''Pleasant Grove Ranger District Parcel'', dated March 12, 2001.

(3) NON-FEDERAL LAND.—The term ''non-Federal land'' means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW ¼, as depicted on the map entitled ''The Highland Property'', dated March 12, 2001.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 503. MAPS AND LEGAL DESCRIPTIONS.

(a) AVAILABILITY OF MAPS.—The maps described in paragraphs (2) and (3) of section 502 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the date on which the land depicted on the maps is exchanged under this title.

(b) TECHNICAL CORRECTIONS TO LEGAL DESCRIPTIONS.—The Secretary may correct minor errors in the legal descriptions in paragraphs (2) and (3) of section 502.

SEC. 504. EXCHANGE OF LAND FOR FACILITY SITE.

(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

(c) VALUATION OF NON-FEDERAL LAND.—

(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this title shall be determined by an appraisal that—

(A) is approved by the Secretary; and

(B) conforms with the Federal appraisal standards, as defined in the publication entitled ''Uniform Appraisal Standards for Federal Land Acquisitions''.

(2) SEPARATE APPRAISALS.—

(A) IN GENERAL.—Each parcel of Federal land described in subparagraphs (A) through (F) of section 502(2) shall be appraised separately.

(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may, as the circumstances require, either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.

(e) ADMINISTRATION OF LAND ACQUISITION BY UNITED STATES.—

(1) BOUNDARY ADJUSTMENT.—

(A) IN GENERAL.—On acceptance of title by the Secretary—

(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

(ii) the boundaries of the national forest shall be adjusted to include the land.

(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–099), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the ''Weeks Act''); and

(B) other laws (including regulations) that apply to National Forest System land.

SEC. 505. DISPOSITION OF FUNDS.

(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the ''Sisk Act'').

(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

SEC. 506. CONSTRUCTION AND OPERATION OF FACILITY.

(a) CONSTRUCTION.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this title, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 504.

(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE VI—WASHOE TRIBE LAND CONVEYANCE

SEC. 601. WASHOE TRIBE LAND CONVEYANCE.

(a) FINDINGS.—Congress finds that—

(1) the ancestral homeland of the Washoe Tribe of Nevada and California (referred to in this title as the ''Tribe'') included an area of approximately 5,000 square miles in and around Lake Tahoe, California and Nevada, and Lake Tahoe was the heart of the territory;

(2) in 1997, Federal, State, and local governments, together with many private landholders, recognized the Washoe people as indigenous people of Lake Tahoe Basin through a series of meetings convened by those governments at 2 locations in Lake Tahoe;

(3) the meetings were held to address protection of the extraordinary natural, recreational, and ecological resources in the Lake Tahoe region;

(4) the resulting multiagency agreement includes objectives that support the traditional and customary uses of National Forest System land by the Tribe; and

(5) those objectives include the provision of access by members of the Tribe to the shore of Lake Tahoe in order to reestablish traditional and customary cultural practices.

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

(1) to implement the joint local, State, tribal, and Federal objective of returning the Tribe to Lake Tahoe; and

(2) to ensure that members of the Tribe have the opportunity to engage in traditional and customary cultural practices on the shore of Lake Tahoe to meet the needs of spiritual renewal, land stewardship, Washoe horticulture and ethnobotany, subsistence

gathering, traditional learning, and reunification of tribal and family bonds.

(c) CONVEYANCE ON CONDITION SUBSEQUENT.—Subject to valid existing rights, the easement reserved under subsection (d), and the condition stated in subsection (e), the Secretary of Agriculture shall convey to the Secretary of the Interior, in trust for the Tribe, for no consideration, all right, title, and interest in the parcel of land comprising approximately 24.3 acres, located within the Lake Tahoe Basin Management Unit north of Skunk Harbor, Nevada, and more particularly described as Mount Diablo Meridian, T15N, R18E, section 27, lot 3.

(d) EASEMENT.—

(1) IN GENERAL.—The conveyance under subsection (c) shall be made subject to reservation to the United States of a nonexclusive easement for public and administrative access over Forest Development Road #15N67 to National Forest System land, to be administered by the Secretary of Agriculture.

(2) ACCESS BY INDIVIDUALS WITH DISABILITIES.—The Secretary of Agriculture shall provide a reciprocal easement to the Tribe permitting vehicular access to the parcel over Forest Development Road #15N67 to—

(A) members of the Tribe for administrative and safety purposes; and

(B) members of the Tribe who, due to age, infirmity, or disability, would have difficulty accessing the conveyed parcel on foot.

(e) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—In using the parcel conveyed under subsection (c), the Tribe and members of the Tribe—

(A) shall limit the use of the parcel to traditional and customary uses and stewardship conservation for the benefit of the Tribe;

(B) shall not permit any permanent residential or recreational development on, or commercial use of, the parcel (including commercial development, tourist accommodations, gaming, sale of timber, or mineral extraction); and

(C) shall comply with environmental requirements that are no less protective than environmental requirements that apply under the Regional Plan of the Tahoe Regional Planning Agency.

(2) TERMINATION AND REVERSION.—If the Secretary of the Interior, after notice to the Tribe and an opportunity for a hearing, based on monitoring of use of the parcel by the Tribe, makes a finding that the Tribe has used or permitted the use of the parcel in violation of paragraph (1) and the Tribe fails to take corrective or remedial action directed by the Secretary of the Interior—

(A) title to the parcel in the Secretary of the Interior, in trust for the Tribe, shall terminate; and

(B) title to the parcel shall revert to the Secretary of Agriculture.

TITLE VII—SANTA CLARA AND SAN ILDEFONSO PUEBLO LAND CONVEYANCE

SEC. 701. DEFINITIONS.

In this title:

(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled ''Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract'', entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term ''boundary line'' means the boundary line established under section 704(a).

(3) GOVERNORS.—The term ''Governors'' means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

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

(5) PUEBLOS.—The term ''Pueblos'' means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

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

(7) TRUST LAND.—The term ''trust land'' means the land held by the United States in trust under section 702(a) or 703(a).

SEC. 702. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., Sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., Sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., Sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., Sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., Sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 703. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., Sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., Sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 704. SURVEY AND LEGAL DESCRIPTIONS.

(a) SURVEY.—Not later than 180 days after the date of enactment of this title, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 702(b) and 703(b), the boundaries of the trust land.

(b) LEGAL DESCRIPTIONS.—

(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 702(b) and 703(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 705. ADMINISTRATION OF TRUST LAND.

(a) IN GENERAL.—Beginning on the date of enactment of this title—

(1) the land held in trust under section 702(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 3(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the ''Pueblo Lands Act'') (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this title or acquired after the date of enactment of this title by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this title or acquired after the date of enactment of this title by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) USE OF TRUST LAND.—

(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) LIMITATION.—Beginning on the date of enactment of this title, the trust land shall not be used for any new commercial developments.

SEC. 706. EFFECT.

Nothing in this title—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this title;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this title;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this title.

SA 4976. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2670, to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—WILDFIRE PREVENTION ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Wildfire Prevention Act of 2002''.

SEC. 102. FINDINGS.

Congress finds that—

(1) there is an increasing threat of wildfire to millions of acres of forest land and rangeland throughout the United States;

(2) forest land and rangeland are degraded as a direct consequence of land management practices (including practices to control and prevent wildfires and the failure to harvest subdominant trees from overstocked stands) that disrupt the occurrence of frequent low-intensity fires that have periodically removed flammable undergrowth;

(3) at least 39,000,000 acres of land of the National Forest System in the interior West are at high risk of wildfire;

(4) an average of 95 percent of the expenditures by the Forest Service for wildfire suppression during fiscal years 1990 through 1994 were made to suppress wildfires in the interior West;

(5) the number, size, and severity of wildfires in the interior West are increasing;

(6) of the timberland in National Forests in the States of Arizona and New Mexico, 59 percent of such land in Arizona, and 56 percent of such land in New Mexico, has an average diameter of 9 to 12 inches diameter at breast height;

(7) the population of the interior West grew twice as fast as the national average during the 1990s;

(8) efforts to prioritize forests and communities for wildfire risk reduction have been inconsistent and insufficient and have resulted in funding to areas that are not prone to severe wildfires;

(9) catastrophic wildfires—

(A) endanger homes and communities;

(B) damage and destroy watersheds and soils; and

(C) pose a serious threat to the habitat of threatened and endangered species;

(10) a 1994 assessment of forest health in the interior West estimated that only a 15- to 30–year window of opportunity exists for effective management intervention before damage from uncontrollable wildfire becomes widespread, with 8 years having already elapsed since the assessment;

(11) following a catastrophic wildfire, certain forests in the interior West do not return to their former grandeur;

(12) healthy forest and woodland ecosystems—

(A) reduce the risk of wildfire to forests and communities;

(B) improve wildlife habitat and biodiversity;

(C) increase tree, grass, forb, and shrub productivity;

(D) enhance watershed values;

(E) improve the environment; and

(F) provide a basis in some areas for economically and environmentally sustainable uses;

(13) sustaining the long-term ecological and economic health of interior West forests and woodland, and their dependent human communities, requires preventing severe wildfires before the wildfires occur and permitting natural, low-intensity ground fires;

(14) more natural fire regimes cannot be accomplished without the reduction of excess fuels and thinning of subdorminant trees (which fuels and trees may be of commercial value);

(15) ecologically-based forest and woodland ecosystem restoration on a landscape scale will—

(A) improve long-term community protection;

(B) minimize the need for wildfire suppression;

(C) improve resource values;

(D) reduce rehabilitation costs;

(E) reduce loss of critical habitat; and

(F) protect forests for future generations;

(16) although the National Fire Plan, and the report entitled ''Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy'' (65 Fed. Reg. 67480), advocate a shift in wildfire policy from suppression to prevention (including restoration and hazardous fuels reduction), Federal land managers are not dedicating sufficient attention and financial resources to restoration activities that simultaneously restore forest health and reduce the risk of severe wildfire;

(17) although landscape scale restoration is needed to effectively reverse degradation, scientific understanding of landscape scale treatments is limited;

(18) the Federal wildfire research program is funded at approximately 1/3 of the amount that is required to address emerging wildfire problems, resulting in the lack of a cohesive strategy to address the threat of catastrophic wildfires; and

(19) rigorous, understandable, and applied scientific information is needed for—

(A) the design, implementation, and adaptation of landscape scale restoration treatments and improvement of wildfire management technology;

(B) the environmental review process; and

(C) affected entities that collaborate in the development and implementation of wildfire treatment.

SEC. 103. PURPOSES.

The purposes of this title are—

(1) to enhance the capacity to develop, transfer, apply, and monitor practical science-based forest restoration treatments that will reduce the risk of severe wildfires, and improve forest and woodland health, in the interior West;

(2) to develop the practical scientific knowledge required to implement forest and woodland restoration on a landscape scale;

(3) to develop the interdisciplinary knowledge required to understand the socioeconomic and environmental impacts of wildfire control on ecosystems and landscapes;

(4) to require Federal agencies—

(A) to use ecological restoration treatments to reverse declining forest health and reduce the risk of severe wildfires across the forest landscape;

(B) to ensure that sufficient funds are dedicated to wildlife prevention activities, including restoration treatments; and

(C) to monitor and use wildfire treatments based on the use of adaptive ecosystem management;

(5) to develop, transfer, and assist land managers in treating acres with restoration-based treatments and use new management technologies (including the transfer of understandable information, assistance with environmental review, and field and classroom training and collaboration) to accomplish the goals identified in—

(A) the National Fire Plan;

(B) the report entitled ''Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy'' (65 Fed. Reg. 67480); and

(C) the report entitled ''10-Year Comprehensive Strategy: A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment'' of the Western Governors' Association; and

(6) to provide technical assistance to collaborative efforts by affected entities to develop, implement, and monitor adaptive ecosystem management restoration treatments that are ecologically sound, economically viable, and socially responsible.

SEC. 104. DEFINITIONS.

In this title:

(1) ADAPTIVE ECOSYSTEM MANAGEMENT.—The term ''adaptive ecosystem management'' means a natural resource management process under which planning, implementation, monitoring, research, evaluation, and incorporation of new knowledge are combined into a management approach that is—

(A) based on scientific findings and the needs of society; and

(B) used to modify future management methods and policy.

(2) AFFECTED ENTITIES.—The term ''affected entities'' includes—

(A) land managers;

(B) stakeholders;

(C) concerned citizens; and

(D) State land managers.

(3) INSTITUTE.—The term ''Institute'' means an Institute established under section 105(a).

(4) INTERIOR WEST.—The term ''interior West'' means the States of Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah.

(5) LAND MANAGER.—

(A) IN GENERAL.—The term ''land manager'' means a person or entity that practices or guides natural resource management.

(B) INCLUSIONS.—The term ''land manager'' includes a Federal, State, local, or tribal land management agency.

(6) RESTORATION.—The term ''restoration'' means a process undertaken to return an ecosystem or habitat toward—

(A) the original condition of the ecosystem or habitat; or

(B) a condition that supports a related species, natural function, or ecological process (including a low intensity fire).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(8) SECRETARIES.—The term ''Secretaries'' means—

(A) the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) the Secretary of the Interior.

(9) STAKEHOLDER.—The term ''stakeholder'' means any person interested in or affected by management of forest or woodland ecosystems.

SEC. 105. ESTABLISHMENT OF INSTITUTES.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall—

(1) not later than 180 days after the date of enactment of this title, establish 3 Institutes to promote the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West; and

(2) provide assistance to the Institutes to promote the use of adaptive ecosystem management in accordance with paragraph (1).

(b) LOCATION.—

(1) EXISTING INSTITUTES.—The Secretary may designate an institute in existence on the date of enactment of this title to serve as an Institute established under this title.

(2) LOCATIONS.—Of the Institutes established under this title, the Secretary shall establish 1 Institute in each of the States of Arizona, New Mexico, and Colorado. The Institute established in Arizona shall be located at Northern Arizona University.

(c) DUTIES.—Each Institute shall—

(1) plan, conduct, or promote research on the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West, including—

(A) research that assists in providing information on the use of adaptive ecosystem management practices to affected entities; and

(B) research that will be useful in the development and implementation of practical, science-based, ecological restoration treatments for forest and woodland ecosystems affected by wildfires; and

(2) provide the results of research described in paragraph (1) to affected entities.

(d) COOPERATION.—To increase and accelerate efforts to restore forest ecosystem health and abate unnatural and unwanted wildfires in the interior West, each Institute shall cooperate with—

(1) researchers at colleges and universities in the States of Arizona, New Mexico, and Colorado that have a demonstrated capability to conduct research described in subsection (c); and

(2) other organizations and entities in the interior West (such as the Western Governors' Association).

(e) ANNUAL WORK PLANS.—As a condition of the receipt of funds made available under this title, for each fiscal year, each Institute shall submit to the Secretary, for review by the Secretary, in consultation with the Secretary of the Interior, an annual work plan that includes assurances, satisfactory to the Secretaries, that the proposed work of the Institute will serve the informational needs of affected entities.

SEC. 106. COOPERATION BETWEEN INSTITUTES AND FEDERAL AGENCIES.

In carrying out this title, the Secretary, in consultation with the Secretary of the Interior—

(1) shall ensure that adequate financial and technical assistance is provided to the Institutes to enable the Institutes to carry out the purposes of the Institutes under section 5, including prevention activities and ecological restoration for wildfires and affected ecosystems;

(2) shall use information and expertise provided by the Institutes;

(3) shall encourage Federal agencies to use, on a cooperative basis, information and expertise provided by the Institutes;

(4) shall encourage cooperation and coordination between Federal programs relating to—

(A) ecological restoration;

(B) wildfire risk reduction; and

(C) wildfire management technologies;

(5) notwithstanding chapter 63 of title 31, United States Code, may—

(A) enter into contracts, cooperative agreements, interagency personal agreements to carry out this title; and

(B) carry out other transactions under this title;

(6) may accept funds from other Federal agencies to supplement or fully fund grants made, and contracts entered into, by the Secretaries;

(7) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this title;

(8) shall encourage professional education and public information activities relating to the purposes of this title; and

(9) may promulgate such regulations as the Secretaries determine are necessary to carry out this title.

SEC. 107. MONITORING AND EVALUATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this title, and every 5 years thereafter, the Secretary, in consultation with the Secretary of the Interior, shall complete and submit to the appropriate committees of Congress a detailed evaluation of the programs and activities of each Institute—

(1) to ensure, to the maximum extent practicable, that the research, communication tools, and information transfer activities of each Institute meet the needs of affected entities; and

(2) to determine whether continued provision of Federal assistance to each Institute is warranted.

(b) TERMINATION OF ASSISTANCE.—If, as a result of an evaluation under subsection (a), the Secretary, in consultation with the Secretary of the Interior, determines that an Institute does not qualify for further Federal assistance under this title, the Institute shall receive no further Federal assistance under this title until such time as the qualifications of the Institute are reestablished to the satisfaction of the Secretaries.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $15,000,000 for each fiscal year.

TITLE II—COMMUNITY-BASED FOREST AND PUBLIC LANDS RESTORATION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Community-Based Forest and Public Lands Restoration Act''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to create a coordinated, consistent, community-based program to restore and maintain the ecological integrity of degraded National Forest System and public lands watersheds;

(2) to ensure that restoration of degraded National Forest System and public lands recognizes variation in forest type and fire regimes, incorporates principles of community forestry, local and traditional knowledge, and conservation biology; and, where possible, uses the least intrusive methods practicable;

(3) to enable the Secretaries to assist small, rural communities to increase their capacity to restore and maintain the ecological integrity of surrounding National Forest System and public lands, and to use the by-products of such restoration in value-added processing;

(4) to require the Secretaries to monitor ecological, social, and economic conditions based on explicit mechanisms for accountability;

(5) to authorize the Secretaries to expand partnerships and to contract with non-profit organizations, conservation groups, small and micro-enterprises, cooperatives, non-Federal conservation corps, and other parties to encourage them to provide services or products that facilitate the restoration of damaged lands; and

(6) to improve communication and joint problem solving, consistent with Federal and State environmental laws, among individuals and groups who are interested in restoring the diversity and productivity of watersheds.

SEC. 203. DEFINITIONS.

As used in this title:

(1) The term ''public lands'' has the meaning given such term in section 103(e) of the Federal Land Policy and Management Act (43 U.S.C. 1702(e)).

(2) The term ''National Forest System'' has the meaning given such term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1609(a)).

(3) The term ''Secretaries'' means the Secretary of Agriculture, acting through the Chief of the Forest Service, and the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(4) The term ''restore'' means to incorporate historic, current, and new scientific information as it becomes available, to reintroduce, maintain, or enhance the characteristics, functions, and ecological processes of healthy, properly functioning watersheds.

(5) The term ''local'' means within the same county, watershed unit, or jurisdiction of a Resource Advisory Council established pursuant to Public Law 106–393 where an associated restoration project, or projects, are conducted.

(6) The term ''micro-enterprise'' means a non-subsidiary business or cooperative employing five or fewer people.

(7) The term ''small enterprise'' means a non-subsidiary business or cooperative employing between 6 and 150 people.

(8) The term ''value-added processing'' means additional processing of a product to increase its economic value and to create additional jobs and benefits where the processing is done.

(9) The term ''low-impact equipment'' means the use of equipment for restorative, maintenance, or extraction purposes that minimizes or eliminates impacts to soils and other resources.

(10) The terms ''rural'' and ''rural area'' mean, a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

SEC. 204. ESTABLISHMENT OF PROGRAM.

(a) REQUIREMENTS.—The Secretaries shall jointly establish a National Forest System and public lands collaborative community-based restoration program. The purposes of the program shall be:

(1) to identify projects that will restore degraded National Forest System and public lands; and

(2) implement such projects in a collaborative way and in a way that builds rural community capacity to restore and maintain in perpetuity the health of the National Forest System and other public lands.

(b) COOPERATION.—The Secretaries may enter into cooperative agreements with willing tribal governments, State and local governments, private and nonprofit entities and landowners for protection, restoration, and enhancement of fish and wildlife habitat, forests, and other resources on the National Forest System and public lands.

(c) MONITORING.—

(1) The Secretaries shall establish a multiparty monitoring, evaluation, and accountability process in order to assess the cumulative accomplishments or adverse impacts of projects implemented under this title. The Secretaries shall include any interested individual or organization in the monitoring and evaluation process.

(2) Not later than 5 years after the date of enactment of this title, the Secretaries shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives detailing the information gathered as a result of the multiparty monitoring and evaluation. The report shall include an assessment on whether, and to what extent, the

projects funded pursuant to this title are meeting the purposes of the title.

(3) The Secretaries shall ensure that monitoring data is collected and compiled in a way that the general public can easily access. The Secretaries may collect the data using cooperative agreements, grants, or contracts with small or micro-enterprises, or Youth Conservation Corps work crews or related partnerships with State, local, and other non-Federal conservation corps.

(d) The Secretaries shall hire additional outreach specialists, grants and agreements specialists, and contract specialists in order to implement this title.

SEC. 205. FOREST RESTORATION AND VALUE-ADDED CENTERS.

(a) ESTABLISHMENT.—Subject to subsection (d), the Secretaries shall provide cost-share grants, cooperative agreements, or both to establish Restoration and Value-Added Centers in order to improve the implementation of collaborative, community-based restoration projects on National Forest System or public lands.

(b) REQUIREMENTS.—The Restoration and Value-Added Centers shall provide technical assistance to non-profit organizations, small or micro-enterprises or individuals interested in creating a natural-resource related small or micro-enterprise in the following areas—

(1) restoration, and

(2) processing techniques for the byproducts of restoration and value-added manufacturing.

(c) ADDITIONAL REQUIREMENTS.—The Restoration and Value-Added Centers shall provide technical assistance in one or more of the following—

(1) using the latest, independent peer reviewed, scientific information and methodology to accomplish restoration and ecosystem health objectives,

(2) workforce training for value-added manufacturing and restoration,

(3) marketing and business support for conservation-based small and micro-enterprises,

(4) accessing urban markets for small and micro-enterprises located in rural communities,

(5) developing technology for restoration and the use of products resulting from restoration,

(6) accessing funding from government and non-government sources, and

(7) development of economic infrastructure including collaborative planning, proposal development, and grant writing where appropriate.

(d) LOCATIONS.—The Secretaries shall ensure that at least one Restoration and Value-Added Center is located within Idaho, New Mexico, Montana, northern California, eastern Oregon, and Washington and that every Restoration and Value-Added Center is located in a rural community that is adjacent to or surrounded by National Forest System or other public lands.

(1) The Secretaries may enter into partnerships and cooperative agreements with other Federal agencies or other organizations, including local non-profit organizations, conservation groups, or community colleges in creating and maintaining the Restoration and Value-Added Centers.

(2) The appropriate Regional Forester and State Bureau of Land Management Director will issue a request for proposals to create a Restoration and Value-Added Center. The Regional Forester and State Bureau of Land Management Director will select a proposal with input from existing Resource and Technical Advisory Committees where appropriate.

(3) The Secretaries shall provide cost-share grants, cooperative agreements, or both equaling 75 percent of each Restoration and Value-Added Center's operating costs, including business planning, not to exceed $1 million annually per center.

(4) Within 30 days of approving a grant or cooperative agreement to establish a Restoration and Value-Added Center, the Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives and identify the recipient of the grant award or cooperative agreement.

(5) After a Restoration and Value-Added Center has operated for five years, the Secretary of Agriculture shall assess the center's performance and begin to reduce, by 25 percent annually, the level of Federal funding for the center's operating costs.

(e) REPORT.—No later than five years after the date of enactment of this title, the Secretaries shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, assessing the Restoration and Value-Added Centers created pursuant to this section. The report shall include—

(1) descriptions of the organizations receiving assistance from the centers, including their geographic and demographic distribution,

(2) a summary of the projects the technical assistance recipients implemented, and

(3) an estimate of the number of non-profit organizations, small enterprises, micro-enterprises, or individuals assisted by the Restoration and Value-Added Centers.

SEC. 206. COMMUNITY-BASED NATIONAL FOREST SYSTEM AND PUBLIC LANDS RESTORATION.

(a) ESTABLISHMENT.—

(1) Notwithstanding Federal procurement laws, the Federal Grant and Cooperative Agreements Act of 1977 (31 U.S.C. 6301 et seq.), and the Competition in Contracting Act, the Secretaries shall ensure that a percentage of the total dollar value of contracts and agreements they award in each fiscal year beginning after the date of enactment of this Act are awarded to qualifying entities as follows:

(A) 10 percent in the first fiscal year;

(B) 20 percent in the second fiscal year;

(C) 30 percent in the third fiscal year;

(D) 40 percent in the fourth fiscal year; and

(E) 50 percent in the fifth fiscal year and each fiscal year thereafter.

(2) For purposes of this section:

(A) The term ''contracts and agreements'' means special salvage timber sale contracts, other timber sale contracts, service contracts, construction contracts, supply contracts, emergency equipment rental agreements, architectural and engineering contracts, challenge cost-share agreements, cooperative agreements, and participating agreements.

(B) The term ''qualifying entity'' means—

(i) a natural-resource related small or micro-enterprise;

(ii) a Youth Conservation Corps crews or related partnerships with State, local and other non-Federal conservation corps;

(iii) an entity that will hire and train local people to complete the service or timber sale contract;

(iv) an entity that will re-train non-local traditional forest workers to complete the service or timber sale contract; or

(v) a local entity that meets the criteria to qualify for the Historically Underutilized Business Zone Program under section 32 of the Small Business Act (15 U.S.C. 657a).

(b) NOTICE OF NATIONAL FOREST SYSTEM PLAN.—At the beginning of each fiscal year, each unit of the National Forest System shall make its advanced acquisition plan publicly available, including publishing it in a local newspaper for a minimum of 15 working days.

(c) BEST VALUE CONTRACTING.—In order to implement projects, the Secretaries may select a source for performance of a contract or agreement on a best value basis with consideration of one or more of the following:

(1) Understanding of the technical demands and complexity of the work to be done.

(2) Ability of the offeror to meet desired ecological objectives of the project and the sensitivity of the resources being treated.

(3) The potential for benefit to local small and micro-enterprises.

(4) The past performance and qualification by the contractor with the type of work being done, the application of low-impact equipment, and the ability of the contractor or purchaser to meet desired ecological conditions.

(5) The commitment of the contractor to training workers for high wage and high skill jobs.

(6) The commitment of the contractor to hiring highly qualified workers and local residents.

SEC. 207. NATIONAL FOREST SYSTEM RESEARCH AND TRAINING.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Agriculture shall establish a program of applied research using the resources of Forest Service Research Station and the Forest Product Laboratory. The purposes of the program shall be to—

(1) identify restoration methods and treatments that minimize impacts to the land, such as through the use of low-impact techniques and equipment; and

(2) test and develop value-added products created from the by-products of restoration.

(b) DISSEMINATION OF RESEARCH TO COMMUNITIES.—The Secretary of Agriculture shall disseminate the applied research to rural communities, including the Restoration and Value-Added Centers, adjacent to or surrounded by National Forest System or public lands. The Secretary of Agriculture shall annually conduct training workshops and classes in such communities to ensure that residents of such communities have access to the information.

(c) COOPERATION.—In establishing the program required pursuant to this section, the Secretary of Agriculture may partner with nonprofit organizations or community colleges.

(d) MONITORING.—In designing the multiparty monitoring and evaluation process to assess the cumulative accomplishments or adverse impacts of projects implemented under this title pursuant to section 204, the Secretaries shall use the expertise of Forest Service Research Stations.

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

These are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 209. SMALL BUSINESS ADMINISTRATION.

Nothing in this title is intended to modify the Small Business Act, Public Law 83–167, regulations promulgated by the Small Business Administration at 13 CFR, Part 121, or affect the Small Business shares prescribed in the Memorandum of Understanding on the Small Business Set Aside Program or the amount of timber volume offered to SBA qualified companies.

TITLE III—FINGER LAKES NATIONAL FOREST LAND WITHDRAWAL

SEC. 301. FINGER LAKES NATIONAL FOREST LAND WITHDRAWAL.

All Federal land within the boundary of Finger Lakes National Forest in the State of New York is withdrawn from all forms of entry, appropriation, or disposal under the public land laws and disposition under all laws relating to oil and gas leasing.

TITLE IV—ALASKA NAVIGABLE WATERS COMMISSION

SEC. 401. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The efficient and orderly development of the State of Alaska will be better achieved if the Federal Government joins the State of Alaska in a carefully coordinated approach to identify ownership and jurisdictional interests in land and waters.

(2) Alaska has abundant water resources that are invaluable to State residents and all citizens of the United States.

(3) Because of the massive number of navigable waterways and other bodies of water in the State of Alaska, the task of resolving submerged land ownership and navigable water determinations has been very slow, counter-productive from an orderly resource management standpoint, and costly as the State, private landowners, and the Federal Government attempt to initiate long-range planning processes.

(b) PURPOSES.—The purposes of this title are:

(1) To expedite the process of quieting legitimate title to the submerged lands in the State of Alaska;

(2) To facilitate determinations for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.), to the extent possible, which bodies of water in Alaska are navigable waters and which such bodies of water are not navigable waters; and

(3) To recommend to the State of Alaska and the Federal Government—

(A) ways to improve the process of making water use and navigability decisions; and

(B) ways to fairly and expeditiously quiet title to the State's submerged lands and assist in the determination of the specifically reserved lands that will remain in Federal ownership.

SEC. 402. SHORT TITLE.

This title may be cited as the 'Joint Federal and State Navigable Waters Commission for Alaska Act''.

SEC. 403. ESTABLISHMENT.

There is established a commission to be known as the ''Joint Federal and State Navigable Waters Commission for Alaska'' (referred to in this Act as the ''Commission'').

SEC. 404. DUTIES OF THE COMMISSION.

The Commission shall—

(1) make recommendations to the Secretary of the Interior and the State of Alaska regarding determinations of bodies of water in the State that are navigable waters for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.);

(2) establish a process for employing established standards to facilitate making such recommendations and determinations;

(3) develop procedures for involving private landowners, including Alaska Native corporations and the general public, in that process;

(4) for purposes of making such recommendations, undertake a process to identify navigable waters in Alaska pursuant to established standards and criteria; and

(5) make recommendations to improve coordination and consultation between the government of the State of Alaska and the Federal Government regarding navigability determinations and decisions concerning title to submerged lands.

SEC. 405. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) IN GENERAL.—The Commission shall be composed of 14 members, of which 7 shall be Federal members appointed under subsection (b) and 7 shall be State members appointed under subsection (c).

(2) APPOINTMENT DEADLINE.—Initial appointments under this section shall be made not later than 60 days after the date of enactment of this title.

(b) FEDERAL MEMBERS.—The 7 Federal members shall consist of—

(1) 2 members appointed by the President of the United States, one of which shall be designated as the President's appointee for the position of Federal co-chair under subsection (e);

(2) 1 member appointed by each of the three members of the Congress who represent the State of Alaska;

(3) 1 member appointed by the Secretary of the Interior; and

(4) 1 member appointed by the Secretary of Agriculture.

(c) STATE MEMBERS.—The 7 State members shall be appointed in accordance with the requirements of state law.

(d) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall not be eligible for appointment to the Commission.

(e) CO-CHAIRS.—One of the members appointed by the President of the United States and the Governor or Governor's designee shall serve as co-chairs of the Commission.

(f) INITIAL MEETING.—The initial meeting of the Commission shall be called by the co-chairs.

(g) TERM OF APPOINTMENT.—

(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

(2) Early termination of appointment—

(A) Membership of a member of the Commission shall terminate if the member is an individual who is an officer or employee of a government body and who ceases to serve as such an officer or employee, or if the member is an individual who is not an officer or employee of a government and who becomes an officer or employee of a government.

(B) Termination of an individual's membership pursuant to paragraph (A) shall take effect on the expiration of the 90–day period beginning on the date such member ceases to be such an officer or employee of such government, or becomes an officer or employee of a government, respectively.

(h) QUORUM.—4 Federal members and 4 State members of the Commission shall constitute a quorum, but a lesser number may conduct meetings. All decisions of the Commission shall require concurrence by at least 4 State members and 4 Federal members of the Commission.

(i) VACANCY.—A vacancy in the membership of the Commission—

(1) shall not affect the powers of the Commission to meet or conduct business, subject to subsection (h); and (2) shall be filled in the same manner in which the original appointment was made, by the same appointing authority.

SEC. 406. COMPENSATION OF THE COMMISSION.

(a) Pay for Federal Members of the Commission—

(1) NON-GOVERNMENT EMPLOYEES.—Each Federal member of the Commission who is not otherwise an officer or employee of the Federal Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of either the government of the State of Alaska or the Federal Government shall serve without additional pay or benefits for service as a member of the Commission.

(b) TRAVEL EXPENSES.—Federal members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code. State members of the Commission are entitled to per diem and travel expenses as authorized under pertinent laws of the State of Alaska.

SEC. 407. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on the authorization of the Commission, any subcommittee or member of the Commission may, for the purposes of carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise reproduce and distribute all or part of commission proceedings and reports, and sit and act at those times and places as the Commission, subcommittee, or members consider desirable.

(b) INFORMATION FOR THE COMMISSION.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court, information necessary to enable it to carry out its duties under this Act. On this request of either co-chair of the Commission, and consistent with applicable law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

(c) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(d) VOLUNTEER SERVICES.—The Commission may accept volunteer services for the purpose of aiding or facilitating the work of the Commission.

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

(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this title.

(g) CONTRACT AUTHORITY.—To the extent or in the amounts provided in advance in appropriation Acts, the Commission may contract with and compensate government and private agencies or persons for property or services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

SEC. 408. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—Subject to rules prescribed by the Commission, the co-chairs may appoint and fix the pay of personnel as they consider appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for GS–15 of the General Schedule.

(c) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the co-chairs may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–15 of the General Schedule.

(d) STAFF OF FEDERAL AGENCIES.—Upon request of the co-chairs, the head of any Federal department or agency may detail, on a

reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this title.

SEC. 409. RELATIONSHIP TO OTHER LAW.

The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the Commission.

SEC. 410. REPORTS.

(a) ANNUAL REPORT.—Not later than January 31 of each year, the Commission shall submit to the President of the United States, the Committee on Energy and Natural Resources of the United States Senate, the Committee on Resources of the House of Representatives, the Governor of the State of Alaska, and the legislature of the State of Alaska a written report describing its activities during the preceding year.

(b) FINAL REPORT.—The Commission shall submit a final comprehensive report to the officials and entities referred to in subsection (a) at least 10 days before the date the Commission terminates.

SEC. 411. TERMINATION OF THE COMMISSION.

The Commission is terminated 2 years after the date of completion of appointment of all members of the Commission.

TITLE V—LAND CONVEYANCE TO HAINES, OREGON

SEC. 501. CONVEYANCE TO THE CITY OF HAINES, OREGON.

(a) CONVEYANCE.—As soon as practicable after the date of enactment of this title, the Secretary of the Interior shall convey, without consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the city of Haines, Oregon.

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of Bureau of Land Management land consisting of approximately 40 acres, as indicated on the map entitled ''S. 1907: Conveyance to the City of Haines, Oregon'' and dated May 9, 2002.

SA 4977. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2222, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes, as follows:

Strike all after the enacting clause and insert:

TITLE I—CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT

SECTION 101. SHORT TITLE.

This title may be cited as the ''Cape Fox Land Entitlement Adjustment Act of 2002''.

SEC. 102. FINDINGS.

Congress finds that:

(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) for the Native Village of Saxman.

(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(1) of ANCSA (43 U.S.C. 1621(1)).

(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no known economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA (43 U.S.C. 1615(b)).

(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of additional split estate between National Forest System surface lands and Sealaska subsurface lands.

(9) There is an additional need to resolve existing areas of Sealaska/Tongass split estate, in which Sealaska holds title or conveyance rights to several thousand acres of subsurface lands that encumber management of Tongass National Forest surface lands.

(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve some of the Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

SEC. 103. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN LANDS.

Notwithstanding the provisions of section 16(b) of ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be required to select or receive conveyance of approximately 160 acres of federal unconveyed lands within Section 1, T. 75 S., R. 91 E., C.R.M.

SEC. 104. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

(a) SELECTION AND CONVEYANCE OF SURFACE ESTATE.—In addition to lands made available for selection under ANCSA, within 24 months after the date of enactment of this title, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

(1) T. 73 S., R. 90 E., C.R.M.

(2) Section 33: SW portion of SE¼: 38 acres.

(3) Section 33: NW portion of SE¼: 13 acres.

(4) Section 33: SE¼ of SE¼: 40 acres.

(5) Section 33: SE¼ of SW¼: 8 acres.

(b) CONVEYANCE OF SUBSURFACE ESTATE.—Upon conveyance to Cape Fox of the surface estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska the subsurface estate to the lands.

(c) TIMING.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

SEC. 105. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c) and, to the extent necessary, lands and interests therein identified under subsection (d).

(b) LANDS TO BE EXCHANGED TO CAPE FOX.—The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled ''Proposed Kensington Project Land Exchange,'' dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify in writing to the Secretaries of Agriculture and the Interior the lands and interests in lands that Cape Fox proposes to exchange for the federal lands described in subsection (b). The lands and interests in lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 2,900 acres and designated as parcels A–1 to A–3, B–1 to B–3, and C upon a map entitled ''Cape Fox Corporation ANCSA Land Exchange Proposal,'' dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise. The value of the easement shall be included in determining the total value of lands exchanged to the United States.

(d) VALUATION OF EXCHANGE LANDS.—The Secretary of Agriculture shall determine whether the lands identified by Cape Fox under subsection (c) are equal in value to the lands described in subsection (b). If the lands identified under subsection (c) are determined to have insufficient value to equal the value of the lands described in subsection (b), Cape Fox and the Secretary shall mutually identify additional Cape Fox lands for exchange sufficient to equalize the value of lands conveyed to Cape Fox. Such land shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts.

(e) CONDITIONS.—The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(f) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this title, to enter into an agreement with Cape Fox to consummate the exchange consistent with this title. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to conveyance from Cape Fox to the United States of all its rights, title and interests in the Cape Fox lands included in the exchange consistent with this title, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the federal lands included in the exchange within 180 days after the execution of the exchange agreement by Cape Fox and the Secretary of Agriculture.

SEC. 106. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—Upon conveyance of the Cape Fox lands included in the exchange under section 105 and conveyance and relinquishment by Sealaska in accordance with this title of the lands and interests in lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the federal lands identified for exchange under subsection (b).

(b) LANDS TO BE EXCHANGED TO SEALASKA.—The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled ''Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area,'' dated April 2002 and available for inspection in the Forest Service Region 10 Regional Office in Juneau, Alaska. Within 60 days after receiving notice of the identification by Cape Fox of the exchange lands under Section 105(c), Sealaska shall be entitled to identify in writing to the Secretaries of Agriculture and the Interior the lands that Sealaska selects to receive in exchange for the Sealaska lands described in subsection (c). Lands selected by Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 105(b). The Secretary of Agriculture shall determine whether these selected lands are equal in value to the lands described in subsection (c) and may adjust the amount of selected lands in order to reach agreement with Sealaska regarding equal value. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands selected and agreed to by the Secretary but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 105(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to be additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2 and 3 lands as set forth in the Sealaska Corporation/United States Forest Service 3 lands as set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

(d) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska under subsection (b), to enter into an agreement with Sealaska to consummate the exchange consistent with this title. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to the Cape Fox and Sealaska conveyances and relinquishments described in subsection (a), the Secretary of the Interior shall complete the interim conveyance to Sealaska of the federal lands selected for exchange within 180 days after execution of the agreement by Sealaska and the Secretary of Agriculture.

(e) MODIFICATION OF AGREEMENT.—The executed exchange agreement under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102–415 (October 14, 1992).

SEC. 107. MISCELLANEOUS PROVISIONS.

(a) EQUAL VALUE REQUIREMENT.—The exchanges described in this title shall be of equal value. Cape Fox and Sealaska shall have the opportunity to present to the Secretary of Agriculture estimates of value of exchange lands with the Secretary of Agriculture estimates of value of exchange lands with supporting information.

(b) TITLE.—Cape Fox and Sealaska shall convey and provide evidence of title satisfactory to the Secretary of Agriculture for their respective lands to be exchanged to the United States under this title, subject only to exceptions, reservations and encumbrances in the interim conveyance or patent from the United States or otherwise acceptable to the Secretary of Agriculture.

(c) HAZARDOUS SUBSTANCES.—Cape Fox, Sealaska, and the United States each shall not be subject to liability for the presence of any hazardous substance in land or interests in land solely as a result of any conveyance or transfer of the land or interests under this title.

(d) EFFECT ON ANCSA SELECTIONS.—Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this title shall be considered, for all purposes, land conveyed pursuant to ANCSA. Nothing in this title shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA. Cape Fox and Sealaska shall remain charged for any lands they exchange under this title and any lands conveyed pursuant to section 4, but shall not be charged for any lands received under section 5 or section 6. The exchanges described in this title shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States pursuant to ANCSA. Lands or interests therein transferred to the United States under this title shall become and be administered as part of the Tongass National Forest.

(e) EFFECT ON STATEHOOD SELECTIONS.—Lands conveyed to or selected by the State of Alaska under the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339; 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this title without the consent of the State of Alaska.

(f) MAPS.—The maps referred to in this title shall be maintained on file in the Forest Service Region 10 Regional Office in Juneau, Alaska. The acreages cited in this title are approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

(g) EASEMENTS.—Notwithstanding section 17(b) of ANCSA, federal lands conveyed to Cape Fox or Sealaska pursuant to this title shall be subject only to the reservation of public easements mutually agreed to and set forth in the exchange agreements executed under this title. The easements shall include easements necessary for access across the lands conveyed under this title for use of national forest or other public lands.

(h) OLD GROWTH RESERVES.—The Secretary of Agriculture shall add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this title.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF AGRICULTURE.—There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary for value estimation and related costs of exchanging lands specified in this title, and for road rehabilitation, habitat and timber stand improvement, including thinning and pruning, on lands acquired by the United States under this title.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary for land surveys and conveyances pursuant to this title.

TITLE II—LAND CONVEYANCE TO CLARK COUNTY, NEVADA

SECTION 201. CONVEYANCE OF PROPERTY TO CLARK COUNTY, NEVADA.

(a) FINDINGS.—Congress finds that—

(1) the Las Vegas area has experienced such rapid growth in the last few years that traditional locations for target shooting are now too close to populated areas for safety;

(2) there is a need to designate a centralized location in the Las Vegas valley where target shooters can practice safely; and

(3) a central facility is also needed for persons training in the use of firearms, such as local law enforcement and security personnel.

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

(1) to provide a suitable location for the establishment of a centralized shooting facility in the Las Vegas valley; and

(2) to provide the public with—

(A) opportunities for education and recreation; and

(B) a location for competitive events and marksmanship training.

(c) CONVEYANCE.—As soon as practicable after the date of enactment of this title, the Secretary of the Interior shall convey to Clark County, Nevada, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the following parcels of land:

(1) the approximately 640 acres of land depicted as ''Site Location'' on the map entitled ''Shooting Range, Las Vegas Valley'' and dated October 2, 2002 (hereinafter referred to as the ''Map''), to be conveyed under the Recreation and Public Purposes Act (43 U.S.C. 869), notwithstanding subsection (b) of the Act, to the extent there is any conflict with this subsection; and

(2) the approximately 2,240 acres of land depicted as ''Open Space'' on the Map.

(d) USE OF LAND.—

(1) SHOOTING RANGE.—The land depicted as ''Site Location'' on the Map shall be used by Clark County for the purposes described in subsection (b) only.

(2) OPEN SPACE.—The land depicted as ''Open Space'' on the Map shall be used by Clark County solely to provide open space, wildlife habitat, and a buffer around the shooting range facility.

(3) DISPOSAL.—None of the land conveyed under subsection (c) shall be disposed of by the County.

(4) REVERSION.—If Clark County ceases to use any parcel for the purposes described in this subsection, or attempts to dispose of any parcel, title to the parcel shall revert to the United States, at the option of the United States.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Interior may require such additional terms and conditions in connection with the conveyance as the Secretary considers appropriate to protect the interests of the United States.

TITLE III—BLUNT RESERVOIR AND PIERRE CANAL LAND CONVEYANCE

SECTION 301. SHORT TITLE.

This Act may be cited as the ''Blunt Reservoir and Pierre Canal Land Conveyance Act of 2002''.

SEC. 302. BLUNT RESERVOIR AND PIERRE CANAL.

(a) DEFINITIONS.—In this section:

(1) BLUNT RESERVOIR FEATURE.—The term ''Blunt Reservoir feature'' means the Blunt Reservoir feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin Program.

(2) COMMISSION.—The term ''Commission'' means the Commission of Schools and Public Lands of the State.

(3) NONPREFERENTIAL LEASE PARCEL.—The term ''nonpreferential lease parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a nonpreferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(4) PIERRE CANAL FEATURE.—The term ''Pierre Canal feature'' means the Pierre Canal feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin Program.

(5) PREFERENTIAL LEASEHOLDER.—The term ''preferential leaseholder'' means a person or descendant of a person that held a lease on a preferential lease parcel as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(6) PREFERENTIAL LEASE PARCEL.—The term 'preferential lease parcel' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a preferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(8) STATE.—The term ''State'' means the State of South Dakota, including a successor in interest of the State.

(9) UNLEASED PARCEL.—The term ''unleased parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) is not under lease as of the date of enactment of this Act.

(b) DEAUTHORIZATION.—The Blunt Reservoir feature is deauthorized.

(c) ACCEPTANCE OF LAND AND OBLIGATIONS.—

(1) IN GENERAL.—As a condition of each conveyance under subsections (d)(5) and (e), respectively, the State shall agree to accept—

(A) in ''as is'' condition, the portions of the Blunt Reservoir Feature and the Pierre Canal Feature that pass into State ownership;

(B) any liability accruing after the date of conveyance as a result of the ownership, operation, or maintenance of the features referred to in subparagraph (A), including liability associated with certain outstanding obligations associated with expired easements, or any other right granted in, on, over, or across either feature; and

(C) the responsibility that the Commission will act as the agent for the Secretary in administering the purchase option extended to preferential leaseholders under subsection (d).

(2) RESPONSIBILITIES OF THE STATE.—An outstanding obligation described in paragraph (1)(B) shall inure to the benefit of, and be binding upon, the State.

(3) OIL, GAS, MINERAL AND OTHER OUTSTANDING RIGHTS.—A conveyance to the State under subsection (d)(5) or (e) or a sale to a preferential leaseholder under subsection (d) shall be made subject to—

(A) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by or in favor of a third party; and

(B) any permit, license, lease, right-of-use, or right-of-way of record in, on, over, or across a feature referred to in paragraph (1)(A) that is outstanding as to a third party as of the date of enactment of this Act.

(4) ADDITIONAL CONDITIONS OF CONVEYANCE TO STATE.—A conveyance to the state under subsection (d)(5) or (e) shall be subject to the reservations by the United States and the conditions specified in section 1 of the Act of May 19, 1948 (chapter 310; 62 Stat. 240), as amended (16 U.S.C. 667b), for the transfer of property to state agencies for wildlife conservation purposes.

(d) PURCHASE OPTION.—

(1) IN GENERAL.—A preferential leaseholder shall have an option to purchase from the Commission, acting as an agent for the Secretary, the preferential lease parcel that is the subject of the lease.

(2) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a preferential leaseholder may elect to purchase a parcel on 1 of the following terms:

(i) Cash purchase for the amount that is equal to—

(I) the value of the parcel determined under paragraph (4); minus

(II) 10 percent of that value.

(ii) Installment purchase, with 10 percent of the value of the parcel determined under paragraph (4) to be paid on the date of purchase and the remainder to be paid over not more than 30 years at 3 percent annual interest.

(B) VALUE UNDER $10,000.—If the value of the parcel is under $10,000, the purchase shall be made on a cash basis in accordance with subparagraph (A)(i).

(3) OPTION EXERCISE PERIOD.—

(A) IN GENERAL.—A preferential leaseholder shall have until the date that is 5 years after enactment of this title to exercise the option under paragraph (1).

(B) CONTINUATION OF LEASES.—Until the date specified in subparagraph (A), a preferential leaseholder shall be entitled to continue to lease from the Secretary the parcel leased by the preferential leaseholder under the same terms and conditions as under the lease, as in effect as of the date of enactment of this Act.

(4) VALUATION.—

(A) IN GENERAL.—The value of a preferential lease parcel shall be its fair market value for agricultural purposes determined by an independent appraisal, exclusive of the value of private improvements made by the leaseholders while the land was federally owned before the date of the enactment of this title, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition.

(B) FAIR MARKET VALUE.—Any dispute over the fair market value of a property under subparagraph (A) shall be resolved in accordance with section 2201.4 of title 43, Code of Federal Regulations.

(5) CONVEYANCE TO THE STATE.—

(A) IN GENERAL.—If a preferential leaseholder fails to purchase a parcel within the period specified in paragraph (3)(A), the Secretary shall convey the parcel to the State of South Dakota Department of Game, Fish, and Parks.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(6) USE OF PROCEEDS.—Proceeds of sales of land under this title shall be deposited as miscellaneous funds in the Treasury and such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill.

(e) CONVEYANCE OF NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(1) CONVEYANCE BY SECRETARY TO STATE.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall convey to the South Dakota Department of Game, Fish, and Parks the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(2) LAND EXCHANGES FOR NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(A) IN GENERAL.—With the concurrence of the South Dakota Department of Game, Fish, and Parks, the South Dakota Commission of Schools and Public Lands may allow a person to exchange land that the person owns elsewhere in the State for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal, as the case may be.

(B) PRIORITY.—The right to exchange nonpreferential lease parcels or unleased parcels shall be granted in the following order or priority:

(i) Exchanges with current lessees for nonpreferential lease parcels.

(ii) Exchanges with adjoining and adjacent landowners for unleased parcels and nonpreferential lease parcels not exchanged by current lessees.

(C) EASEMENT FOR WATER CONVEYANCE STRUCTURE.—As a condition of the exchange of land of the Pierre Canal Feature under this paragraph, the United States reserves a perpetual easement to the land to allow for the right to design, construct, operate, maintain, repair, and replace a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal Feature.

(f) RELEASE FROM LIABILITY.—

(1) IN GENERAL.—Effective on the date of conveyance of any parcel under this title, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the parcel, except for damages for acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date of conveyance.

(2) NO ADDITIONAL LIABILITY.—Nothing in this section adds to any liability that the United States may have under chapter 171 of title 28, United States Code (commonly known as the ''Federal Tort Claims Act'').

(g) REQUIREMENTS CONCERNING CONVEYANCE OF LEASE PARCELS.—

(1) INTERIM REQUIREMENTS.—During the period beginning on the date of enactment of this title and ending on the date of conveyance of the parcel, the Secretary shall continue to lease each preferential lease parcel or nonpreferential lease parcel to be conveyed under this section under the terms and conditions applicable to the parcel on the date of enactment of this title.

(2) PROVISION OF PARCEL DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act $750,000 to reimburse the Secretary for expenses incurred in implementing this title, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this title, not to exceed 10 percent of the cost of each transaction conducted under this title.

TITLE IV—GLEN CANYON NATIONAL RECREATION AREA BOUNDARY REVISION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Glen Canyon National Recreation Area Boundary Revision Act of 2002''.

SEC. 402. GLEN CANYON NATIONAL RECREATION AREA BOUNDARY REVISION.

(a) IN GENERAL.—The first section of Public Law 92–593 (16 U.S.C. 460dd; 86 Stat. 1311) is amended—

(1) by striking ''That in'' and inserting ''SECTION 1. (a) In''; and

(2) by adding at the end the following:

(b) In addition to the boundary change authority under subsection (a), the Secretary may acquire approximately 152 acres of private land in exchange for approximately 370 acres of land within the boundary of Glen Canyon National Recreation Area, as generally depicted on the map entitled ''Page One Land Exchange Proposal'', number 608/60573a–2002, and dated May 16, 2002. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service. Upon conclusion of the exchange, the boundary of the recreation area shall be revised to reflect the exchange.

(c) CHANGE IN ACREAGE CEILING.—Such section is further amended by striking ''one million two hundred and thirty-six thousand eight hundred and eighty acres'' and inserting ''1,256,000 acres''.

TITLE V—WILD SKY WILDERNESS

SEC. 501. SHORT TITLE.

This title may be cited as the ''Wild Sky Wilderness Act of 2002''.

SEC. 502. FINDINGS AND STATEMENT OF POLICY.

(a) FINDINGS.—Congress finds the following:

(1) Americans cherish the continued existence of diverse wilderness ecosystems and wildlife found on their Federal lands and share a strong sense of moral responsibility to protect their wilderness heritage as an enduring resource to cherish, protect, and bequeath undisturbed to future generations of Americans.

(2) The values an area of wilderness offer to this and future generations of Americans are greatly enhanced to the degree that the area is diverse in topography, elevation, life zones and ecosystems, and to the extent that it offers a wide range of outdoor recreational and educational opportunities accessible in all seasons of the year.

(3) Large blocks of wildlands embracing a wide range of ecosystems and topography, including low-elevation forests, have seldom remained undisturbed due to many decades of development.

(4) Certain wildlands on the western slope of the Cascade Range in the Skykomish River valley of the State of Washington offer an outstanding representation of the original character of the forested landscape, ranging from high alpine meadows and extremely rugged peaks to low-elevation mature and old-growth forests, including groves with some of the largest and most spectacular trees in Washington, with diameters of eight feet and larger.

(5) These diverse, thickly forested mountain slopes and valleys of mature and old-growth trees in the Skykomish River valley harbor nearly the full complement of the original wildlife and fish species found by settlers of the 19th century, including mountain goats, bald eagles, black bear, pine marten, black-tailed deer, as well as rare and endangered wildlife such as northern spotted owls and goshawks, Chinook and Coho salmon, and steelhead and bull trout.

(6) An ecologically and topographically diverse wilderness area in the Skykomish River valley accessible in all seasons of the year will be enjoyable to users of various kinds, such as hikers, horse riders, hunters, anglers, and educational groups, but also to the many who cherish clean water and clean air, fish and wildlife (including endangered species such as wild salmon), and pristine mountain and riverside scenery.

(b) STATEMENT OF POLICY.—Congress hereby declares that it is the policy of the United States—

(1) to better serve the diverse wilderness and environmental education needs of the people of the State of Washington and its burgeoning metropolitan regions by granting wilderness protection to certain lower elevation wildlands in the Skykomish River valley of the State of Washington; and

(2) to protect additional lands adjacent to the Henry M. Jackson Wilderness designated by the Washington Wilderness Act of 1984 (Public Law 98–339), in further tribute to the ecologically enlightened vision of the distinguished Senator from the State of Washington and former Chairman of the Senate Committee on Energy and Natural Resources (formerly the Senate Interior and Insular Affairs Committee).

SEC. 503. ADDITIONS TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following Federal lands in the State of Washington are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: Certain lands which compromise approximately 106,000 acres, as generally depicted on a map entitled ''Wild Sky Wilderness Proposal'', dated August 2002, which shall be known as the Wild Sky Wilderness.

(b) MAPS AND LEGAL DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall file a map and a legal description for the wilderness area designated under this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives. The map and description shall have the same force and effect as if included in this title, except that the Secretary of Agriculture may correct clerical and typographical errors in the legal description and map. The map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

SEC. 504. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—Subject to valid existing rights, lands designated as wilderness by this title shall be managed by the Secretary of Agriculture in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this title, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this title.

(b) NEW TRAILS.—

(1) The Secretary of Agriculture shall consult with interested parties and shall establish a hiking trail plan designed to develop a system of hiking trails within or adjacent to or to provide access to the wilderness designated by this Act in a manner consistent with the Wilderness Act, Public Law 88–577 (16 U.S.C. 1131 et seq.).

(2) Within two years after the date of enactment of this Act, the Secretary of Agriculture shall complete a report on the implementation of the hiking trail plan required under this title. This report shall include the identification of priority hiking trails for development.

(c) REPEATER SITE.—Within the Wild Sky Wilderness, the Secretary of Agriculture is authorized to use helicopter access to construct and maintain a single communication repeater site to be used jointly by the Forest Service and Washington State's Snohomish County government to provide improved communication for safety and health purposes in a manner compatible with the preservation of the wilderness environment.

(d) FLOAT PLANE ACCESS.—As provided by Section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), the use of floatplanes on Lake Isabel, where such use has already become established, shall be permitted to continue subject to such reasonable restrictions as the Secretary of Agriculture deems desirable.

SEC. 505. AUTHORIZATION FOR LAND ACQUISITION.

(a)(1) IN GENERAL.—The Secretary of Agriculture is authorized to acquire lands and interests therein, by purchase, donation, or exchange, and shall give priority consideration to those lands identified as ''Priority Acquisition Lands'' on the map entitled ''Wild Sky Wilderness Proposal'', dated August 2002. The boundaries of the Snoqualmie National Forest and the Wild Sky Wilderness shall be adjusted to encompass any land acquired pursuant to this section.

(2) CORRIDOR.—Upon the acquisition by the Secretary of Agriculture of the two Priority Acquisition Lands parcels adjacent to the lands identified as the Corridor on the map entitled ''Wild Sky Wilderness Proposal'', date August 2002, the boundary of the Wild Sky Wilderness shall be adjusted to encompass the Corridor.

(b) ACCESS.—Consistent with section 5(a) of the Wilderness Act (Public Law 88–577; 16 U.S.C. 1134(a)), the Secretary of Agriculture shall assure adequate access to private inholdings within the Wild Sky Wilderness.

(c) APPRAISAL.—Valuation of private lands shall be determined without reference to any restrictions on access or use which arise out of designation as a wilderness area as a result of this title.

SEC. 506. LAND EXCHANGES.

The Secretary of Agriculture shall exchange lands and interests in lands, as generally depicted on a map entitled Chelan County Public Utility District Exchange and dated May 22, 2002, with the Chelan County Public Utility District in accordance with the following provisions:

(1) If the Chelan County Public Utility District, within ninety days after the date of enactment of this Act, offers to the Secretary of Agriculture approximately 371.8 acres within the Snoqualmie National Forest in the State of Washington, the Secretary shall accept such lands.

(2) Upon acceptance of title by the Secretary of Agriculture to such lands and interests therein, the Secretary of Agriculture shall convey to the Chelan County Public Utility District a permanent easement, including helicopter access, consistent with such levels as used as of date of enactment, to maintain an existing snowtel site on 1.82 acres on the Wenatchee National Forest in the State of Washington.

(3) The exchange directed by this Act shall be consummated if Chelan County Public Utility District conveys title acceptable to the Secretary and provided there is no hazardous material on the site, which is objectionable to the Secretary.

(4) In the event Chelan County Public Utility District determines there is no longer a need to maintain a snowtel site to monitor the snow pack for calculating expected runoff into the Lake Chelan hydroelectric project and the hydroelectric projects in the Columbia River Basin, the secretary shall be notified in writing and the easement shall be extinguished and all rights conveyed by this exchange shall revert to the United States.

TITLE VI—CONVEYANCE TO THE CITY OF CRAIG, ALASKA

SECTION 601. SHORT TITLE.

This title may be cited as the ''Craig Recreation Land Purchase Act''.

SEC. 602. AUTHORIZATION FOR CONVEYANCE.

If the City of Craig, Alaska, (''City'') tenders all right, title and interest of the City in and to the municipal lands identified on the map entitled ''Sunnahae Property and Trail,'' dated April 22, 1992 and labeled Attachment A, to the Secretary of Agriculture (''Secretary'') within six months of the date the City receives the results of the appraisal conducted pursuant to section 4, the Secretary shall accept such tender.

SEC. 603. ACQUISITION OF LAND BY THE CITY OF CRAIG.

(a) Funds received by the City under section 2 shall be used by the City for the purchase of lands shown on the map entitled ''Wards Cove Property,'' dated March 24, 1969 and labeled attachment B.

(b) The purchase of lands by the City under subsection (a) shall be for an amount equal to the appraised value of the lands conveyed to the Secretary by the City, except that the Secretary and the City may equalize the values by adjusting acreage or by payments not to exceed $100,000.

SEC. 604. APPRAISAL.

Prior to any conveyance, the Secretary shall conduct an appraisal of the lands identified for conveyance by the City in accordance with the United States Department of Justice Uniform Standards of Appraisal and shall notify the City of the results of the appraisal.

SEC. 605. MANAGEMENT OF CONVEYED LANDS.

Lands received by the Secretary shall be included in the Tongass National Forest and shall be managed in accordance with the laws, regulations, and forest plan applicable to the Tongass National Forest.

SEC. 606. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SA 4978. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—FREMONT-MADISON CONVEYANCE

SECTION 101. SHORT TITLE.

This title may be cited as the ''Fremont-Madison Conveyance Act''.

SEC. 102. DEFINITIONS.

In this title:

(1) DISTRICT.—The term ''District'' means the Fremont-Madison Irrigation District, an irrigation district organized under the law of the State of Idaho.

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

SEC. 103. CONVEYANCE OF FACILITIES.

(a) CONVEYANCE REQUIREMENT.—The Secretary of the Interior shall convey to the Fremont-Madison Irrigation District, Idaho, pursuant to the terms of the memorandum of agreement (MOA) between the District and the Secretary (Contract No. 1425–0901–09MA–0910–093310), all right, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained by the District for delivery of water to and drainage of water from lands within the boundaries of the District as they exist upon the date of enactment of this Act, consistent with section 108.

(b) REPORT.—If the Secretary has not completed any conveyance required under this title by September 13, 2003, the Secretary shall, by no later than that date, submit a report to the Congress explaining the reasons that conveyance has not been completed and stating the date by which the conveyance will be completed.

SEC. 104. COSTS.

(a) IN GENERAL.—The Secretary shall require, as a condition of the conveyance under section 103, that the District pay the administrative costs of the conveyance and related activities, including the costs of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as described in Contract No. 1425–0901–09MA–0910–093310.

(b) VALUE OF FACILITIES TO BE TRANSFERRED.—In addition to subsection (a) the Secretary shall also require, as condition of the conveyance under section 103, that the District pay to the United States the lesser of the net present value of the remaining obligations owed by the District to the United States with respect to the facilities conveyed, or $280,000. Amounts received by the United States under this subsection shall be deposited into the Reclamation Fund.

SEC. 105. TETON EXCHANGE WELLS.

(a) CONTRACTS AND PERMIT.—In conveying the Teton Exchange Wells pursuant to section 103, the Secretary shall also convey to the District—

(1) Idaho Department of Water Resources permit number 22–097022, including drilled wells under the permit, as described in Contract No. 1425–0901–09MA–0910–093310; and

(2) all equipment appurtenant to such wells.

(b) EXTENSION OF WATER SERVICE CONTRACT.—The water service contract between the Secretary and the District (Contract No. 7–0907–0910–09W0179, dated September 16, 1977) is hereby extended and shall continue in full force and effect until all conditions described in this title are fulfilled.

SEC. 106. ENVIRONMENTAL REVIEW.

Prior to conveyance the Secretary shall complete all environmental reviews and analyses as set forth in the Memorandum of Agreement referenced in section 103(a).

SEC. 107. LIABILITY.

Effective on the date of the conveyance the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section may increase the liability of the United States beyond that currently provided in chapter 171 of title 28, United States Code.

SEC. 108. WATER SUPPLY TO DISTRICT LANDS.

The acreage within the District eligible to receive water from the Minidoka Project and the Teton Basin Projects is increased to reflect the number of acres within the District as of the date of enactment of this title, including lands annexed into the District prior to enactment of this title as contemplated by the Teton Basin Project. The increase in acreage does not alter deliveries authorized under the District's existing water storage contracts and as allowed by State water law.

SEC. 109. DROUGHT MANAGEMENT PLANNING.

Within 60 days of enactment of this title, in collaboration with stakeholders in the Henry's Fork watershed, the Secretary shall initiate a drought management planning process to address all water uses, including irrigation and the wild trout fishery, in the Henry's Fork watershed. Within 18 months of enactment of this title, the Secretary shall submit a report to Congress, which shall include a final drought management plan.

SEC. 110. EFFECT.

(a) IN GENERAL.—Except as provided in this title, nothing in this title affects—

(1) the rights of any person; or

(2) any right in existence on the date of enactment of this Act of the Shoshone-Bannock Tribes of the Fort Hall Reservation to water based on a treaty, compact, executive order, agreement, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the ''Winters Doctrine''), or law.

(b) CONVEYANCES.—Any conveyance under this title shall not affect or abrogate any provision of any contract executed by the United States or State law regarding any irrigation district's right to use water developed in the facilities conveyed.

TITLE II—DENVER WATER REUSE PROJECT

SEC. 201. DENVER WATER REUSE PROJECT.

(a) AUTHORIZATION.—The Secretary of the Interior, in cooperation with the appropriate State and local authorities, may participate in the design, planning, and construction of the Denver Water Reuse Project (hereinafter referred to as the ''Project'') to reclaim and reuse water in the service area of the Denver Water Department of the city and county of Denver, Colorado.

(b) COST SHARE.—The Federal share of the cost of the Project shall not exceed 25 percent of the total cost.

(c) LIMITATION.—Funds provided by the Secretary shall not be used for the operation or maintenance of the Project.

(d) FUNDING.—Funds appropriated pursuant to section 1631 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–13) may be used for the Project.

SEC. 202. RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT.

Design, planning, and construction of the Project authorized by this title shall be in accordance with, and subject to the limitations contained in, the Reclamation Wastewater and Groundwater Study and Facilities Act (106 Stat. 4663–4669; 43 U.S.C. 390h *et seq.*), as amended.

TITLE III—WALLOWA LAKE DAM REHABILITATION

SEC. 301. SHORT TITLE.

This title may be cited as the ''Wallowa Lake Dam Rehabilitation and Water Management Act of 2002''.

SEC. 302. DEFINITIONS.

In this title:

(1) ASSOCIATED DITCH COMPANIES, INCORPORATED.—The term ''Associated Ditch Companies, Incorporated'' means the non-profit corporation by that name (as established under the laws of the State of Oregon) that operates Wallowa Lake Dam.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(3) WALLOWA LAKE DAM REHABILITATION PROGRAM.— The term ''Wallowa Lake Dam Rehabilitation Program'' means the program for the rehabilitation of the Wallowa Lake Dam in Oregon, as contained in the engineering document entitled, ''Phase I Dam Assessment and Preliminary Engineering Design'', dated October 2001, and on file with the Bureau of Reclamation.

(4) WALLOWA VALLEY WATER MANAGEMENT PLAN.—The term ''Wallowa Valley Water Management Plan'' means the program developed for the Wallowa River watershed, as contained in the document entitled ''Wallowa Lake Dam Rehabilitation and Water Management Plan Vision Statement'', dated February 2001, and on file with the Bureau of Reclamation.

SEC. 303. AUTHORIZATION TO PARTICIPATE IN PROGRAM.

(a) AUTHORIZATION.—The Secretary—

(1) in cooperation with the Associated Ditch Companies, Incorporated, may participate in the Wallowa Lake Dam Rehabilitation Program; and

(2) in cooperation with tribal, State and local governmental entities, may participate in planning, design and construction of facilities needed to implement the Wallowa Valley Water Management Plan.

(b) COST SHARING.—

(1) IN GENERAL.—The Federal share of the costs of activities authorized under this title shall not exceed 80 percent.

(2) EXCLUSIONS FROM FEDERAL SHARE.—There shall not be credited against the Federal share of such costs—

(A) any expenditure by the Bonneville Power Administration in the Wallowa River watershed; and

(B) expenditures made by individual farmers in any Federal farm or conservation program.

(c) COMPLIANCE WITH STATE LAW.—The Secretary, in carrying out this title, shall comply with otherwise applicable State water law.

(d) PROHIBITION ON HOLDING TITLE.—The Federal Government shall not hold title to any facility rehabilitated or constructed under this title.

(e) PROHIBITION ON OPERATION AND MAINTENANCE.—The Federal Government shall not be responsible for the operation and maintenance of any facility constructed or rehabilitated under this title.

(f) OWNERSHIP AND OPERATION OF FISH PASSAGE FACILITY.—Any facility constructed using Federal funds authorized by this title located at Wallowa Lake Dam for trapping and transportation of migratory adult salmon shall be owned and operated by the Nez Perce Tribe.

SEC. 304. RELATIONSHIP TO OTHER LAW.

Activities funded under this title shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

SEC. 305. APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $32,000,000 for the Federal share of the costs of activities authorized under this title.

TITLE IV—ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Albuquerque Biological Park Title Clarification Act''.

SEC 402. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

(1) In 1997, the City of Albuquerque, New Mexico paid $ 3,875,000 to the Middle Rio Grande Conservancy District to acquire two parcels of land known as Tingley Beach and San Gabriel Park.

(2) The City intends to develop and improve Tingley Beach and San Gabriel Park as part of its Albuquerque Biological Park Project.

(3) In 2000, the United States claimed title to Tingley Beach and San Gabriel Park by asserting that these properties were transferred to the United States in the 1950's as part of the establishment of the Middle Rio Grande Project.

(4) The City's ability to continue developing the Albuquerque Biological Park Project has been hindered by the United States' claim of title to these properties.

(5) The United States' claim of ownership over the Middle Rio Grande Project properties is disputed by the City and MRGCD in Rio Grande Silvery Minnow v. John W. Keys, III, No. CV 99–1320 JP/RLP–ACE (D. N.M. filed Nov. 15, 1999).

(6) Tingley Beach and San Gabriel Park are surplus to the needs of the Bureau of Reclamation and the United States in administering the Middle Rio Grande Project.

(b) PURPOSE.—The purpose of this title is to direct the Secretary of the Interior to issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach or San Gabriel Park to the City, thereby removing the cloud on the City's title to these lands.

SEC. 403. DEFINITIONS.

In this title:

(1) CITY.—The term ''City'' means the City of Albuquerque, New Mexico.

(2) MIDDLE RIO GRANDE CONSERVANCY DISTRICT.—The terms ''Middle Rio Grande Conservancy District'' and ''MRGCD'' mean a political subdivision of the State of New Mexico, created in 1925 to provide and maintain flood protection and drainage, and maintenance of ditches, canals, and distribution systems for irrigation and water delivery and operations in the Middle Rio Grande Valley.

(3) MIDDLE RIO GRANDE PROJECT.—The term ''Middle Rio Grande Project'' means the works associated with water deliveries and operations in the Rio Grande basin as authorized by the Flood Control Act of 1948 (Public Law 80–858; 62 Stat. 1175) and the Flood Control Act of 1950 (Public Law 81–516; 64 Stat. 170).

(4) SAN GABRIEL PARK.—The term ''San Gabriel Park'' means the tract of land containing 40.2236 acres, more or less, situated within Section 12 and Section 13, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

(5) TINGLEY BEACH.—The term ''Tingley Beach'' means the tract of land containing 25.2005 acres, more or less, situated within Section 13 and Section 24, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

SEC. 404. CLARIFICATION OF PROPERTY INTEREST.

(a) REQUIRED ACTION.—The Secretary of the Interior shall issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach and San Gabriel Park to the City.

(b) TIMING.—The Secretary shall carry out the action in subsection (a) as soon as practicable after the date of enactment of this title and in accordance with all applicable law.

(c) NO ADDITIONAL PAYMENT.—The City shall not be required to pay any additional costs to the United States for the value of San Gabriel Park and Tingley Beach.

SEC. 405. OTHER RIGHTS, TITLE, AND INTERESTS UNAFFECTED.

(a) IN GENERAL.—Except as expressly provided in section 404, nothing in this title shall be construed to affect any right, title, or interest in and to any land associated with the Middle Rio Grande Project.

(b) ONGOING LITIGATION.—Nothing contained in this title shall be construed or utilized to affect or otherwise interfere with any position set forth by any party in the lawsuit pending before the United States District Court for the District of New Mexico, No. CV 99–1320 JP/RLP–ACE, entitled Rio Grande Silvery Minnow v. John W. Keys, III, concerning the right, title, or interest in and to any property associated with the Middle Rio Grande Project.

TITLE V—HIGH PLAINS AQUIFER HYDROGEOLOGIC MAPPING

SEC. 501. SHORT TITLE.

This title may be cited as the ''High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act''.

SEC. 502. DEFINITIONS.

For the purposes of this title:

(1) ASSOCIATION.—The term ''Association'' means the Association of American State Geologists.

(2) COUNCIL.—The term ''Council'' means the Western States Water Council.

(3) DIRECTOR.—The term ''Director'' means the Director of the United States Geological Survey.

(4) FEDERAL COMPONENT.—The term ''Federal component'' means the Federal component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 503(c).

(5) HIGH PLAINS AQUIFER.—The term ''High Plains Aquifer'' is the groundwater reserve depicted as Figure 1 in the United States Geological Survey Professional Paper 1400–B, titled ''Geohydrology of the High Plains Aquifer in Parts of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming.''

(6) HIGH PLAINS AQUIFER STATES.—The term ''High Plains Aquifer States'' means the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming.

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

(8) STATE COMPONENT.—The term ''State component'' means the State component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 503(d).

SEC. 503. ESTABLISHMENT.

(a) PROGRAM.—The Secretary, working through the United States Geological Survey, and in cooperation with participating State geological surveys and water management agencies of the High Plains Aquifer States, shall establish and carry out the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program, for the purposes of the characterization, mapping, modeling, and monitoring of the High Plains Aquifer. The Program shall undertake on a county-by-county level or at the largest scales and most detailed levels determined to be appropriate on a state-by-state and regional basis: (1) mapping of the hydrogeological configuration of the High Plains Aquifer; and (2) with respect to the High Plains Aquifer, analyses of the current and past rates at which groundwater is being withdrawn and recharged, the net rate of decrease or increase in High Plains Aquifer

storage, the factors controlling the rate of horizontal and vertical migration of water within the High Plains Aquifer, and the current and past rate of change of saturated thickness within the High Plains Aquifer. The Program shall also develop, as recommended by the State panels referred to in subsection (d)(1), regional data bases and groundwater flow models.

(b) FUNDING.—The Secretary shall make available fifty percent of the funds available pursuant to this title for use in carrying out the State component of the Program, as provided for by subsection (d).

(c) FEDERAL PROGRAM COMPONENT.—

(1) PRIORITIES. The Program shall include a Federal component, developed in consultation with the Federal Review Panel provided for by subsection (e), which shall have as its priorities—

(A) coordinating Federal, State, and local, data, maps, and models into an integrated physical characterization of the High Plains Aquifer;

(B) supporting State and local activities with scientific and technical specialists; and

(C) undertaking activities and providing technical capabilities not available at the State and local levels.

(2) INTERDISCIPLINARY STUDIES.—The Federal component shall include interdisciplinary studies that add value to hydrogeologic characterization, mapping, modeling and monitoring for the High Plains Aquifer.

(d) STATE PROGRAM COMPONENT.—

(1) PRIORITIES.—Upon election by a High Plains Aquifer State, the State may participate in the State component of the Program which shall have as its priorities hydrogeologic characterization, mapping, modeling, and monitoring activities in areas of the High Plains Aquifer that will assist in addressing issues relating to groundwater depletion and resource assessment of the Aquifer. As a condition of participating in the State component of the Program, the Governor or Governor's designee shall appoint a State panel representing a broad range of users of, and persons knowledgeable regarding, hydrogeologic data and information, which shall be appointed by the Governor of the State or the Governor's designee. Priorities under the State component shall be based upon the recommendations of the State panel.

(2) AWARDS.—(A) Twenty percent of the Federal funds available under the State component shall be equally divided among the State geological surveys of the High Plains Aquifer States to carry out the purposes of the Program provided for by this title. In the event that the State geological survey is unable to utilize the funding for such purposes, the Secretary may, upon the petition of the Governor of the State, direct the funding to some other agency of the State to carry out the purposes of the Program.

(B) In the case of a High Plains Aquifer State that has elected to participate in the State component of the Program, the remaining funds under the State component shall be competitively awarded to State or local agencies or entities in the High Plains Aquifer States, including State geological surveys, State water management agencies, institutions of higher education, or consortia of such agencies or entities. A State may submit a proposal for the United States Geological Survey to undertake activities and provide technical capabilities not available at the State and local levels. Such funds shall be awarded by the Director only for proposals that have been recommended by the State panels referred to in subsection (d)(1), subjected to independent peer review, and given final prioritization and recommendation by the Federal Review Panel established under subsection (e). Proposals for multi-state activities must be recommended by the State panel of at least one of the affected States.

(e) FEDERAL REVIEW PANEL.—

(1) ESTABLISHMENT.—There shall be established a Federal Review Panel to evaluate the proposals submitted for funding under the State component under subsection (d)(2)(B) and to recommend approvals and levels of funding. In addition, the Federal Review Panel shall review and coordinate the Federal component priorities under subsection (c)(1), Federal interdisciplinary studies under subsection (c)(2), and the State component priorities under subsection (d)(1).

(2) COMPOSITION AND SUPPORT.—Not later than three months after the date of enactment of this title, the Secretary shall appoint to the Federal Review Panel: (1) three representatives of the United States Geological Survey, at least one of which shall be a hydrologist or hydrogeologist; and (2) four representatives of the geological surveys and water management agencies of the High Plains Aquifer States from lists of nominees provided by the Association and the Council, so that there are two representatives of the State geological surveys and two representatives of the State water management agencies. Appointment to the Panel shall be for a term of three years. The Director shall provide technical and administrative support to the Federal Review Panel. Expenses for the Federal Review Panel shall be paid from funds available under the Federal component of the Program.

(f) LIMITATION.—The United States Geological Survey shall not use any of the Federal funds to be made available under the State component for any fiscal year to pay indirect, servicing, or Program management charges. Recipients of awards granted under subsection (d)(2)(B) shall not use more than eighteen percent of the Federal award amount for any fiscal year for indirect, servicing, or Program management charges. The Federal share of the costs of an activity funded under subsection (d)(2)(B) shall be no more than fifty percent of the total cost of that activity. The Secretary may apply the value of in-kind contributions of property and services to the non-Federal share of the costs of the activity.

SEC. 504. PLAN.

The Secretary, acting through the Director, shall, in consultation with the Association, the Council, the Federal Review Panel, and the State panels, prepare a plan for the High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program. The plan shall address overall priorities for the Program and a management structure and Program operations, including the role and responsibilities of the United States Geological Survey and the States in the Program, and mechanisms for identifying priorities for the Federal component and the State component.

SEC. 505. REPORTING REQUIREMENTS.

(a) REPORT ON PROGRAM IMPLEMENTATION.—One year after the date of enactment of this title, and every two years thereafter through fiscal year 2011, the Secretary shall submit a report on the status of implementation of the Program established by this Act to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States. The initial report submitted by the Secretary shall contain the plan required by section 504.

(b) REPORT ON HIGH PLAINS AQUIFER.—One year after the date of enactment of this title and every year thereafter through fiscal year 2011, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States on the status of the High Plains Aquifer, including aquifer recharge rates, extraction rates, saturated thickness, and water table levels.

(c) ROLE OF FEDERAL REVIEW PANEL.—The Federal Review Panel shall be given an opportunity to review and comment on the reports required by this section.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2011 to carry out this title.

TITLE VI—CALFED BAY-DELTA PROGRAM AUTHORIZATION

SEC. 601. CALFED BAY-DELTA PROGRAM.

(a) The Secretary of the Interior and the heads of the other Federal agencies may participate in the Calfed Bay-Delta Authority established by the California Bay-Delta Authority Act (2002 Cal. Stat. Chap. 812) to the extent not inconsistent with other law.

(b) During each of the fiscal years 2003 through 2005, the Secretary of the Interior and the heads of other Federal agencies identified in the Record of Decision of August 28, 2000, are also authorized to carry out aspects of the Calfed Bay-Delta Program for which federal funds are appropriated.

TITLE VII—T'UF SHUR BIEN PRESERVATION TRUST AREA ACT

SEC. 701. SHORT TITLE.

This Act may be cited as the ''T'uf Shur Bien Preservation Trust Area Act''.

SEC. 702. FINDING AND STATEMENT OF PURPOSE.

(a) FINDING.—The Congress finds that in 1748, the Pueblo of Sandia received a grant from a representative of the King of Spain, which grant was recognized and confirmed by Congress in 1858 (11 Stat. 374). In 1994, the Pueblo filed a lawsuit against the Secretary of the Interior and the Secretary of Agriculture in the U.S. District Court for the District of Columbia, Civil No. 1:94CV02624, asserting that federal surveys of the grant boundaries erroneously excluded certain lands within the Cibola National Forest, including a portion of the Sandia Mountain Wilderness;

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

(1) establish the T'uf Shur Bien Preservation Trust Area in the Cibola National Forest;

(2) confirm the status of National Forest and Wilderness lands in the Area while resolving issues associated with the Pueblo's lawsuit and the opinions of the Solicitor of the Department of the Interior dated December 9, 1988 (M–36963; 96 I.D. 331) and January 19, 2001 (M–37002); and

(3) provide the Pueblo, parties involved in the litigation, and the public with a fair and just settlement of the Pueblo's claim.

SEC. 703. DEFINITIONS.

For purposes of this Act:

(a) AREA.—The term ''Area'' means the T'uf Shur Bien Preservation Trust Area as depicted on the map, and excludes the subdivisions, Pueblo-owned lands, the crest facilities, and the special use permit lands as set forth in this Act.

(b) CREST FACILITIES.—The term ''crest facilities'' means all facilities and developments located on the crest of Sandia Mountain, including the Sandia Crest Electronic Site; electronic site access roads; the Crest House; the upper terminal, restaurant, and related facilities of Sandia Peak Tram Company; the Crest Observation Area; parking lots; restrooms; the Crest Trail (Trail No. 130); hang glider launch sites; and the Kiwanis cabin; as well as the lands upon

which such facilities are located and the lands extending 100 feet along terrain to the west of each such facility, unless a different distance is agreed to in writing between the Forest Service and the Pueblo and documented in the survey of the Area.

(c) EXISTING USES AND ACTIVITIES.—The term ''existing uses and activities'' means uses and activities occurring in the Area on the date of enactment of this Act, or which have been authorized in the Area after November 1, 1995 but before the date of enactment of this Act.

(d) FOREST SERVICE.—The term ''Forest Service'' means the U.S. Forest Service.

(e) LA LUZ TRACT.—The term ''La Luz tract'' means that tract comprised of approximately 31 acres of land owned in fee by the Pueblo and depicted on the map.

(f) LOCAL PUBLIC BODIES.—The term ''local public bodies'' means political subdivisions of the State of New Mexico as defined in New Mexico Code §6–5–1.

(g) MAP.—The term ''map'' means the Forest Service map entitled ''T'uf Shur Bien Preservation Trust Area,'' dated April 2000.

(h) MODIFIED USES OR ACTIVITIES.—The term ''modified uses or activities'' means existing uses which are being modified or reconfigured, but which are not being significantly expanded, including a trail or trailhead being modified, such as to accommodate handicapped access, a parking area being reconfigured though not expanded, or a special use authorization for a group recreation activity being authorized for a different use area or time period.

(i) NEW USES OR ACTIVITIES.—The term ''new uses or activities'' means uses or activities not occurring in the Area on the date of enactment of this Act, as well as existing uses or activities that are being modified such that they significantly expand or alter their previous scope, dimensions, or impacts on the land, water, air and/or wildlife resources of the Area. New uses and activities do not apply to new uses or activities that are categorically excluded from documentation requirements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), or to activities undertaken to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(j) PIEDRA LISA TRACT.—The term ''Piedra Lisa tract'' means that tract comprised of approximately 160 acres of land held in private ownership and depicted on the map.

(k) PUEBLO.—The term ''Pueblo'' means the Pueblo of Sandia in its governmental capacity.

(l) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture, except where otherwise expressly indicated.

(m) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means the Agreement of Compromise and Settlement dated April 4, 2000, between the United States, the Pueblo, and the Sandia Peak Tram Company.

(n) SPECIAL USE PERMIT.—The term ''special use permit'' means the December 1, 1993, Special Use Permit issued by the Forest Service to Sandia Peak Tram Company and Sandia Peak Ski Company, encompassing approximately 46 acres of the corridor presently dedicated to aerial tramway use, and approximately 945 acres of the ski area, as well as the lands described generally in Exhibit A to the December 31, 1993, Special Use Permit, including the maintenance road to the lower tram tower, water storage and distribution facilities, seven helispots, and the other lands described therein.

(o) SUBDIVISIONS.—The term ''subdivisions'' means the subdivisions of Sandia Heights Addition, Sandia Heights North Units I, II, and 3, Tierra Monte, Valley View Acres, and Evergreen Hills, as well as any additional plats and privately owned properties depicted on the map.

(p) TRADITIONAL AND CULTURAL USES.—The terms ''traditional and cultural uses'' and ''traditional and cultural purposes'' mean ceremonial activities, including the placing of ceremonial materials in the Area, and the use, hunting, trapping or gathering of plants, animals, wood, water, and other natural resources, but only for non-commercial purposes.

SEC. 704. T'UF SHUR BIEN PRESERVATION TRUST AREA.

(a) ESTABLISHMENT.—The T'uf Shur Bien Preservation Trust Area is established within the Cibola National Forest and the Sandia Mountain Wilderness as depicted on the map:

(1) to recognize and protect in perpetuity the Pueblo's rights and interests in and to the Area, as specified in section 705(a) of this Act;

(2) to preserve in perpetuity the Wilderness and National Forest character of the Area; and

(3) to recognize and protect in perpetuity the public's longstanding use and enjoyment of the Area.

(b) ADMINISTRATION AND APPLICABLE LAW.—The Secretary, acting through the Forest Service, shall continue to administer the Area as part of the National Forest System and incorporate the provisions of this Act affecting management of the Area, including section 705(a)(3) and section 707.

(c) EXCEPTIONS.—

(1) Traditional and cultural uses by Pueblo members and members of other federally recognized Indian tribes authorized to use the Area by the Pueblo under section 705(a)(4) of this Act shall not be restricted except by the Wilderness Act and its regulations as they exist on the date of enactment of this Act and by applicable federal wildlife protection laws as provided in section 706(a)(2) of this Act.

(2) To the extent that laws enacted or amended after the date of this Act are inconsistent with this Act, they shall not apply to the Area unless expressly made applicable by Congress.

(3) The use of the word ''Trust'' in the name of the Area is in recognition of the Pueblo's specific rights and interests in the Area, and does not confer upon the Pueblo the ownership interest that exists when the Secretary of the Interior accepts the title to land in trust for the benefit of an Indian tribe.

(d) AREA DEFINED.—

(1) The Area shall be comprised of approximately 9890 acres of land within the Cibola National Forest as depicted on the map.

(2) As soon as practicable after enactment of this Act, the Secretary shall file the map and a legal description of the Area with the Committee on Resources of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate. The map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia.

(3) Such map and legal description shall have the same force and effect as if included in this Act, except that

(A) clerical and typographical errors shall be corrected;

(B) changes that may be necessary pursuant to sections 709(b), 709(d), 709(e), 714(c), and 714(d) shall be made; and

(C) to the extent the map and the language of this Act conflict, the language of the Act controls.

(e) NO CONVEYANCE OF TITLE.—The United States' right, title and interest in or to the Area or any part thereof shall not be conveyed to or exchanged with any person, trust, or governmental entity, including the Pueblo, without specific authorization of Congress.

(f) PROHIBITED USES.—Notwithstanding any other provision of law, no use prohibited by the Wilderness Act as of the date of enactment of this Act may occur in the Wilderness portion of the Area; nor may any of the following uses occur in any portion of the Area: gaming or gambling of any kind, mineral production, timber production, and new uses or activities to which the Pueblo objects pursuant to section 705(a)(3) of this Act. The Area is closed to the location of mining claims under the Mining Law of 1872 (30 U.S.C. §22).

(g) NO MODIFICATION OF BOUNDARIES.—Creation of the T'uf Shur Bien Preservation Trust Area shall not affect the boundaries of, nor repeal or disestablish the Sandia Mountain Wilderness or the Cibola National Forest. Establishment of the Area does not in any way modify the existing boundary of the Pueblo grant.

SEC. 705. PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA.

(a) GENERAL.—The Pueblo shall have the following rights and interests in the Area:

(1) free and unrestricted access to the Area for traditional and cultural uses to the extent not inconsistent with the Wilderness Act and its regulations as they exist on the date of enactment of this Act and with applicable federal wildlife protection laws as provided in section 706(a)(2);

(2) perpetual preservation of the Wilderness and National Forest character of the Area under this Act;

(3) rights in the management of the Area as set forth in section 707, which include:

(A) the right to consent or withhold consent to new uses;

(B) the right to consultation regarding modified uses;

(C) the right to consultation regarding the management and preservation of the Area; and

(D) the right to dispute resolution procedures;

(4) exclusive authority, in accordance with its customs and laws, to administer access to the Area for traditional and cultural uses by members of the Pueblo and of other federally recognized Indian tribes; and

(5) such other rights and interests as are enumerated and recognized in sections 704, 705(c), 707, 708, and 709.

(b) LIMITATION.—Except as provided in subsection (a)(4), access to and use of the Area for all other purposes shall continue to be administered by the Secretary through the Forest Service.

(c) COMPENSABLE INTEREST.—

(1) If, by an Act of Congress enacted subsequent to the effective date of this Act, Congress diminishes the Wilderness and National Forest designation of the Area by authorizing a use prohibited by section 704(f) in all or any portion of the Area, or denies the Pueblo access for any traditional and cultural uses in all or any portion of the Area, the United States shall compensate the Pueblo as if the Pueblo had held a fee title interest in the affected portion of the Area and as though the United States had acquired such interest by legislative exercise of its power of eminent domain, and the restrictions of sections 704(f) and 706(a) shall be disregarded in determining just compensation owed to the Pueblo.

(2) Any compensation made to the Pueblo pursuant to subsection (c)(1) does not in any way affect the extinguishment of claims set forth in section 710.

SEC. 706. LIMITATIONS ON PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA.

(a) LIMITATIONS.—The Pueblo's rights and interests recognized in this Act do not include:

(1) any right to sell, grant, lease, convey, encumber or exchange lands in the Area, or any right or interest therein, and any such conveyance shall not have validity in law or equity;

(2) any exemption from applicable federal wildlife protection laws;

(3) any right to engage in any activity or use prohibited in section 704(f); or

(4) any right to exclude persons or governmental entities from the Area.

(b) EXCEPTION.—No person who exercises traditional and cultural use rights as authorized in section 705(a)(4) of this Act may be prosecuted for a federal wildlife offense requiring proof of a violation of a state law or regulation.

SEC. 707. MANAGEMENT OF THE AREA.

(a) PROCESS.—

(1) GENERAL.—

(A) The Forest Service shall consult with the Pueblo of Sandia not less than twice a year, unless otherwise mutually agreed, concerning protection, preservation, and management of the Area, including proposed new and modified uses and activities in the Area and authorizations that are anticipated during the next six months and approved in the preceding six months.

(2) NEW USES AND ACTIVITIES.—

(A) If after consultation the Pueblo of Sandia denies its consent for a new use or activity within 30 days of the consultation, the Forest Service will not be authorized to proceed with the activity or use. If the Pueblo consents to the new use or activity in writing or fails to respond within 30 days, the Forest Service may proceed with the notice and comment process and the environmental analysis.

(B) Before the Forest Service signs a Record of Decision (ROD) or Decision Notice (DN) for a proposed use or activity, the Forest Service will again request Pueblo consent within 30 days of the Pueblo's receipt of the proposed ROD or DN. If the Pueblo refuses to consent, the activity or use will not be authorized. If the Pueblo fails to respond to the consent request within 30 days after the proposed ROD or DN is provided to the Pueblo, the Pueblo will be deemed to have consented to the proposed ROD or DN and the Forest Service may proceed to issue the final ROD or DN.

(3) PUBLIC INVOLVEMENT.—

(A) For proposed new and modified uses and activities, the public shall be provided notice of—

(i) the purpose and need for the proposed action or activity,

(ii) the Pueblo's role in the decision-making process, and

(iii) the Pueblo's position on the proposal.

Any person may file an action in the United States District Court for the District of New Mexico to challenge Forest Service determinations of what constitutes a new or a modified use or activity.

(b) EMERGENCIES AND EMERGENCY CLOSURE ORDERS.—The Forest Service shall retain its existing authorities to manage emergency situations, to provide for public safety, and to issue emergency closure orders in the Area subject to applicable law. The Forest Service shall notify the Pueblo of Sandia regarding emergencies, public safety issues, and emergency closure orders as soon as possible. Such actions are not subject to the Pueblo's right to withhold consent to new uses in the Area as set forth in section 705(a)(3)(i).

(c) DISPUTES INVOLVING FOREST SERVICE MANAGEMENT AND PUEBLO TRADITIONAL USES.—

(1) GENERAL.—In the event that Forest Service management of the Area and Pueblo traditional and cultural uses conflict, and the conflict does not pertain to new or modified uses subject to the process set forth in subsection (a), the process for dispute resolution set forth in this subsection shall take effect.

(2) DISPUTE RESOLUTION PROCESS.—(A) When there is a dispute between the Pueblo and the Forest Service regarding Pueblo traditional and cultural use and Forest Service management of the Area, the party identifying the dispute shall notify the other party in writing addressed to the Governor of the Pueblo or the Regional Forester respectively, setting forth the nature of the dispute. The Regional Forester or designee and the Governor of the Pueblo or designee shall attempt to resolve the dispute for no less than 30 days after notice has been provided before filing an action in United States District Court for the District of New Mexico.

(B) DISPUTES REQUIRING IMMEDIATE RESOLUTION.—In the event of a conflict that requires immediate resolution to avoid imminent, substantial and irreparable harm, the party alleging such conflict shall notify the other party and seek to resolve the dispute within 3 days of the date of notification. If the parties are unable to resolve the dispute within 3 days, either party may file an action for immediate relief in the United States District Court for the District of New Mexico, and the procedural exhaustion requirements set forth above shall not apply.

SEC. 708. JURISDICTION OVER THE AREA.

(a) CRIMINAL JURISDICTION.—Notwithstanding any other provision of law, jurisdiction over crimes committed in the Area shall be allocated as follows:

(1) To the extent that the allocations of criminal jurisdiction over the Area under paragraphs (2), (3), and (4) of this subsection are overlapping, they should be construed to allow for the exercise of concurrent criminal jurisdiction.

(2) The Pueblo shall have jurisdiction over crimes committed by its members or by members of another federally recognized Indian tribe who are present in the Area with the Pueblo's permission pursuant to section 705(a)(4).

(3) The United States shall have jurisdiction over—

(A) the offenses listed in section 1153 of title 18, U.S. Code, including any offenses added to the list in that statute by future amendments thereto, when such offenses are committed by members of the Pueblo and other federally recognized Indian tribes;

(B) crimes committed by any person in violation of laws and regulations pertaining to the protection and management of National Forests;

(C) enforcement of federal criminal laws of general applicability; and

(D) any other offense committed by a member of the Pueblo against a non-member of the Pueblo. Any offense which is not defined and punished by federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State of New Mexico.

(4) The State of New Mexico shall have jurisdiction over any crime under its laws committed by a person not a member of the Pueblo.

(b) CIVIL JURISDICTION.—

(1) Except as provided in paragraphs (2), (3), (4), and (5), the United States, the State of New Mexico, and local public bodies shall have the same civil adjudicatory, regulatory, and taxing jurisdiction over the Area as they exercised prior to the enactment of this Act.

(2) The Pueblo shall have exclusive civil adjudicatory jurisdiction over—

(A) disputes involving only members of the Pueblo;

(B) civil actions brought by the Pueblo against members of the Pueblo; and

(C) civil actions brought by the Pueblo against members of other federally recognized Indian tribes for violations of understandings between the Pueblo and that member's tribe regarding use or access to the Area for traditional and cultural purposes.

(3) The Pueblo shall have no regulatory jurisdiction over the Area with the exception of:

(A) exclusive authority to regulate traditional and cultural uses by the Pueblo's own members and to administer access to the Area by other federally recognized Indian tribes for traditional and cultural uses, to the extent such regulation is consistent with this Act; and

(B) The Pueblo shall have exclusive authority to regulate hunting and trapping in the Area by its members that is related to traditional and cultural purposes: Provided that any hunting and trapping conducted by Pueblo members as a traditional and cultural use within the Area, excluding that part of the Area contained within Sections 13, 14, 23, 24, and the northeast quarter of Section 25 of T12N, R4E, and Section 19 of T12N, R5E, N.M.P.M., Sandoval County, New Mexico, shall be regulated by the Pueblo in a manner consistent with the regulations of the State of New Mexico concerning types of weapons and proximity of hunting and trapping to trails and residences.

(4) The Pueblo shall have no authority to impose taxes within the Area.

(5) The State of New Mexico and local public bodies shall have no authority within the Area to tax the activities or the property of the Pueblo, its members, or members of other federally recognized Indian tribes authorized to use the Area under section 705(a)(4) of this Act.

SEC. 709. SUBDIVISIONS AND OTHER PROPERTY INTERESTS.

(a) SUBDIVISIONS.—The subdivisions are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the subdivisions and property interests therein, and the laws of the Pueblo shall not apply to the subdivisions. The jurisdiction of the State of New Mexico and local public bodies over the subdivisions and property interests therein shall continue in effect, except that upon application of the Pueblo a tract comprised of approximately 35 contiguous, non-subdivided acres in the northern section of Evergreen Hills owned in fee by the Pueblo at the time of enactment of this Act, shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior. Such trust land shall be subject to all limitations on use pertaining to the Area contained in this Act.

(b) PIEDRA LISA.—The Piedra Lisa tract is excluded from the Area notwithstanding any subsequent acquisition of the tract by the Pueblo. If the Secretary or the Pueblo acquires the Piedra Lisa tract, the tract shall be transferred to the United States and is hereby declared to be held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 706(a)(4) shall not apply outside of Forest Service System trails. Until acquired by the Secretary or Pueblo, the jurisdiction of the State of New Mexico and local public bodies over the Piedra Lisa tract and property interests therein shall continue in effect.

(c) CREST FACILITIES.—The lands on which the crest facilities are located are excluded from the Area. The Pueblo shall have no

civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the lands on which the crest facilities are located and property interests therein, and the laws of the Pueblo shall not apply to those lands. The pre-existing jurisdictional status of those lands shall continue in effect.

(d) SPECIAL USE PERMIT AREA.—The lands described in the special use permit are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory, or any other form of jurisdiction, over the lands described in the special use permit, and the laws of the Pueblo shall not apply to those lands. The pre-existing jurisdictional status of these lands shall continue in effect. In the event the special use permit, during its existing term or any future terms or extensions, requires amendment to include other lands in the Area necessary to realign the existing or any future replacement tram line, associated structures, or facilities, the lands subject to that amendment shall thereafter be excluded from the Area and shall have the same status under this Act as the lands currently described in the special use permit. Any lands dedicated to aerial tramway and related uses and associated facilities that are excluded from the special use permit through expiration, termination or the amendment process shall thereafter be included in the Area but only after final agency action is no longer subject to any appeals.

(e) LA LUZ TRACT.—The La Luz tract now owned in fee by the Pueblo is excluded from the Area and upon application by the Pueblo shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 706(a)(4) shall not apply outside of Forest Service System trails.

(f) EVERGREEN HILLS ACCESS.—The Secretary, consistent with section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210), shall ensure that Forest Service Road 333D, as depicted on the map, is maintained in an adequate condition consistent with the terms of section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210).

(g) PUEBLO FEE LANDS.—Those properties not specifically addressed in subsections (a) or (e) of this section that are owned in fee by the Pueblo within the subdivisions are excluded from the Area and shall be subject to the jurisdictional provisions of subsection (a) of this section.

(h) RIGHTS-OF-WAY.—

(1) ROAD RIGHTS-OF-WAY.—(A) In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the County of Bernalillo, New Mexico, in perpetuity, the following irrevocable rights of way for roads identified on the map in order to provide for public access to the subdivisions, the special use permit land and facilities, the other leasehold and easement rights and interests of the Sandia Peak Tram Company and its affiliates, the Sandia Heights South Subdivision, and the Area:

(i) a right-of-way for Tramway Road;

(ii) a right-of-way for Juniper Hill Road North;

(iii) a right-of-way for Juniper Hill Road South;

(iv) a right-of-way for Sandia Heights Road; and

v) a right-of-way for Juan Tabo Canyon Road (Forest Road No. 333).

(B) The road rights-of-way shall be subject to the following conditions:

(i) Such rights-of-way may not be expanded or otherwise modified without the Pueblo's written consent, but road maintenance to the rights of way shall not be subject to Pueblo consent;

(ii) The rights-of-way shall not authorize uses for any purpose other than roads without the Pueblo's written consent.

(iii) Except as provided in the Settlement Agreement, existing rights-of-way or leasehold interests and obligations held by the Sandia Peak Tram Company and its affiliates, shall be preserved, protected, and unaffected by this Act.

(2) UTILITY RIGHTS-OF-WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant irrevocable utility rights-of-way in perpetuity across Pueblo lands to appropriate utility or other service providers serving Sandia Heights Addition, Sandia Heights North Units I, II, and 3, the special use permit lands, Tierra Monte, and Valley View Acres, including rights-of-way for natural gas, power, water, telecommunications, and cable television services. Such rights-of-way shall be within existing utility corridors as depicted on the map or, for certain water lines, as described in the existing grant of easement to the Sandia Peak Utility Company; provided that use of water line easements outside the utility corridors depicted on the map shall not be used for utility purposes other than water lines and associated facilities. Except where above-ground facilities already exist, all new utility facilities shall be installed underground unless the Pueblo agrees otherwise. To the extent that enlargement of existing utility corridors is required for any technologically-advanced telecommunication, television, or utility services, the Pueblo shall not unreasonably withhold agreement to a reasonable enlargement of the easements described above.

(i) FOREST SERVICE RIGHTS OF WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the Forest Service the following irrevocable rights-of-way in perpetuity for Forest Service trails crossing land of the Pueblo in order to provide for public access to the Area and through Pueblo lands:

(1) a right-of-way for a portion of the Crest Spur Trail (Trail No. 84), crossing a portion of the La Luz tract, as identified on the map;

(2) a right-of-way for the extension of the Foothills Trail (Trail No. 365A), as identified on the map; and

(3) a right-of-way for that portion of the Piedra Lisa North-South Trail (Trail No. 135) crossing the Piedra Lisa tract, if the Pueblo ever acquires the Piedra Lisa tract.

SEC. 710. EXTINGUISHMENT OF CLAIMS.

(a) GENERAL.—Except for the rights and interests in and to the Area specifically recognized in sections 704, 705, 707, 708, and 709, all Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to lands within the Area, any part thereof, and property interests therein, as well as related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished. The United States' title to the Area is hereby confirmed.

(b) SUBDIVISIONS.—Any Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to the subdivisions and property interests therein (except for land owned in fee by the Pueblo as of the date of enactment of this Act), as well as related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished.

(c) SPECIAL USE AND CREST FACILITIES AREAS.—Any Pueblo right, title and interest of any kind, including aboriginal claims, and related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished in and to

(1) the lands described in the special use permit; and

(2) the lands on which the crest facilities are located.

(d) PUEBLO AGREEMENT.—As provided in the Settlement Agreement, the Pueblo has agreed to the relinquishment and extinguishment of those claims, rights, titles and interests extinguished pursuant to subsection (a), (b) and (c) of this section.

(e) CONSIDERATION.—The recognition of the Pueblo's rights and interests in this Act constitutes adequate consideration for the Pueblo's agreement to the extinguishment of the Pueblo's claims in this section and the right-of-way grants contained in section 709, and it is the intent of Congress that those rights and interests may only be diminished by a future Act of Congress specifically authorizing diminishment of such rights, with express reference to this Act.

SEC. 711. CONSTRUCTION.

(a) STRICT CONSTRUCTION.—This Act recognizes only enumerated rights and interests, and no additional rights, interests, obligations, or duties shall be created by implication.

(b) EXISTING RIGHTS.—To the extent there exists within the Area at the time of enactment of this Act any valid private property rights associated with the Piedra Lisa tract or other private lands that are not otherwise addressed in this Act, such rights are not modified or otherwise affected by this Act, nor is the exercise of any such right subject to the Pueblo's right to withhold consent to new uses in the Area as set forth in section 705(a)(3)(i).

(c) NOT PRECEDENT.—The provisions of this Act creating certain rights and interests in the National Forest System are uniquely suited to resolve the Pueblo's claim and the geographic and societal situation involved, and shall not be construed as precedent for any other situation involving management of the National Forest System.

(d) FISH AND WILDLIFE.—Except as provided in section 708(b)(3), nothing in this Act shall be construed as affecting the responsibilities of the State of New Mexico with respect to fish and wildlife, including the regulation of hunting, fishing, or trapping within the Area.

(e) FEDERAL LAND POLICY AND MANAGEMENT ACT.—Section 316 (43 U.S.C. 1746) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) is amended by adding the following sentence at the end thereof: ''Any corrections authorized by this section which affect the boundaries of, or jurisdiction over, lands administered by another Federal agency shall be made only after consultation with, and the approval of, the head of such other agency.''

SEC. 712. JUDICIAL REVIEW.

(a) ENFORCEMENT.—Suit to enforce the provisions of this Act may be brought to the extent permitted under chapter 7 of title 5, United States Code. Judicial review shall be based upon the administrative record and subject to the applicable standard of review set forth in section 706 of title 5.

(b) WAIVER.—Suit may be brought against the Pueblo for declaratory judgment or injunctive relief under this Act, but no money damages, including costs or attorney's fees, may be imposed on the Pueblo as a result of such judicial action.

(c) VENUE.—Venue for any suit provided for in this section, as well as any suit to contest the constitutionality of this Act, shall lie only in the United States District Court for the District of New Mexico.

SEC. 713. EFFECTIVE DATE.

The provisions of this Act shall take effect immediately upon enactment of this Act.

SEC. 714. AUTHORIZATION OF APPROPRIATIONS AND RELATED AUTHORITIES.

(a) GENERAL.—There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act, including such sums as may be necessary for the Forest Service to acquire ownership of, or other interest in, lands within the external boundaries of the Area as authorized in subsection (d).

(b) CONTRIBUTIONS.—

(1) The Secretary is authorized to accept contributions from the Pueblo, or from other persons or governmental entities, to perform and complete a survey of the Area, or otherwise for the benefit of the Area in accordance with this Act.

(2) The Secretary shall complete a survey of the Area within one year of the date of enactment of this Act.

(c) LAND EXCHANGE.—Within 180 days after the date of enactment of this Act, after consultation with the Pueblo, the Secretary is directed in accordance with applicable laws to prepare and offer a land exchange of National Forest lands outside the Area and contiguous to the northern boundary of the Pueblo's Reservation within sections 10, 11, and 14 of T12N, R4E, N.M.P.M., Sandoval County, New Mexico excluding Wilderness land, for lands owned by the Pueblo in the Evergreen Hills subdivision in Sandoval County contiguous to National Forest land, and the La Luz tract in Bernalillo County. Notwithstanding section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)), the Secretary may either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership. Any funds received by the Secretary as a result of the exchange shall be deposited in the fund established under the Act of December 4, 1967, known as the Sisk Act (16 U.S.C. 484a), and shall be available to purchase non-Federal lands within or adjacent to the National Forests in the State of New Mexico. All lands exchanged or conveyed to the Pueblo are hereby declared to be held in trust for the Pueblo by the United States and added to the Pueblo's Reservation subject to all existing and outstanding rights and shall remain in their natural state and shall not be subject to commercial development of any kind. Lands exchanged or conveyed to the Forest Service shall be subject to all limitations on use pertaining to the Area under this Act. If the land exchange offer is not made within 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, a report explaining the reasons for the failure to make the offer including an assessment of the need for any additional legislation that may be necessary for the exchange. If additional legislation is not necessary, the Secretary, consistent with this section, should proceed with the exchange pursuant to existing law.

(d) LAND ACQUISITION.—(1) The Secretary is authorized to acquire lands owned by the Pueblo within the Evergreen Hills Subdivision in Sandoval County or any other privately held lands inside of the exterior boundaries of the Area. The boundaries of the Cibola National Forest and the Area shall be adjusted to encompass any lands acquired pursuant to this section.

(2) In the event the Pueblo acquires the Piedra Lisa tract, the Secretary shall compensate the Pueblo for the fair market value of:

(A) the right-of-way established pursuant to section 709(i)(3); and

(B) the conservation easement established by the limitations on use of the Piedra Lisa tract pursuant to section 709(b).

(e) REIMBURSEMENT OF CERTAIN COSTS.—

(1) The Pueblo, the County of Bernalillo, New Mexico, and any person who owns or has owned property inside of the exterior boundaries of the Area as designated on the map, and who has incurred actual and direct costs as a result of participating in the case of Pueblo of Sandia v. Babbitt, Civ. No. 94–2624 HHG (D.D.C.), or other proceedings directly related to resolving the issues litigated in that case, may apply for reimbursement in accordance with this section. Costs directly related to such participation which shall qualify for reimbursement shall be—

(A) dues or payments to a homeowner association for the purpose of legal representation; and

(B) legal fees and related expenses.

(2) The reimbursement provided in this subsection shall be in lieu of that which might otherwise be available pursuant to the Equal Access to Justice Act (24 U.S.C. 2412).

(3) The Secretary of the Treasury is authorized and directed to make reimbursement payments as provided in this section out of any money not otherwise appropriated.

(4) Applications for reimbursement shall be filed within 180 days of the date of enactment of this Act with the Department of the Treasury, Financial Management Service, Washington, D.C.

(5) In no event shall any one party be compensated in excess of $750,000 and the total amount reimbursed pursuant to this section shall not exceed $3,000,000.

PRIVILEGE OF THE FLOOR

Mr. CLELAND. I ask unanimous consent that my press secretary, Patricia Murphy, be admitted to the floor.

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

Mr. REID. Mr. President, I ask unanimous consent that privileges of the floor be granted to Ross Arends, a detailee in the office of Senator KOHL, during the pendency of the homeland security bill.

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

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S currency
Senator John McCain:									
United States	Dollar				6,409.34				6,409.34
Romania	Dollar		380.00						380.00
Georgia	Dollar		232.00						232.00
Croatia	Dollar		209.00						209.00
Bosnia	Dollar		184.00						184.00
Slovenia	Dollar		209.00						209.00
Dan Twining:									
United States	Dollar				6,955.34				6,955.34
Romania	Dollar		425.00						425.00
Georgia	Dollar		220.00						220.00
Croatia	Dollar		292.00						292.00
Bosnia	Dollar		196.00						196.00
Slovenia	Dollar		355.00						355.00
Maren Leed:									
United States	Dollar				5,871.07				5,871.07
Germany	Euro		470.80		60.00		13.00		543.80
Italy	Euro		110.75				18.00		128.75
Joseph T. Sixeas:									
United States	Dollar				3,696.00				3,696.00
Italy	Euro		110.75						110.75
Germany	Euro		220.00						220.00
Ambrose R. Hock:									
United States	Dollar				3,187.83				3,187.83
South Korea	Won		1,002.86						1,002.86

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2000—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S currency
Daniel J. Cox, Jr.:									
United States	Dollar				2,522.10				2,522.10
South Korea	Won		1,090.99						1,090.99
Total			5,708.15		28,701.68		31.00		34,440.83

CARL LEVIN,
Chairman, Committee on Armed Services, Oct. 1, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Phil Gramm:									
United Kingdom	Dollar		2,000.98						2,000.98
Norway	Dollar		504.33						504.33
Senator Mike Crapo:									
United Kingdom	Dollar		2,630.00						2,630.00
Norway	Dollar		717.00						717.00
Senator John Ensign:									
United Kingdom	Dollar		2,580.00						2,580.00
Norway	Dollar		693.97						693.97
Ms. Ruth Cymber:									
United Kingdom	Dollar		2,250.00						2,250.00
Norway	Dollar		529.69						529.69
[1] Delegation Expenses:									
United Kingdom	Dollar						14,073.85		14,073.85
Total			11,905.97				14,073.85		25,979.82

*Delegation expenses include direct payments and reimbursements to the Department of State under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384.

PAUL S. SARBANES,
Chairman, Committee on Banking, Housing and Urban Affairs, Oct. 7, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SENATE BUDGET COMMITTEE FOR TRAVEL FROM AUG. 23 TO SEPT. 1, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Bernadette Kilroy:									
Thailand	Baht		358.45						358.45
Cambodia	Dollar		152.50						152.50
Viet Nam (HCMC)	Dollar		321.60						321.60
Viet Nam (Hanoi)	Dollar		143.80						143.80
Hong Kong	Dollar		703.56		6,252.83				6,956.39
Total			1,679.91		6,252.83				7,932.74

KENT CONRAD,
Chairman, Senate Budget Committee, Oct. 1, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JULY 1, 2002 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Sara Barth:									
South Africa	Rand		1,788.00		2,962.67				4,750.67
Floyd DesChamps:									
South Africa	Rand		1,839.27		3,265.10				5,104.37
Amy A. Fraenkel:									
South Africa	Rand		1,538.42		3,045.60				4,584.02
Total			5,156..69		9,273.37				14,439.06

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
Nov. 5, 2002.

AMENDMENT TO 2ND QUARTER 2002, CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Shirley Neff:									
United Kingdom	Dollar		1,200.00		5,642.56				6,842.56

AMENDMENT TO 2ND QUARTER 2002, CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total			1,200.00		5,642.56				6,842.56

JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, Sept. 17, 2002.

AMENDMENT TO 2ND QUARTER 2002 CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM APR. 1, 2002 TO JUNE 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator George Voinovich: [1]									
United Kingdom	Dollar						152.97		152.97
Total							152.97		152.97

[1] Delegation expenses include direct payments and reimbursements to the Department of State under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384.

JOSEPH I. LIEBERMAN,
Chairman, Committee on Governmental Affairs, Oct. 7, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JULY 1, 2002 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Fred Thompson:									
United States					6,290.34				6,290.34
Romania	Lei		396.20						396.20
Georgia	Lari		245.51						245.51
Croatia	Kuna		174.76						174.76
Bosnia/Herzegovina	Marka		165.10						165.10
Slovenia	Tolar		200.95						200.95
Total			1,182.52		6,290.34				7,472.86

JOSEPH I. LIEBERMAN,
Chairman, Committee on Governmental Affairs, Oct. 7, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Lugar			2,084.00						2,084.00
	Dollar				4,985.34				4,985.34
Kenneth Myers, Jr.			2,320.00						2,320.00
	Dollar				4,985.34				4,985.34
Senator Richard Shelby			3,420.00						3,420.00
Christopher Ford			3,086.00						3,086.00
Anne Caldwell			3,420.00						3,420.00
Senator Bob Graham			1,559.00						1,559.00
Senator Mike DeWine			1,325.00						1,325.00
Senator Evan Bayh			1,153.00						1,153.00
	Dollar				2,627.54				2,627.54
Robert Filippone			1,559.00						1,559.00
James Barnett			1,159.00						1,159.00
Senator Jon Kyl			2,926.83						2,926.83
Matthew Pollard			3,272.00						3,272.00
	Dollar				5,106.74				5,106.74
Lorenzo Goco			1,066.00						1,066.00
	Dollar				6,270.88				6,270.88
Randy Bookout			150.00						150.00
	Dollar				4,985.00				4,985.00
Mary Patricia Lawrence			1,133.00						1,133.00
	Dollar				6,270.88				6,270.88
Hyon Kim			934.61						934.61
	Dollar				6,270.88				6,270.88
Senator Barbara Mikulski			1,686.00						1,686.00
	Dollar				9,172.52				9,172.52
George K. Johnson			9,389.66						9,389.66
	Dollar				8,070.19				8,070.19
Julia Frifield			1,542.00						1,542.00
	Dollar				9,172.52				9,172.52
Tracye Winfrey			608.00						608.00
	Dollar				5,142.11				5,142.11
James Barnett			953.00						953.00
	Dollar				6,572.33				6,572.33
Christopher Ford			1,095.00						1,095.00
	Dollar				9,243.63				9,243.63
James Hensler			872.08						872.08
	Dollar				9,243.63				9,243.63
Christopher Jackson			933.00						933.00
	Dollar				9,107.22				9,107.22
Matthew Pollard			1,077.34						1,077.34
	Dollar				9,313.63				9,313.63
Randy Bookout			2,605.00						2,605.00
	Dollar				9,004.00				9,004.00
Peter Dorn			1,422.08						1,422.08
	Dollar				9,107.22				9,107.22
Linda Taylor			1,145.97						1,145.97
	Dollar				9,107.22				9,107.22
Dana Lesemann			299.00						299.00
	Dollar				5,930.43				5,930.43
Linda Taylor			1,008.00						1,008.00
	Dollar				5,142.11				5,142.11
Peter Dorn			1,187.00						1,187.00
	Dollar				5,828.48				5,828.48

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Patti Litman	Dollar		1,008.00						1,008.00
Total			57,398.57		160,659.84				218,058.41

BOB GRAHAM,
Chairman, Committee on Intelligence, Sept. 30, 2002

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Erika Schlager:									
U.S.A.	Dollar				3,292.38				3,292.38
Poland	Dollar		2,846.75						2,846.75
Representative Alcee L. Hastings:									
U.S.A.	Dollar				5,243.01				5,243.01
Spain	Dollar		2,317.00						2,317.00
Janice L. Helwig:									
U.S.A.	Dollar				4,807.52				4,807.52
Austria	Dollar		13,489.51						13,489.51
Poland	Dollar		2,988.00						2,988.00
Marlene Kaufmann:									
U.S.A.	Dollar				2,916.30				2,916.30
Romania	Dollar		810.00						810.00
Donald Kursch:									
U.S.A.	Dollar				3,292.38				3,292.38
Poland	Dollar		2,609.67						2,609.67
Ronald McNamara:									
U.S.A.	Dollar				5,403.88				5,403.88
Austria	Dollar		670.13						670.13
Spain	Dollar		132.00						132.00
Michael Ochs:									
U.S.A.	Dollar				10,047.71				10,047.71
Azerbaijan	Dollar		1,108.00						1,108.00
Poland	Dollar		1,328.00						1,328.00
Dorothy D. Taft:									
U.S.A.	Dollar				3,492.97				3,492.97
Macedonia	Dollar		613.00						613.00
Poland	Dollar		900.30						900.30
Maureen Walsh:									
U.S.A.	Dollar				3,966.44				3,966.44
Poland	Dollar		2,846.75						2,846.75
Robert A. Hand:									
U.S.A.	Dollar				3,487.99				3,487.99
(F.R.) Yugoslavia	Dollar		1,128.00						1,128.00
Bosnia Herzegovina	Dollar		1,078.00						1,078.00
Total			34,865.11		45,950.58				80,815.69

BEN NIGHTHORSE CAMPBELL,
Chairman, the Commission on Security and Cooperation in Europe,
Oct. 31, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TRENT LOTT FOR TRAVEL FROM JUNE 28 TO JULY 7, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Trent Lott:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Robert Bennett:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Craig Thomas:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Jim Bunning:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Benjamin Nelson:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Dr. John Eisold:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Mr. Ron Bonjean:									
Russia	Ruble		1,357.00						1,357.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Jeff McEvoy:									
Russia	Ruble		1,360.00						1,360.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Lauren Stanton:									
Russia	Ruble		1,302.00						1,302.00
Latvia	Lat		514.00						514.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TRENT LOTT FOR TRAVEL FROM JUNE 28 TO JULY 7, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ireland	Euro		658.00						658.00
Sally Walsh:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Susan Wells:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Robert Wilkie:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Eric Womble:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Delegation Expenses: [1]									
Russia	Ruble						21,404.47		21,404.47
Latvia	Lat						10,293.85		10,293.85
Ireland	Euro						14,162.72		14,162.72
TOTAL			33,275.00				45,861.04		79,136.04

[1] Delegation expenses include payments and reimbursements to the Department of State, Executive Branch, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

TRENT LOTT,
Republican Leader, Oct. 16, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TOM DASCHLE FOR TRAVEL FROM AUG. 21 TO SEPT. 1, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Daschle:									
South Africa	Rand		522.00						522.00
Kenya	Schilling		980.00						980.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Senator Jeff Bingaman:									
United States	Dollar				4,669.12				4,669.12
South Africa	Rand		422.00						422.00
Kenya	Schilling		777.50						777.50
Botswana	Pula		332.00						332.00
Nigeria	Naira		460.00						460.00
Senator Harry Reid:									
South Africa	Rand		522.00						522.00
Kenya	Schilling		975.00						975.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Senator Ben Nighthorse Campbell:									
South Africa	Rand		522.00						522.00
Kenya	Schilling		977.50						977.50
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Alton Dillard:									
South Africa	Rand		600.00						600.00
Kenya	Schilling		886.00						886.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Denis McDonough:									
South Africa	Rand		528.00						528.00
Kenya	Schilling		681.00						681.00
Botswana	Pula		427.00						427.00
Nigeria	Naira		500.00						500.00
Laura Petrou:									
South Africa	Rand		528.00						528.00
Kenya	Schilling		678.50						678.50
Botswana	Pula		427.00						427.00
Nigeria	Naira		500.00						500.00
Jim Ryan									
South Africa	Rand		600.00						600.00
Kenya	Schilling		876.00						876.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Sally Walsh:									
South Africa	Rand		600.00						600.00
Kenya	Schilling		876.00						876.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Delegation Expenses: [1]									
South Africa	Rand						17,963.33		17,963.33
Kenya	Schilling						13,234.70		13,234,70
Botswana	Pula						10,547.53		10,547.53
Nigeria	Naira						9,831.33		9,831.33
TOTAL			21,749.50		4,669.12		51,576.89		77,995.51

[1] Delegation expenses include payments and reimbursements to the Department of State, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

TOM DASCHLE,
Majority Leader, Nov. 9, 2002.

OIL REGION NATIONAL HERITAGE AREA ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 605, H.R. 695.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 695) to establish the Oil Region National Heritage Area.

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

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

H.R. 695

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

[SECTION 1. SHORT TITLE; DEFINITIONS.

[(a) SHORT TITLE.—This Act may be cited as the ''Oil Region National Heritage Area Act''.

[(b) DEFINITIONS.—For the purposes of this Act, the following definitions shall apply:

[(1) HERITAGE AREA.—The term ''Heritage Area'' means the Oil Region National Heritage Area established in section 3(a).

[(2) MANAGEMENT ENTITY.—The term ''management entity'' means the Oil Heritage Region, Inc., or its successor entity.

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

[SEC. 2. FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress finds the following:

[(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

[(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

[(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

[(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

[(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

[(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

[(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

[(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania, local subdivisions of the Commonwealth of Pennsylvania, volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

[(b) PURPOSE.—The purpose of this Act is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

[SEC. 3. OIL REGION NATIONAL HERITAGE AREA.

[(a) ESTABLISHMENT.—There is hereby established the Oil Region National Heritage Area.

[(b) BOUNDARIES.—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled ''Oil Region National Heritage Area'', numbered OIRE/20,000 and dated October, 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary of the Interior shall publish in the Federal Register, as soon as practical after the date of the enactment of this Act, a detailed description and map of the boundaries established under this subsection.

[(c) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 5(b).

[SEC. 4. COMPACT.

[To carry out the purposes of this Act, the Secretary shall enter into a compact with the management entity. The compact shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

[SEC. 5. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

[(a) AUTHORITIES OF THE MANAGEMENT ENTITY.—The management entity may use funds made available under this Act for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

[(1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;

[(2) hiring and compensating staff; and

[(3) undertaking initiatives that advance the purposes of the Heritage Area.

[(b) MANAGEMENT PLAN.—The management entity shall develop a management plan for the Heritage Area that—

[(1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

[(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

[(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

[(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

[(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

[(6) recommends policies for resource management which consider and detail application of appropriate land and water management techniques, including, but not limited to, the development of intergovernmental and interagency cooperative agreements to protect the Heritage Area's historical, cultural, recreational, and natural resources in a manner consistent with supporting appropriate and compatible economic viability;

[(7) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

[(8) includes an analysis of ways in which local, State, and Federal programs, including the role for the National Park Service in the Heritage Area, may best be coordinated to promote the purposes of this Act;

[(9) lists any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

[(10) includes an interpretation plan for the Heritage Area.

[(c) DEADLINE; TERMINATION OF FUNDING.—

[(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this Act.

[(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this Act.

[(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

[(1) give priority to implementing actions set forth in the compact and management plan;

[(2) assist units of government, regional planning organizations, and nonprofit organizations in—

[(A) establishing and maintaining interpretive exhibits in the Heritage Area;

[(B) developing recreational resources in the Heritage Area;

[(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

[(D) the restoration of any historic building relating to the themes of the Heritage Area;

[(E) ensuring that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

[(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of this Act;

[(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

[(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

[(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

[(A) conduct public meetings at least annually regarding the implementation of the management plan;

[(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and

[(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

[(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this Act to acquire real property or an interest in real property.

[SEC. 6. DUTIES AND AUTHORITIES OF THE SECRETARY.

[(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

[(1) IN GENERAL.—

[(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this Act, including updating and implementing a management plan that is submitted under section 5(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

[(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this Act (including updating and implementing a management plan that is submitted under section 5(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives), upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

[(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

[(A) implementation of the management plan;

[(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

[(C) development and application of techniques promoting the preservation of cultural and historic properties;

[(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

[(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

[(F) implementation of initiatives prior to approval of the management plan.

[(3) DOCUMENTATION OF STRUCTURES.—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

[(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this Act not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

[(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

[(2) The level of public participation in the development of the management plan.

[(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

[(c) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

[(d) APPROVING CHANGES.—The Secretary shall review and approve amendments to the management plan under section 5(b) that make substantial changes. Funds appropriated under this Act may not be expended to implement such changes until the Secretary approves the amendments.

[(e) EFFECT OF INACTION.—If the Secretary does not approve or disapprove a management plan, revision, or change within 90 days after it is submitted to the Secretary, then such management plan, revision, or change shall be deemed to have been approved by the Secretary.

[SEC. 7. DUTIES OF OTHER FEDERAL ENTITIES.

[Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

[(1) consult with the Secretary and the management entity with respect to such activities;

[(2) cooperate with the Secretary and the management entity in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

[(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

[SEC. 8. SUNSET.

[The Secretary may not make any grant or provide any assistance under this Act after the expiration of the 15-year period beginning on the date of the enactment of this Act.

[SEC. 9. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

[Nothing in this Act shall preclude the management entity from using Federal funds available under Acts other than this Act for the purposes for which those funds were authorized.

[SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

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

[(1) not more than $1,000,000 for any fiscal year; and

[(2) not more than a total of $10,000,000.

[(b) 50 PERCENT MATCH.—Financial assistance provided under this Act may not be used to pay more than 50 percent of the total cost of any activity carried out with that assistance.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Omnibus National Heritage Area Act of 2002''.

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TITLE I—OIL REGION NATIONAL HERITAGE AREA

SEC. 101. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the ''Oil Region National Heritage Area''.

(b) DEFINITIONS.—For the purposes of this title, the following definitions shall apply:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Oil Region National Heritage Area established in section 103(a).

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the Oil Heritage Region, Inc., or its successor entity.

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

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania, local subdivisions of the Commonwealth of Pennsylvania, volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

(b) PURPOSE.—The purpose of this title is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

SEC. 103. OIL REGION NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Oil Region National Heritage Area.

(b) BOUNDARIES.—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled ''Oil Region National Heritage Area'', numbered OIRE/20,000 and dated October 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary shall publish in the Federal Register, as soon as practical after the date of the enactment of this title, a detailed description and map of the boundaries established under this subsection.

(c) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally-based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 105(b).

SEC. 104. MEMORANDUM OF UNDERSTANDING.

To carry out the purposes of this title, the Secretary shall enter into a memorandum of understanding with the management entity. The memorandum shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

SEC. 105. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES.—The management entity may use funds made available under this title for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

(1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;

(2) hiring and compensating staff; and

(3) undertaking initiatives that advance the purposes of the Heritage Area.

(b) MANAGEMENT PLAN.—The management entity shall develop a management plan for the Heritage Area that—

(1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

(6) recommends policies for resource management which consider and detail application of appropriate land and water management techniques, including, but not limited to, the development of intergovernmental and interagency cooperative agreements to protect the Heritage Area's historical, cultural, recreational, and natural resources in a manner consistent with supporting appropriate and compatible economic viability;

(7) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

(8) includes an analysis of ways in which local, State, and Federal programs, including the role for the National Park Service in the Heritage Area, may best be coordinated to promote the purposes of this title;

(9) list any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

(10) includes an interpretation plan for the Heritage Area.

(c) DEADLINE; TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this title.

(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this title.

(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

(1) give priority to implementing actions set forth in the compact and management plan;

(2) assist units of government, regional planning organizations, and nonprofit organizations in—

(A) establishing and maintaining interpretative exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

(D) the restoration of any historic building relating to the themes of the Heritage Area;

(E) ensuring that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of the title;

(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

(A) conduct public meetings at least annually regarding the implementation of the management plan;

(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and

(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

SEC. 106. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—

(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this title, including updating and implementing a management plan that is submitted under section 105(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this title (including updating

and implementing a management plan that is submitted under section 105(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives, upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

(A) implementation of the management plan;

(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

(C) development and application of techniques promoting the preservation of cultural and historic properties;

(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

(F) implementation of initiatives prior to approval of the management plan.

(3) DOCUMENTATION OF STRUCTURES.—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this title not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

(2) The level of public participation in the development of the management plan.

(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

(c) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(d) APPROVING CHANGES.—The Secretary shall review and approve amendments to the management plan under section 105(b) that make substantial changes. Funds appropriated under this title may not be expended to implement such changes until the Secretary approves the amendments.

SEC. 107. DUTIES OF OTHER FEDERAL ENTITIES.

Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

SEC. 108. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

Nothing in this title shall preclude the management entity from using Federal funds available under Acts other than this title for the purposes for which those funds were authorized.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 110. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE II—ARABIA MOUNTAIN NATIONAL HERITAGE AREA

SEC. 201. SHORT TITLE.

This title may be cited as the ''Arabia Mountain Heritage Area Act of 2002''.

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Arabia Mountain area contains a variety of natural, cultural, historical, scenic, and recreational resources that together represent distinctive aspects of the heritage of the United States that are worthy of recognition, conservation, interpretation, and continuing use;

(2) the best methods for managing the resources of the Arabia Mountain area would be through partnerships between public and private entities that combine diverse resources and active communities;

(3) Davidson-Arabia Mountain Nature Preserve, a 535-acre park in DeKalb County, Georgia—

(A) protects granite outcrop ecosystems, wetland, and pine and oak forests; and

(B) includes federally-protected plant species;

(4) Panola Mountain, a national natural landmark, located in the 860-acre Panola Mountain State Conservation Park, is a rare example of a pristine granite outcrop;

(5) The archaeological site at Miners Creek Preserve along the South River contains documented evidence of early human activity;

(6) the city of Lithonia, Georgia, and related sites of Arabia Mountain and Stone Mountain possess sites that display the history of granite mining as an industry and culture in Georgia, and the impact of that industry on the United States;

(7) the community of Klondike is eligible for designation as a National Historic District; and

(8) the city of Lithonia has two structures listed on the National Register of Historic Places.

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

(1) to recognize, preserve, promote, interpret, and make available for the benefit of the public the natural, cultural, historical, scenic, and recreational resources in the area that includes Arabia Mountain, Panola Mountain, Miners Creek, and other significant sites and communities; and

(2) to assist the state of Georgia and the counties of DeKalb, Rockdale, and Henry in the State in developing and implementing an integrated cultural, historical, and land resource management program to protect, enhance, and interpret the significant resources within the heritage area.

SEC. 203. DEFINITIONS.

In this title:

(1) HERITAGE AREA.—The term ''heritage area'' means the Arabia Mountain National Heritage Area established by section 204.

(2) MANAGEMENT ENTITY.— The term ''management entity'' means the Arabia Mountain Heritage Area Alliance or its successor.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the heritage area developed under section 206.

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

(5) STATE.—The term ''State'' means the State of Georgia.

SEC. 204. ARABIA MOUNTAIN NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Arabia Mountain National Heritage Area in the State.

(b) BOUNDARIES.—The heritage area shall consist of certain parcels of land in the counties of DeKalb, Rockdale, and Henry in the State, as generally depicted on the map entitled ''The Preferred Concept'' contained in the document entitled ''Arabia Mountain National Heritage Area Feasibility Study'', dated February 28, 2001.

(c) AVAILABILITY OF MAP.— The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) MANAGEMENT ENTITY.— The Arabia Mountain Heritage Area Alliance shall be the management entity for the heritage area.

SEC. 205. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of developing and implementing the management plan, the management entity may—

(1) make grants to, and enter into cooperative agreements with, the State, political subdivisions of the State, and private organizations;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—

(1) MANAGEMENT PLAN.—

(A) IN GENERAL.— The management entity shall develop and submit to the Secretary the management plan.

(B) CONSIDERATIONS.—In developing and implementing the management plan, the management entity shall consider the interests of diverse governmental, business, and nonprofit groups within the heritage area.

(2) PRIORITIES.—The management entity shall give priority to implementing actions described in the management plan, including—

(A) assisting units of government and nonprofit organizations in preserving resources within the heritage area; and

(B) encouraging local governments to adopt land use policies consistent with the management of the heritage area and the goals of the management plan.

(3) PUBLIC MEETINGS.—The management entity shall conduct public meetings at least quarterly on the implementation of the management plan.

(4) ANNUAL REPORT.—For any year in which Federal funds have been made available under this title, the management entity shall submit to the Secretary an annual report that describes—

(A) the accomplishments of the management entity; and

(B) the expenses and income of the management entity.

(5) AUDIT.—The management entity shall—

(A) make available to the Secretary for audit all records relating to the expenditure of Federal funds and any matching funds; and

(B) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of those funds.

(c) USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The management entity shall not use Federal funds made available under this title to acquire real property or an interest in real property.

(2) OTHER SOURCES.—Nothing in this title precludes the management entity from using Federal funds made available under other Federal laws for any purpose for which the funds are authorized to be used.

SEC. 206. MANAGEMENT PLAN.

(a) IN GENERAL.—The management entity shall develop a management plan for the heritage area that incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, cultural, historical, scenic, and recreational resources of the heritage area.

(b) BASIS.—The management plan shall be based on the preferred concept in the document entitled ''Arab Mountain National Heritage Area Feasibility Study'', dated February 28, 2001.

(c) CONSIDERATION OF OTHER PLANS AND ACTIONS.—The management plan shall—

(1) take into consideration State and local plans; and

(2) involve residents, public agencies, and private organizations in the heritage area.

(d) REQIREMENTS.—The management plan shall include—

(1) an inventory of the resources in the heritage area, including—

(A) a list of property in the heritage area that—

(i) relates to the purposes of the heritage area; and

(ii) should be preserved, restored, managed, or maintained because of the significance of the property; and

(B) an assessment of cultural landscapes within the heritage area;

(2) provisions for the protection, interpretation, and enjoyment of the resources of the heritage area consistent with the purposes of this title;

(3) an interpretation plan for the heritage area;

(4) a program for implementation of the management plan that includes—

(A) actions to be carried out by units of government, private organizations, and public-private partnerships to protect the resources of the heritage area; and

(B) the identification of existing and potential sources of funding for implementing the plan; and

(5) a description and evaluation of the management entity, including the membership and organizational structure of the management entity.

(e) SUBMISSION TO SECRETARY FOR APPROVAL.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall submit the management plan to the Secretary for approval.

(2) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (1), the Secretary shall not provide any additional funding under this title until such date as a management plan for the heritage area is submitted to the Secretary.

(f) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receiving the management plan submitted under subsection (e), the Secretary, in consultation with the State, shall approve or disapprove the management plan.

(2) ACTION FOLLOWING DISAPPROVAL.—

(A) REVISION.—If the Secretary disapproves a management plan submitted under paragraph (1), the Secretary shall—

(i) advise the management entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the management plan; and

(iii) allow the management entity to submit to the Secretary revisions to the management plan.

(B) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (A)(iii), the Secretary shall approve or disapprove the revision.

(g) REVISION OF MANAGEMENT PLAN.—

(1) IN GENERAL.—After approval by the Secretary of a management plan, the management entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any revisions to the management plan that the management entity considers to be appropriate.

(2) EXPENDITURE OF FUNDS.—No funds made available under this title shall be used to implement any revision proposed by the management entity under paragraph (1)(B) until the Secretary approves the revision.

SEC. 207. TECHNICAL AND FINANCIAL ASSISTANCE.

(a) IN GENERAL.—At the request of the management entity, the Secretary may provide technical and financial assistance to the heritage area to develop and implement the management plan.

(b) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the conservation of the significant natural, cultural, historical, scenic, and recreational resources that support the purposes of the heritage area; and

(2) the provision of educational, interpretive, and recreational opportunities that are consistent with the resources and associated values of the heritage area.

SEC. 208. EFFECT ON CERTAIN AUTHORITY.

(a) OCCUPATIONAL, SAFETY, CONSERVATION, AND ENVIRONMENTAL REGULATION.—Nothing in this title—

(1) imposes an occupational, safety, conservation, or environmental regulation on the heritage area that is more stringent than the regulations that would be applicable to the land described in section 204(b) but for the establishment of the heritage area by section 204; or

(2) authorizes a Federal agency to promulgate an occupational, safety, conservation, or environmental regulation for the heritage area that is more stringent than the regulations applicable to the land described in section 204(b) as of the date of enactment of this title, solely as a result of the establishment of the heritage area by section 204.

(b) LAND USE REGULATION.—Nothing in this title—

(1) modifies, enlarges, or diminishes any authority of the Federal Government or a State or local government to regulate any use of land as provided for by law (including regulations) in existence on the date of enactment of this title; or

(2) grants powers of zoning or land use to the management entity.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 210. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE III—FREEDOM'S WAY NATIONAL HERITAGE AREA

SEC. 301. SHORT TITLE.

This title may be cited as the ''Freedom's Way National Heritage Area Act''.

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the cultural and natural legacies of an area encompassing 36 communities in Massachusetts and 6 communities in New Hampshire have made important and distinctive contributions to the national character of America;

(2) recognizing and protecting those legacies will help sustain the quality of life in the future;

(3) significant legacies of the area include—

(A) the early settlement of the United States and the early evolution of democratic forms of government;

(B) the development of intellectual traditions of the philosophies of freedom, democracy, and conservation;

(C) the evolution of social ideas and religious freedom;

(D) the role of immigrants and industry in contributing to ethnic diversity;

(E) Native American and African American resources; and

(F) the role of innovation and invention in cottage industries;

(4) the communities in the area know the value of the legacies but need a cooperative framework and technical assistance to achieve important goals by working together;

(5) there is a Federal interest in supporting the development of a regional framework to assist the States, local governments, local organizations, and other persons in the region with conserving, protecting, and bringing recognition to the heritage of the area for the educational and recreation benefit of future generations of Americans;

(6) significant examples of the area's resources include—

(A) Walden Pond State Reservation in Concord, Massachusetts;

(B) Minute Man National Historical Park in the State of Massachusetts;

(C) Shaker Villages in Shirley and Harvard in the State of Massachusetts;

(D) Wachusett Mountain State Reservation, Fitchburg Art Museum, and Barrett House in New Ipswich, New Hampshire; and

(E) Beaver Brook Farms and Lost City of Monson in Hollis, New Hampshire;

(7) the study entitled ''Freedom's Way Heritage Area Feasibility Study'', prepared by the Freedom's Way Heritage Association, Inc., and the Massachusetts Department of Environmental Management, demonstrates that there are sufficient nationally distinctive historical resources necessary to establish the Freedom's Way National Heritage Area; and

(8) the Freedom's Way Heritage Association, Inc., should oversee the development of the Freedom's Way National Heritage Area.

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

(1) to foster a close working relationship between the Secretary and all levels of government, the private sector, and local communities in the States of Massachusetts and New Hampshire;

(2) to assist the entities referred to in paragraph (1) in preserving the special historic identity of the Heritage Area; and

(3) to manage, preserve, protect, and interpret the cultural, historical, and natural resources of the Heritage Area for the educational and inspirational benefit of future generations.

SEC. 303. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Freedom's Way National Heritage Area established by section 304(a).

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the management entity for the Heritage Area designated by section 304(d).

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area developed under section 305.

(4) MAP.—The term ''Map'' means the map entitled ''Freedom's Way National Heritage Area'', numbered FRWA P–75/80,000 and dated July 2002.

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

SEC. 304. FREEDOM'S WAY NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Freedom's Way National Heritage Area in the States of Massachusetts and New Hampshire.

(b) BOUNDARIES.—

(1) IN GENERAL.—The Heritage Area shall consist of the land within the boundaries of the Heritage Area, as depicted on the Map.

(2) REVISION.—The boundaries of the Heritage Area may be revised if the revision is—

(A) proposed in the management plan;

(B) approved by the Secretary in accordance with section 305(c); and

(C) placed on file in accordance with subsection (c).

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a legal description of the Heritage Area.

(2) AVAILABILITY.—The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) MANAGEMENT ENTITY.—The Freedom's Way Heritage Association, Inc., shall serve as the management entity for the Heritage Area.

SEC. 305. MANAGEMENT PLAN.

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall develop and submit to the Secretary for approval a management plan for the Heritage Area that presents comprehensive recommendations and strategies for the conservation, funding, management, and development of the Heritage Area.

(b) REQUIREMENTS.—The management plan shall—

(1) take into consideration and coordinate Federal, State, and local plans to present a unified historic preservation and interpretation plan;

(2) involve residents, public agencies, and private organizations in the Heritage Area;

(3) describe actions that units of government and private organizations recommend for the protection of the resources of the Heritage Area;

(4) identify existing and potential sources of Federal and non-Federal funding for the conservation, management, and development of the Heritage Area; and

(5) include—

(A) an inventory of the cultural, historic, natural, or recreational resources contained in the Heritage Area, including a list of property that—

(i) is related to the themes of the Heritage Area; and

(ii) should be conserved, restored, managed, developed, or maintained;

(B) a recommendation of policies for resource management and protection that—

(i) apply appropriate land and water management techniques;

(ii) develop intergovernmental cooperative agreements to manage and protect the cultural, historic, and natural resources and recreation opportunities of the Heritage Area; and

(iii) support economic revitalization efforts;

(C) a program of strategies and actions to implement the management plan that—

(i) identifies the roles of agencies and organizations that are involved in the implementation of the management plan and the role of the management entity;

(ii) includes—

(I) restoration and construction plans or goals;

(II) a program of public involvement;

(III) annual work plans; and

(IV) annual reports;

(D) an analysis of ways in which Federal, State, and local programs may best be coordinated to promote the purposes of this title;

(E) an interpretive and educational plan for the Heritage Area;

(F) any revisions proposed by the management entity to the boundaries of the Heritage Area and requested by the affected local government; and

(G) a process to provide public access to the management entity for the purpose of attempting to resolve informally any disputes arising from the management plan.

(c) FAILURE TO SUBMIT.—If the management entity fails to submit the management plan to the Secretary in accordance with subsection (a), the Heritage Area shall no longer qualify for Federal funding.

(d) APPROVAL OR DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve the management plan, the Secretary shall consider whether—

(A) the management entity afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the management plan;

(B) the resource protection and interpretation strategies contained in the management plan would adequately protect the cultural and historic resources of the Heritage Area; and

(C) the Secretary has received adequate assurances from the appropriate State and local officials whose support is needed to ensure the effective implementation of the State and local aspects of the management plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan under paragraph (1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 60 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(e) AMENDMENTS.—

(1) IN GENERAL.—In accordance with subsection (b), the Secretary shall approve or disapprove each amendment to the management plan that the Secretary determines may make a substantial change to the management plan.

(2) USE OF FUNDS.—Funds made available under this title shall not be expended by the management entity to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 306. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—The Management Entity may, for purposes of preparing and implementing the management plan, use funds made available under this title to—

(1) make grants to, and enter into cooperative agreements with, the States of Massachusetts and New Hampshire (including a political subdivision thereof), a nonprofit organizations, or any person;

(2) hire and compensate staff;

(3) obtain funds from any source (including a program that has a cost-sharing requirement); and

(4) contract for goods and services.

(b) DUTIES OF THE MANAGEMENT ENTITY.—In addition to developing the management plan, the management entity shall—

(1) give priority to the implementation of actions, goals, and strategies set forth in the management plan, including assisting units of government and other persons in—

(A) carrying out the programs that recognize and protect important resource values in the Heritage Area;

(B) encouraging economic viability in the Heritage Area in accordance with the goals of the management plan;

(C) establishing and maintaining interpretive exhibits in the Heritage Area;

(D) developing recreational and educational opportunities in the Heritage Area;

(E) increasing public awareness of and appreciation for the cultural, historical, and natural resources of the Heritage Area;

(F) restoring historic buildings that are located in the Heritage Area and relate to the themes of the Heritage Area; and

(G) installing throughout the Heritage Area clear, consistent, and appropriate signs identifying public access points and sites of interest;

(2) prepare and implement the management plan while considering the interests of diverse units of government, businesses, private property owners, and nonprofit groups within the Heritage Area;

(3) conduct public meetings at least quarterly regarding the development and implementation of the management plan;

(4) for any fiscal year for which Federal funds are received under this title—

(A) submit to the Secretary a report that describes, for the year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which a grant was made;

(B) make available for audit by Congress, the Secretary, and appropriate units of governments, all records pertaining to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing expenditure of Federal funds by any entity, that the receiving entity make available for audit all records pertaining to the expenditure of the funds.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—

(1) FEDERAL FUNDS.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(2) OTHER FUNDS.—Notwithstanding paragraph (1), the management entity may acquire real property or an interest in real property using non-Federal funds.

SEC. 307. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—On the request of the management entity, the Secretary may provide technical and financial assistance for the development and implementation of the management plan.

(2) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall give priority to actions that assist in—

(A) conserving the significant cultural, historic, and natural resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(3) SPENDING ON NON-FEDERAL PROPERTY.—The management entity may expend Federal funds made available under this title on nonfederally owned property that is—

(A) identified in the management plan; or

(B) listed or eligible for listing on the National Register of Historic Places.

(4) OTHER ASSISTANCE.—The Secretary may enter into cooperative agreements with public and private organizations to carry out this subsection.

(b) OTHER FEDERAL AGENCIES.—Any Federal entity conducting or supporting an activity that directly affects the Heritage Area shall—

(1) consider the potential effect of the activity on the purposes of the Heritage Area and the management plan;

(2) consult with the management entity regarding the activity; and

(3) to the maximum extent practicable, conduct or support the activity to avoid adverse effects on the Heritage Area.

SEC. 308. LAND USE REGULATION; APPLICABILITY OF FEDERAL LAW.

(a) LAND USE REGULATION.—

(1) IN GENERAL.—The management entity shall provide assistance and encouragement to State and local governments, private organizations, and persons to protect and promote the resources and values of the Heritage Area.

(2) EFFECT.—Nothing in this title—

(A) Affects the authority of the State or local governments to regulate under law any use of land; or

(B) grants any power of zoning or land use to the management entity.

(b) PRIVATE PROPERTY.—

(1) IN GENERAL.—The management entity shall be an advocate for land management practices consistent with the purposes of the Heritage Area.

(2) EFFECT.—Nothing in this title—

(A) abridges the rights of any person with regard to private property;

(B) affects the authority of the State or local government regarding private property; or

(C) imposes any additional burden on any property owner.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title 10,000,000, of which not more than $1,000,0900 may be authorized to be appropriate for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 310. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this Act.

TITLE IV—GREAT BASIN NATIONAL HERITAGE AREA

SEC. 401. SHORT TITLE.

This title may be cited as the ''Great Basin National Heritage Area Act of 2002.''

SEC. 402. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the natural, cultural, and historic heritage of the North American Great Basin is nationally significant;

(2) communities in the Great Basin Heritage Area (including the towns of Delta, Utah, Ely, Nevada, and the surrounding communities) are located in a classic western landscape that contains long natural visits, isolated higher desert valleys, mountain ranges, ranches, mines, historic railroads, archaeological sites, and tribal communities;

(3) the Native American, pioneer, ranching, mining, timber, and railroad heritages in the Great Basin Heritage Area include the social history and living cultural traditions of a rich diversity of nationalities;

(4) the pioneer, Mormon and other religious settlements, ranching, timber, and mining activities of the region played and continue to play a significant role in the development of the United States, shaped by—

(A) the unique geography of the Great Basin;

(B) an influx of people of Greek, Chinese, Basque, Serb, Croat, Italian, and Hispanic descent; and

(C) a Native American presence (Western Shoshone, Northern and Southern Paiute, and Goshute) that continues in the Great Basin today;

(5) the Great Basin housed internment camps for Japanese-American citizens during World War II, one of which, Topaz, was located within the Heritage Area;

(6) the pioneer heritage of the Heritage Area includes the Pony Express route and stations, the Overland Stage, and many examples of 19th century exploration of the western United States;

(7) the Native American heritage of the Heritage Area dates back thousands of years and includes—

(A) archaeological sites;

(B) petroglyphs and pictographs;

(C) the westernmost village of the Fremont culture; and

(D) communities of Western Shoshone, Paiute, and Goshute tribes;

(8) the Heritage Area contains multiple biologically diverse ecological communities that are home to exceptional species such as—

(A) bristlecone pines, the oldest living trees in the world;

(B) wildlife adapted to harsh desert conditions;

(C) unique plant communities, lakes, and streams; and

(D) native Bonneville cutthroat trout;

(9) the air and water quality of the Heritage Area is among the best in the United States, and the clear air permits outstanding viewing of the night skies;

(10) the Heritage Area includes unique and outstanding geologic features such as numerous limestone caves, classic basin and range topography with playa lakes, alluvial fans, volcanics, cold and hot springs, and recognizable features of ancient Lake Bonneville;

(11) the Heritage Area includes an unusual variety of open space and recreational and educational opportunities because of the great quantity of ranching activity and public land (including city, county, and State parks, national forests, Bureau of Land Management land, and a national park);

(12) there are significant archaeological, historical, cultural, natural, scenic, and recreational resources in the Great Basin to merit the involvement of the Federal Government in the development, in cooperation with the Great Basin Heritage Area Partnership and other local and governmental entities, of programs and projects to—

(A) adequately conserve, protect, and interpret the heritage of the Great Basin for present and future generations; and

(B) provide opportunities in the Great Basin for education; and

(13) the Great Basin Heritage Area Partnership shall serve as the management entity for a Heritage Area established in the Great Basin.

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

(1) to foster a close working relationship with all levels of government, the private sector, and the local communities within White Pine County, Nevada, Millard County, Utah, and the Duckwater Shoshone Reservation;

(2) to enable communities referred to in paragraph (1) to conserve their heritage while continuing to develop economic opportunities; and

(3) to conserve, interpret, and develop the archaeological, historical, cultural, natural, scenic, and recreational resources related to the unique ranching, industrial, and cultural heritage of the Great Basin, in a manner that promotes multiple uses permitted as of the date of enactment of this title, without managing or regulating land use.

SEC. 403. DEFINITIONS.

In this title:

(1) GREAT BASIN.—The term ''Great Basin'' means the North American Great Basin.

(2) HERITAGE AREA.—The term ''Heritage Area'' means the Great Basin National Heritage Area established by section 404(a).

(3) MANAGEMENT ENTITY.—The term ''management entity'' means the Great Basin Heritage Area Partnership established by section 404(c).

(4) MANAGEMENT PLAN.—The term ''management plan'' means the plan developed by the management entity under section 406(a).

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

SEC. 404. GREAT BASIN NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Great Basin National Heritage Area.

(b) COMPOSITION.—The Heritage Area shall include historical, cultural, natural, scenic, and recreational resources within White Pine County, Nevada, Millard County, Utah, and the Duckwater Shoshone Reservation in Nye County, Nevada. The boundaries of the Heritage Area shall be specified in detail in the management plan developed in section 406.

(c) MANAGEMENT ENTITY.—

(1) IN GENERAL.—The Great Basin Heritage Area Partnership shall serve as the management entity for the Heritage Area.

(2) BOARD OF DIRECTORS.—The Great Basin Heritage Area Partnership shall be governed by a board of directors that consists of—

(A) 4 members who are appointed by the Board of County Commissioners for Millard County, Utah;

(B) 4 members who are appointed by the Board of County Commissioners for White Pine County, Nevada; and

(C) a representative appointed by each Native American Tribe participating in the Heritage Area.

SEC. 405. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—In carrying out this title, the Secretary, in consultation with the Governors of the States of Nevada and Utah, and each tribe participating in the Heritage Area, shall enter into a memorandum of understanding with the management entity.

(b) INCLUSIONS.—The memorandum of understanding shall include information relating to the objectives and management of the Heritage Area, including—

(1) a description of the resources within the Heritage Area;

(2) a discussion of the goals and objectives of the Heritage Area, including—

(A) an explanation of the proposed approach to conservation, development, and interpretation; and

(B) a general outline of the anticipated protection and development measures;

(3) a description of the management entity;

(4) a list and statement of the financial commitment of the initial partners to be involved in developing and implementing the management plan; and

(5) a description of the role of the States of Nevada and Utah in the management of the Heritage Area.

(c) ADDITIONAL REQUIREMENTS.—In developing the terms of the memorandum of understanding, the Secretary and the management entity shall—

(1) provide opportunities for local participation; and

(2) include terms that ensure, to the maximum extent practicable, timely implementation of all aspects of the memorandum of understanding.

(d) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review any amendments of the memorandum of understanding proposed by the management entity or the Governor of the State of Nevada or Utah.

(2) USE OF FUNDS.—Funds made available under this title shall not be expended to implement a change made by a proposed amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 406. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall develop and submit to the Secretary for approval a management plan for the Heritage Area that presents clear and comprehensive recommendations for the conservation, funding, management, and development of the Heritage Area.

(b) CONSIDERATIONS.—In developing the management plan, the management entity shall—

(1) provide for the participation of local residents, public agencies, and private organizations located within the counties of Millard County, Utah, White Pine County, Nevada, and the Duckwater Shoshone Reservation in the protection and development of resources of the Heritage Area, taking into consideration State, tribal, county, and local land use plans in existence on the date of enactment of this title;

(2) identify sources of funding; and

(3) include—

(A) an inventory of the archaeological, historical, cultural, natural, scenic, and recreational resources contained in the Heritage Area, including a list of public and tribal property that—

(i) is related to the themes of the Heritage Area; and

(ii) should be preserved, restored, managed, developed, or maintained because of the archaeological, historical, cultural, natural, scenic, and recreational significance of the property;

(B) a program for implementation of the management plan by the management entity, including—

(i) plans for restoration, stabilization, rehabilitation, and construction of public or tribal property; and

(ii) specific commitments by the identified partners referred to in section 405(b)(4) for the first 5 years of operation; and

(C) an interpretation plan for the Heritage Area; and

(4) develop a management plan that will not infringe on private property rights without the consent of the owner of the private property.

(c) FAILURE TO SUBMIT.—If the management entity fails to submit a management plan to the Secretary in accordance with subsection (a), the Heritage Area shall no longer qualify for Federal funding.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receipt of a management plan under subsection (a), the Secretary, in consultation with the Governors of the States of Nevada and Utah, shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve a management plan, the Secretary shall consider whether the management plan—

(A) has strong local support from a diversity of landowners, business interests, nonprofit organizations, and governments within the Heritage Area;

(B) is consistent with an complements continued economic activity in the Heritage Area;

(C) has a high potential for effective partnership mechanisms;

(D) infringes on private property rights; and

(E) provides methods to take appropriate action to ensure that private property rights are observed.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan under subsection (d)(1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 90 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(e) IMPLEMENTATION.—On approval of the management plan as provided in section 406(d)(1), the management entity, in conjunction with the Secretary, shall take appropriate steps to implement the management plan.

(f) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review each amendment to the management plan that the Secretary determines may make a substantial change to the management plan.

(2) USE OF FUNDS.—Funds made available under this title shall not be expended to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 407. AUTHORITY AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES.—The management entity may, for purposes of preparing and implementing the management plan, use funds made available under this title to—

(1) make grants to, and enter into cooperative agreements with, a State (including a political subdivision), a tribe, a private organization, or any person; and

(2) hire and compensate staff.

(b) DUTIES.—In addition to developing the management plan, the management entity shall—

(1) give priority to implementing the memorandum of understanding and the management plan, including taking steps to—

(A) assist units of government, regional planning organizations, and nonprofit organizations in—

(i) establishing and maintaining interpretive exhibits in the Heritage Area;

(ii) developing recreational resources in the Heritage Area;

(iii) increasing public awareness of and appreciation for the archaeological, historical, cultural, natural, scenic, and recreational resources and sites in the Heritage Area; and

(iv) if requested by the owner, restoring, stabilizing, or rehabilitating any private, public, or tribal historical building relating to the themes of the Heritage Area;

(B) encourage economic viability and diversity in the Heritage Area in accordance with the objectives of the management plan; and

(C) encourage the installation of clear, consistent, and environmentally appropriate signage identifying access points and sites of interest throughout the Heritage Area;

(2) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area;

(3) conduct public meetings within the Heritage Area at least semiannually regarding the implementation of the management plan;

(4) submit substantial amendments (including any increase of more than 20 percent in the cost estimates for implementation) to the management plan to the Secretary for approval by the Secretary; and

(5) for any year for which Federal funds are received under this title—

(A) submit to the Secretary a report that describes, for the year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which any loan or grant was made;

(B) make available for audit all records pertaining to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing the expenditure of federal funds by any entity, that the receiving entity make available for audit all records pertaining to the expenditure of the funds.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(d) PROHIBITION ON THE REGULATION OF LAND USE.—The management entity shall not regulate land use within the Heritage Area.

SEC. 408. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary may, on request of the management entity, provide technical and financial assistance to develop and implement the management plan and memorandum of understanding.

(2) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall, on request of the management entity, give priority to actions that assist in—

(A) conserving the significant archaeological, historical, cultural, natural, scenic, and recreational resources of the Heritage Area; and

(B) providing education, interpretive, and recreational opportunities, consistent with those resources.

(b) APPLICATION OF FEDERAL LAW.—The establishment of the Heritage Area shall have no effect on the application of any Federal law to any property within the Heritage Area.

SEC. 409. LAND USE REGULATION; APPLICABILITY OF FEDERAL LAW.

(a) LAND USE REGULATION.—Nothing in this title—

(1) modifies, enlarges, or diminishes any authority of the Federal, State, tribal, or local government to regulate by law (including by regulation) any use of land; or

(2) grants any power of zoning or land use to the management entity.

(b) APPLICABILITY OF FEDERAL LAW.—Nothing in this title—

(1) imposes on the Heritage Area, as a result of the designation of the Heritage Area, any regulation that is not applicable to the area within the Heritage area as of the date of enactment of this title; or

(2) authorizes any agency to promulgate a regulation that applies to the Heritage Area solely as a result of the designation under this title.

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 411. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE V—NORTHERN RIO GRANDE NATIONAL HERITAGE AREA

SEC. 501. SHORT TITLE.

This title may be cited as the ''Northern Rio Grande National Heritage Area Act''.

SEC. 502. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) northern New Mexico encompasses a mosaic of cultures and history, including eight Pueblos and the descendants of Spanish ancestors who settled in the area in 1598;

(2) the combination of cultures, languages, folk arts, customs, and architecture make northern New Mexico unique;

(3) the area includes spectacular natural, scenic, and recreational resources;

(4) there is broad support from local governments and interested individuals to establish a National Heritage Area to coordinate and assist in the preservation and interpretation of these resources;

(5) in 1991, the National Park Service study Alternative Concepts for Commemorating Spanish Colonization identified several alternatives consistent with the establishment of a National Heritage Area, including conducting a comprehensive archaeological and historical research program, coordinating a comprehensive interpretation program, and interpreting a cultural heritage scene; and

(6) establishment of a National Heritage Area in northern New Mexico would assist local communities and residents in preserving these unique cultural, historical and natural resources.

SEC. 503. DEFINITIONS.

As used in this title—

(1) the term ''heritage area'' means the Northern Rio Grande Heritage Area; and

(2) the term ''Secretary'' means the Secretary of the Interior.

SEC. 504. NORTHERN RIO GRANDE NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Northern Rio Grande National Heritage Area in the State of New Mexico.

(b) BOUNDARIES.—The heritage area shall include the counties of Santa Fe, Rio Arriba, and Taos.

(c) MANAGEMENT ENTITY.—

(1) The Northern Rio Grande National Heritage Area, Inc., a non-profit corporation chartered in the State of New Mexico, shall serve as the management entity for the heritage area.

(2) The Board of Directors for the management entity shall include representatives of the State of New Mexico, the counties of Santa Fe, Rio Arriba and Taos, tribes and pueblos within the heritage area, the cities of Santa Fe, Espanola and Taos, and members of the general public. The total number of Board members and the number of Directors representing State, local

and tribal governments and interested communities shall be established to ensure that all parties have appropriate representation on the Board.

SEC. 505. AUTHORITY AND DUTIES OF THE MANAGEMENT ENTITY.

(a) MANAGEMENT PLAN.—

(1) Not later than 3 years after the date of enactment of this title, the management entity shall develop and forward to the Secretary a management plan for the heritage area.

(2) The management entity shall develop and implement the management plan in cooperation with affected communities, tribal and local governments and shall provide for public involvement in the development and implementation of the management plan.

(3) The management plan shall, at a minimum—

(A) provide recommendations for the conservation, funding, management, and development of the resources of the heritage area;

(B) identify sources of funding.

(C) include an inventory of the cultural, historical, archaeological, natural, and recreational resources of the heritage area;

(D) provide recommendations for educational and interpretive programs to inform the public about the resources of the heritage area; and

(E) include an analysis of ways in which local, State, Federal, and tribal programs may best be coordinated to promote the purposes of this title.

(4) If the management entity fails to submit a management plan to the secretary as provided in paragraph (1), the heritage area shall no longer be eligible to receive Federal funding under this title until such time as a plan is submitted to the Secretary.

(5) The Secretary shall approve or disapprove the management plan within 90 days after the date of submission. If the Secretary disapproves the management plan, the Secretary shall advise the management entity in writing of the reasons therefore and shall make recommendations for revisions to the plan.

(6) The management entity shall periodically review the management plan and submit to the Secretary any recommendations for proposed revisions to the management plan. Any major revisions to the management plan must be approved by the Secretary.

(b) AUTHORITY.—The management entity may make grants and provide technical assistance to tribal and local governments, and other public and private entities to carry out the management plan.

(c) DUTIES.—The management entity shall—

(1) give priority in implementing actions set forth in the management plan;

(2) coordinate with tribal and local governments to better enable them to adopt land use policies consistent with the goals of the management plan;

(3) encourage by appropriate means economic viability in the heritage area consistent with the goals of the management plan; and

(4) assist local and tribal governments and non-profit organizations in—

(A) establishing and maintaining interpretive exhibits in the heritage area;

(B) developing recreational resources in the heritage area;

(C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological and natural resources and sits in the heritage area;

(D) the restoration of historic structures related to the heritage area; and

(E) carrying out other actions that the management entity determines appropriate to fulfill the purposes of this title, consistent with the management plan.

(d) PROHIBITION ON ACQUIRING REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

(e) PUBLIC MEETINGS.—The management entity shall hold public meetings at least annually regarding the implementation of the management plan.

(f) ANNUAL REPORTS AND AUDITS.—

(1) For any year in which the management entity receives Federal funds under this title, the management entity shall submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each entity to which any grant was made by the management entity.

(2) The management entity shall make available to the Secretary for audit all records relating to the expenditure of Federal funds and any matching funds. The management entity shall also require, for all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organization make available to the Secretary for audit all records concerning the expenditure of those funds.

SEC. 506. DUTIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may, upon request of the management entity, provide technical and financial assistance to develop and implement the management plan.

(b) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the conservation of the significant natural, cultural, historical, archaeological, scenic, and recreational resources of the heritage area; and

(2) the provision of educational, interpretive, and recreational opportunities consistent with the resources and associated values of the heritage area.

SEC. 507. SAVINGS PROVISIONS.

(a) NO EFFECT ON PRIVATE PROPERTY.—Nothing in this title shall be construed—

(1) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands; or

(2) to grant the management entity any authority to regulate the use of privately owned lands.

(b) TRIBAL LANDS.—Nothing in this title shall restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

(c) AUTHORITY OF GOVERNMENTS.—Nothing in this title shall—

(1) modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(2) authorize the management entity to assume any management authorities over such lands.

(d) TRUST RESPONSIBILITIES.—Nothing in this title shall diminish the Federal Government's trust responsibilities or government-to-government obligations to any federally recognized Indian tribe.

SEC. 508. SUNSET.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

SEC. 509. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

TITLE VI—NATIONAL MORMON PIONEER HERITAGE AREA

SEC. 601. SHORT TITLE.

This title may be cited as the ''National Mormon Pioneer Heritage Area Act''.

SEC. 602. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the historical, cultural, and natural heritage legacies of Mormon colonization and settlement are nationally significant;

(2) in the area starting along the Highway 89 corridor at the Arizona border, passing through Kane, Garfield, Piute, Sevier, Wayne, and Sanpete Counties in the State of Utah, and terminating in Fairview, Utah, there are a variety of heritage resources that demonstrate—

(A) the colonization of the western United States; and

(B) the expansion of the United States as a major world power;

(3) the great relocation to the western United States was facilitated by—

(A) the 1,400 mile trek from Illinois to the Great Salt Lake by the Mormon pioneers; and

(B) the subsequent colonization effort in Nevada, Utah, the southeast corner of Idaho, the southwest corner of Wyoming, large areas of southeastern Oregon, much of southern California, and areas along the eastern border of California;

(4) the 250-mile Highway 89 corridor from Kanab to Fairview, Utah, contains some of the best features of the Mormon colonization experience in the United States;

(5) the landscape, architecture, traditions, beliefs, folk life, products, and events along Highway 89 convey the heritage of the pioneer settlement;

(6) the Boulder Loop, Capitol Reef National Park, Zion National Park, Bryce Canyon National Park, and the Highway 89 area convey the compelling story of how early settlers—

(A) interacted with Native Americans; and

(B) established towns and cities in a harsh, yet spectacular, natural environment;

(7) the colonization and settlement of the Mormon settlers opened up vast amounts of natural resources, including coal, uranium, silver, gold, and copper;

(8) the Mormon colonization played a significant role in the history and progress of the development and settlement of the western United States; and

(9) the artisans, crafters, innkeepers, outfitters, historic landscape, customs, national parks, and architecture in the Heritage Area make the Heritage Area unique.

(b) PURPOSE.—The purpose of this title is to establish the Heritage Area to—

(1) foster a close working relationship with all levels of government, the private sector, residents, business interests, and local communities in the State;

(2) empower communities in the State to conserve, preserve, and enhance the heritage of the communities while strengthening future economic opportunities;

(3) conserve, interpret, and develop the historical, cultural, natural, and recreational resources within the Heritage Area; and

(4) expand, foster, and develop heritage businesses and products relating to the cultural heritage of the Heritage Area.

SEC. 603. DEFINITIONS.

In this title:

(1) ALLIANCE.—The term ''Alliance'' means the Utah Heritage Highway 89 Alliance.

(2) BOARD.—The term ''Board'' means the Board of Directors of the Alliance.

(3) HERITAGE AREA.—The term ''Heritage Area'' means the National Mormon Pioneer Heritage Area established by section 604(a).

(4) MANAGEMENT PLAN.—The term ''management plan'' means the plan developed by the Board under section 606(a).

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

(6) STATE.— The term ''State'' means the State of Utah.

SEC. 604. NATIONAL MORMON PIONEER HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the National Mormon Pioneer Heritage Area.

(b) BOUNDARIES.—

(1) IN GENERAL.—The boundaries of the Heritage Area shall include areas in the State that are—

(A) related to the corridors—

(i) from the Arizona border northward through Kanab, Utah, and to the intersection of Highway 89 and Highway 12, including Highway 12 and Highway 24 as those highways loop off Highway 89 and rejoin Highway 89 at Sigurd;

(ii) from Highway 89 at the intersection of Highway 12 through Panguitch, Junction, Marysvale, and Sevier County to Sigurd;

(iii) continuing northward along Highway 89 through Axtell and Sterling, Sanpete County, to Fairview, Sanpete County, at the junction with Utah Highway 31; and

(iv) continuing northward along Highway 89 through Fairview and Thistle Junction, to the junction with Highway 6; and

(B) located in the following communities; Kanab, Mt. Carmel, Orderville, Glendale, Alton, Cannonville, Tropic, Henrieville, Escalante, Boulder, Teasdale, Fruita, Hanksville, Torrey, Bicknell, Loa, Hatch, Panquitch, Circleville, Antimony, Junction, Marysvale, Koosharem, Sevier, Joseph, Monroe, Elsinore, Richfield, Glenwood, Sigurd, Aurora, Salina, Mayfield, Sterling, Gunnison, Fayette, Manti, Ephraim, Spring City, Mt. Pleasant, Moroni, Fountain Green, and Fairview.

(2) MAP.—The Secretary shall prepare a map of the Heritage Area, which shall be on file and available for public inspection in the office of the Director of the National Park Service.

(3) NOTICE TO LOCAL GOVERNMENTS.—The Alliance shall provide to the government of each city, town, and county that has jurisdiction over property proposed to be included in the Heritage Area written notice of the proposed inclusion.

(c) ADMINISTRATION.—The Heritage Area shall be administered in accordance with this title.

SEC. 605. DESIGNATION OF ALLIANCE AS MANAGEMENT ENTITY.

(a) IN GENERAL.—The Alliance shall be the management entity for the Heritage Area.

(b) FEDERAL FUNDING.—

(1) AUTHORIZATION TO RECEIVE FUNDS.—The Alliance may receive amounts made available to carry out this title.

(2) DISQUALIFICATION.—If a management plan is not submitted to the Secretary as required under section 606 within the time period specified in that section, the Alliance may not receive Federal funding under this title until a management plan is submitted to the Secretary.

(c) USE OF FEDERAL FUNDS.—The Alliance may, for the purposes of developing and implementing the management plan, use Federal funds made available under this title—

(1) to make grants and loans to the State, political subdivision of the State, nonprofit organizations, and other persons;

(2) to enter into cooperative agreements with or provide technical assistance to the State, political subdivisions of the State, nonprofit organizations, and other organizations;

(3) to hire and compensate staff;

(4) to obtain funds from any source under any program or law requiring the recipient of funds to make a contribution in order to receive the funds; and

(5) to contract for goods and services.

(d) PROHIBITION OF ACQUISITION OF REAL PROPERTY.—The Alliance may not use Federal funds received under this title to acquire real property or any interest in real property.

SEC. 606. MANAGEMENT OF THE HERITAGE AREA.

(a) HERITAGE AREA MANAGEMENT PLAN.—

(1) DEVELOPMENT AND SUBMISSION FOR REVIEW.—Not later than 3 years after the date of enactment of this title, the Board, with public participation, shall develop and submit for review to the Secretary a management plan for the Heritage Area.

(2) CONTENTS.—The management plan shall—

(A) present comprehensive recommendation for the conservation, funding, management, and development of the Heritage Area;

(B) take into consideration Federal, State, county, and local plans in effect on the date of enactment of this title;

(C) involve residents, public agencies, and private organizations in the Heritage Area;

(D) include a description of actions that units of government and private organizations are recommended to take to protect the resources of the Heritage Area;

(E) specify existing and potential sources of Federal and non-Federal funding for the conservation, management, and development of the Heritage Area; and

(F) include—

(i) an inventory of resources in the Heritage Area that—

(I) includes a list of property in the Heritage Area that should be conserved, restored, managed, developed, or maintained because of the historical, cultural, or natural significance of the property as the property relates to the themes of the Heritage Area; and

(II) does not include any property that is privately owned unless the owner of the property consents in writing to the inclusion;

(ii) a recommendation of policies for resource management that consider the application of appropriate land and water management techniques, including policies for the development of intergovernmental cooperative agreements to manage the historical, cultural, and natural resources and recreational opportunities of the Heritage Area in a manner that is consistent with the support of appropriate and compatible economic viability;

(iii) a program for implementation of the management plan, including plans for restoration and construction;

(iv) a description of any commitments that have been made by persons interested in management of the Heritage Area;

(v) an analysis of means by which Federal, State, and local programs may best be coordinated to promote the purposes of this title; and

(vi) an interpretive plan for the Heritage Area.

(3) APPROVAL OR DISAPPROVAL OF THE MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 180 days after submission of the management plan by the Board, the Secretary shall approve or disapprove the management plan.

(B) DISAPPROVAL AND REVISIONS.—

(i) IN GENERAL.—If the Secretary disapproves the management plan, the Secretary shall—

(I) advise the Board, in writing, of the reasons for the disapproval; and

(II) make recommendations for revision of the management plans.

(ii) APPROVAL OR DISAPPROVAL.—The Secretary shall approve or disapprove proposed revisions to the management plan not later than 60 days after receipt of the revisions from the Board.

(b) PRIORITIES.—The Alliance shall give priority to the implementation of actions, goals, and policies set forth in the management plan, including—

(1) assisting units of government, regional planning organizations, and nonprofit organizations in—

(A) conserving the historical, cultural, and natural resources of the Heritage Area;

(B) establishing and maintaining interpretive exhibits in the Heritage Area;

(C) developing recreational opportunities in the Heritage Area;

(D) increasing public awareness of and appreciation for the historical, cultural, and natural resources of the Heritage Area;

(E) restoring historic buildings that are—

(i) located within the boundaries of the Heritage Area; and

(ii) related to the theme of the Heritage Area; and

(F) ensuring that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(2) consistent with the goals of the management plan, encouraging economic viability in the affected communities by appropriate means, including encouraging and soliciting the development of heritage products.

(c) CONSIDERATION OF INTERESTS OF LOCAL GROUPS.—In developing and implementing the management plan, the Board shall consider the interests of diverse units of government, businesses, private property owners, and nonprofit organizations in the Heritage Area.

(d) PUBLIC MEETINGS.—The Board shall conduct public meetings at least annually regarding the implementation of the management plan.

(e) ANNUAL REPORTS.—For any fiscal year in which the Alliance receives Federal funds under this title or in which a loan made by the Alliance with Federal funds under section 605(c)(1) is outstanding, the Alliance shall submit to the Secretary an annual report that describes—

(1) the accomplishments of the Alliance;

(2) the expenses and income of the Alliance; and

(3) the entities to which the Alliance made any loans or grants during the year for which the report is made.

(f) COOPERATION WITH AUDITS.—For any fiscal year in which the Alliance receives Federal funds under this title or in which a loan made by the Alliance with Federal funds under section 605(c)(1) is outstanding, the Alliance shall—

(1) make available for audit by Congress, the Secretary, and appropriate units of government all records and other information relating to the expenditure of the Federal funds and any matching funds; and

(2) require, with respect to all agreements authorizing expenditure of the Federal funds by other organizations, that the receiving organizations make available for audit all records and other information relating to the expenditure of the Federal funds.

(g) DELEGATION.—

(1) IN GENERAL.—The Alliance may delete the responsibilities and actions under this section for each area identified in section 604(b)(1).

(2) REVIEW.—All delegated responsibilities and actions are subject to review and approval by the Alliance.

SEC. 607. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.

(a) TECHNICAL ASSISTANCE AND GRANTS.—

(1) IN GENERAL.—The Secretary may provide technical assistance and, subject to the availability of appropriations, grants to—

(A) units of government, nonprofit organizations, and other persons, at the request of the Alliance; and

(B) the Alliance, for use in developing and implementing the management plan.

(2) PROHIBITION OF CERTAIN REQUIREMENTS.—The Secretary may not, as a condition of the award of technical assistance or grants under this section, require any recipient of the technical assistance or a grant to enact or modify any land use restriction.

(3) DETERMINATION REGARDING ASSISTANCE.—The Secretary shall determine whether a unit of government, nonprofit organization, or other person shall be awarded technical assistance or grants and the amount of technical assistance—

(A) based on the extent to which the assistance—

(i) fulfills the objectives of the management plan; and

(ii) achieves the purposes of this title; and

(B) after giving special consideration to projects that provide a greater leverage of Federal funds.

(b) PROVISION OF INFORMATION.—In cooperation with other Federal agencies, the Secretary shall provide the public with information concerning the location and character of the Heritage Area.

(c) OTHER ASSISTANCE.—The Secretary may enter into cooperative agreements with public and private organizations for the purposes of implementing this section.

(d) DUTIES OF OTHER FEDERAL AGENCIES.—A Federal entity conducting any activity directly affecting the Heritage Area shall—

(1) consider the potential effect of the activity on the management plan; and

(2) consult with the Alliance with respect to the activity to minimize the adverse effects of the activity on the Heritage Area.

SEC. 608. NO EFFECT ON LAND USE AUTHORITY AND PRIVATE PROPERTY.

(a) NO EFFECT ON LAND USE AUTHORITY.—Nothing in this title modifies, enlarges, or diminishes any authority of Federal, State, or local government to regulate any use of land under any other law (including regulations).

(b) NO ZONING OR LAND USE POWERS.—Nothing in this title grants powers of zoning or land use control to the Alliance.

(c) LOCAL AUTHORITY AND PRIVATE PROPERTY NOT AFFECTED.—Nothing in this title affects or authorizes the Alliance to interfere with—

(1) the right of any person with respect to private property; or

(2) any local zoning ordinance or land use plan of the State or a political subdivision of the State.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) FEDERAL SHARE.—The Federal share of the cost of any activity carried out using funds made available under this title shall not exceed 50 percent.

SEC. 610. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE VII—JOHN H. CHAFEE BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of Public Law 99–647 (16 U.S.C. 461 note) is amended by striking subsection (b) and inserting the following:

''(b) DEVELOPMENT FUNDS.—There is authorized to be appropriated to carry out section 8(c) for the period of fiscal years 2003 through 2007 not more than $5,000,000, to remain available until expended.''.

Mr. REID. Mr. President, it is my understanding that Senator BINGAMAN has an amendment at the desk, and I ask unanimous consent that the amendment be considered and agreed to, the committee-reported substitute amendment, as amended, be agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD, with no intervening action or debate.

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

AMENDMENT NO. 4970

(Purpose: To designate additional National Heritage Areas)

The amendment (No. 4970) 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 (H.R. 695), as amended, was read the third time and passed.

GOLDEN GATE NATIONAL RECREATION AREA ACT

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 941.

The Acting President pro tempore laid before the Senate the following message from the House of Representatives on S. 941.

Resolved, That the bill from the Senate (S. 941) entitled ''An Act to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—GOLDEN GATE NATIONAL RECREATION AREA

SEC. 101. BOUNDARY ADJUSTMENT.

Section 2(a) of Public Law 92–589 (16 U.S.C. 460bb–1(a)) is amended—

(1) by striking ''(a)'' and inserting ''(a) RECREATION AREA LANDS.—'';

(2) by striking ''The recreation area shall comprise'' and inserting the following:

''(1) IN GENERAL.—The recreation area shall comprise''; and

(3) by striking ''The following additional lands are also'' and all that follows through the period at the end of the paragraph and inserting the following:

''(2) ADDITIONAL LAND.—In addition to the land described in paragraph (1), the recreation area shall include—

''(A) the parcels numbered by the Assessor of Marin County, California, 119–040–04, 119–040–05, 119–040–18, 166–202–03, 166–010–06, 166–010–07, 166–010–24, 166–010–25, 119–240–19, 166–010–10, 166–010–22, 119–240–03, 119–240–51, 119–240–52, 119–240–54, 166–010–12, 166–010–13, and 119–235–10;

''(B) land and water in San Mateo County generally depicted on the map entitled 'Sweeney Ridge Addition, Golden Gate National Recreation Area', numbered NRA GG–80,000–A, and dated May 1980;

''(C) land acquired under the Golden Gate National Recreation Area Addition Act of 1992 (16 U.S.C. 460bb–1 note; Public Law 10–299);

''(D) land generally depicted on the map entitled 'Additions to Golden Gate National Recreation Area', numbered NPS–80–076, and dated July 2000/PWR–PLRPC; and

''(E) land generally depicted on the map entitled 'Rancho Corral de Tierra Additions to the Golden Gate National Recreation Area', numbered NPS–80,079A and dated July 2001.

''(3) ACQUISITION AUTHORITY.—The Secretary may acquire land described in paragraph (2)(E) only from a willing seller.''.

TITLE II—ADVISORY COMMISSIONS

SEC. 201. GOLDEN GATE NATIONAL RECREATION AREA ADVISORY COMMISSION.

Section 5 of Public Law 92–589 (16 U.S.C. 460bb–4) is amended—

(1) in subsection (b)—

(A) by striking ''(b) The Commission'' and inserting the following:

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Commission'';

(B) by striking ''Provided, That the'' and all that follows through the period; and

(C) by inserting after paragraph (1) (as designated by subparagraph (A)) the following:

''(2) CONSIDERATIONS.—In appointing members to the Commission, the Secretary shall ensure that the interests of local, historic recreational users of the recreation area shall be represented.''; and

(2) in subsection (g), by striking ''thirty years after the enactment of this Act'' and inserting ''on December 31, 2012''.

SEC. 202. MANZANAR NATIONAL HISTORIC SITE ADVISORY COMMISSION.

Section 105(h) of Public Law 102–248 (16 U.S.C. 461 note) is amended by striking ''10 years after the date of enactment of this title'' and inserting ''on December 31, 2012''.

TITLE III—YOSEMITE NATIONAL PARK

SEC. 301. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The three elementary schools serving the children of employees of Yosemite National Park are served by the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District.

(2) The schools are in remote mountainous areas and long distances from other educational and administrative facilities of the two local educational agencies.

(3) Because of their remote locations and relatively small number of students, schools serving the children of employees of the Park provide fewer services in more basic facilities than the educational services and facilities provided to students that attend other schools served by the two local educational agencies.

(4) Because of the long distances involved and adverse weather and road conditions that occur during much of the school year, it is impractical for the children of employees of the Park who live within or near the Park to attend other schools served by the two local educational agencies.

(b) PURPOSE.—The purpose of this title is to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist the State of California or local educational agencies in California in providing educational services for students attending schools located within the Park.

SEC. 302. PAYMENTS FOR EDUCATIONAL SERVICES.

(a) AUTHORITY TO PROVIDE FUNDS.—For fiscal years 2003 through 2007, the Secretary may provide funds to the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District for educational services to students who are dependents of persons engaged in the administration, operation, and maintenance of the Park or students who live at or near the Park upon real property of the United States.

(b) LIMITATION ON USE OF FUNDS.—Payments made by the Secretary under this section may not be used for new construction, construction contracts, or major capital improvements, and may be used only to pay public employees for services otherwise authorized by this title.

(c) LIMITATION ON AMOUNT OF FUNDS.—Payments made under this section shall not exceed the lesser of $750,000 in any fiscal year or the amount necessary to provide students described in subsection (a) with educational services that are normally provided and generally available to students who attend public schools elsewhere in the State of California.

(d) ADJUSTMENT OF PAYMENTS.—Subject to subsection (c), the Secretary is authorized to adjust payments made under this section if the State of California or the appropriate local educational agencies do not continue to provide funding for educational services at Park schools at per student levels that are equivalent to or greater than those provided in the fiscal year prior to the date of enactment of this title.

(e) SOURCE OF PAYMENTS.—

(1) AUTHORIZED SOURCES.—Except as provided in paragraph (2), in order to make payments under this section, the Secretary may use funds available to the National Park Service from appropriations, donations, or fees.

(2) EXCEPTIONS.—Funds from the following sources may not be used to make payments under this section:

(A) Fees authorized and collected under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.).

(B) The recreational fee demonstration program under section 315 of the Department of the

Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 460l–6a note).

(C) The national park passport program established under section 602 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5992).

(D) Emergency appropriations for Yosemite flood recovery.

(f) DEFINITIONS.—For the purposes of this title, the following definitions apply:

(1) LOCAL EDUCATIONAL AGENCIES.—The term ''local educational agencies'' has the meaning given that term in section 9101(26) of the Elementary and Secondary Education Act of 1965.

(2) EDUCATIONAL SERVICES.—The term ''educational services'' means services that may include maintenance and minor upgrades of facilities and transportation to and from school.

(3) PARK.—The term ''Park'' means Yosemite National Park.

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

SEC. 303. AUTHORIZATION FOR PARK FACILITIES TO BE LOCATED OUTSIDE THE BOUNDARIES OF YOSEMITE NATIONAL PARK.

Section 814(c) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 346e) is amended—

(1) in the first sentence—

(A) by inserting ''and Yosemite National Park'' after ''Zion National Park''; and

(B) by inserting ''transportation systems and'' before ''the establishment of''; and

(2) by striking ''park'' each place it appears and inserting ''parks''.

TITLE IV—ESTABLISHMENT OF GOLDEN CHAIN HIGHWAY AS A NATIONAL HERITAGE CORRIDOR STUDY

SEC. 401. STUDY; REPORT.

(a) STUDY.—

(1) IN GENERAL.—Not later than 1 year after the date that funds are first made available for this section, the Secretary of the Interior, in consultation with the affected local governments, the State government, State and local historic preservation offices, community organizations, and the Golden Chain Council, shall complete a special resource study of the national significance, suitability, and feasibility of establishing Highway 49 in California, known as the ''Golden Chain Highway'', as a National Heritage Corridor.

(2) CONTENTS.—The study shall include an analysis of—

(A) the significance of Highway 49 in American history;

(B) options for preservation and use of the highway;

(C) options for interpretation of significant features associated with the highway; and

(D) private sector preservation alternatives.

(3) BOUNDARIES OF STUDY AREA.—The area studied under this section shall be comprised of Highway 49 in California extending from the city of Oakhurst in Madera County to the city of Tuttletown in Tuolumne County, and lands, structures, and cultural resources within the immediate vicinity of the highway.

(b) REPORT.—Not later than 30 days after completion of the study required by subsection (a), the Secretary shall submit a report describing the results of the study to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

TITLE V—JOHN MUIR NATIONAL HISTORIC SITE BOUNDARY ADJUSTMENT

SEC. 501. BOUNDARY ADJUSTMENT.

(a) BOUNDARY.—The boundary of the John Muir National Historic Site is adjusted to include the lands generally depicted on the map entitled ''Boundary Map, John Muir National Historic Site'' numbered PWR–OL 426–80,044a and dated August 2001.

(b) LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire the lands and interests in lands identified as the ''Boundary Adjustment Area'' on the map referred to in subsection (a) by donation, purchase with donated or appropriated funds, exchange, or otherwise.

(c) ADMINISTRATION.—The lands and interests in lands described in subsection (b) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

TITLE VI—SAN GABRIEL RIVER WATERSHEDS STUDY

SEC. 601. AUTHORIZATION OF STUDY.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter in this title referred to as the ''Secretary'') shall conduct a special resource study of the following areas:

(1) The San Gabriel River and its tributaries north of and including the city of Santa Fe Springs.

(2) The San Gabriel Mountains within the territory of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (as defined in section 32603(c)(1)(C) of the State of California Public Resource Code).

(b) STUDY CONDUCT AND COMPLETION.—Section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)) shall apply to the conduct and completion of the study required by this section.

(c) CONSULTATION WITH FEDERAL, STATE, AND LOCAL GOVERNMENTS.—In conducting the study authorized by this section, the Secretary shall consult with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and other appropriate Federal, State, and local governmental entities.

(d) CONSIDERATIONS.—In conducting the study authorized by this section, the Secretary shall consider regional flood control and drainage needs and publicly owned infrastructure, including, but not limited to, wastewater treatment facilities.

SEC. 602. REPORT.

Not later than 3 years after funds are made available for this title, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report on the findings, conclusions, and recommendations of the study.

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with a further Bingaman amendment, which is at the desk; that the amendment be considered and agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

AMENDMENT NO. 4971

(Purpose: To concur in the House amendment with an amendment in the nature of a substitute)

The amendment (No. 4971) was agreed to.

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

MIAMI CIRCLE SITE SPECIAL RESOURCE STUDY ACT

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1894.

The Acting President pro tempore laid before the Senate a message from the House of Representatives on S. 1894.

Resolved, That the bill from the Senate (S. 1894) entitled ''An Act to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—MIAMI CIRCLE SITE SPECIAL RESOURCE STUDY

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Tequesta Indians were one of the earliest groups to establish permanent villages in southeast Florida;

(2) the Tequestas had one of only two North American civilizations that thrived and developed into a complex social chiefdom without an agricultural base;

(3) the Tequesta sites that remain preserved today are rare;

(4) the discovery of the Miami Circle, occupied by the Tequesta approximately 2,000 years ago, presents a valuable new opportunity to learn more about the Tequesta culture; and

(5) Biscayne National Park also contains and protects several prehistoric Tequesta sites.

(b) PURPOSE.—The purpose of this title is to direct the Secretary to conduct a special resource study to determine the national significance of the Miami Circle site as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park.

SEC. 102. DEFINITIONS.

In this title:

(1) MIAMI CIRCLE.—The term ''Miami Circle'' means the Miami Circle archaeological site in Miami-Dade County, Florida.

(2) PARK.—The term ''Park'' means Biscayne National Park in the State of Florida.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 103. SPECIAL RESOURCE STUDY.

(a) IN GENERAL.—Not later than one year after the date funds are made available, the Secretary shall conduct a special resource study as described in subsection (b). In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) COMPONENTS.—In addition to a determination of national significance, feasibility, and suitability, the special resource study shall include the analysis and recommendations of the Secretary with respect to—

(1) which, if any, particular areas of or surrounding the Miami Circle should be included in the Park;

(2) whether any additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of the Park; and

(3) any impact on the local area that would result from the inclusion of Miami Circle in the Park.

(c) REPORT.—Not later than 30 days after completion of the study, the Secretary shall submit a report describing the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE II—GATEWAY COMMUNITIES COOPERATION

SEC. 201. IMPROVED RELATIONSHIP BETWEEN FEDERAL LAND MANAGERS AND GATEWAY COMMUNITIES TO SUPPORT COMPATIBLE LAND MANAGEMENT OF BOTH FEDERAL AND ADJACENT LANDS.

(a) FINDINGS.—The Congress finds the following:

(1) Communities that are adjacent to or near Federal lands, including units of the National Park System, units of the National Wildlife Refuge System, units of the National Forest System, and lands administered by the Bureau of Land Management, are vitally impacted by the management and public use of these Federal lands.

(2) These communities, commonly known as gateway communities, fulfill an integral part in the mission of the Federal lands by providing necessary services, such as schools, roads, search and rescue, emergency, medical, provisioning, logistical support, living quarters, and drinking water and sanitary systems, for both visitors to the Federal lands and employees of Federal land management agencies.

(3) Provision of these vital services by gateway communities is an essential ingredient for a meaningful and enjoyable experience by visitors to the Federal lands because Federal land management agencies are unable to provide, or are prevented from providing, these services.

(4) Gateway communities serve as an entry point for persons who visit the Federal lands and are ideal for establishment of visitor services, including lodging, food service, fuel and auto repairs, emergency services, and visitor information.

(5) Development in these gateway communities affect the management and protection of these Federal lands, depending on the extent to which advance planning for the local development is coordinated between the communities and Federal land managers.

(6) The planning and management decisions of Federal land managers can have unintended consequences for gateway communities and the Federal lands, when the decisions are not adequately communicated to, or coordinated with, the elected officials and residents of gateway communities.

(7) Experts in land management planning are available to Federal land managers, but persons with technical planning skills are often not readily available to gateway communities, particularly small gateway communities.

(8) Gateway communities are often affected by the policies and actions of several Federal land agencies and both the communities and the agencies would benefit from greater interagency coordination of those policies and actions.

(9) Persuading gateway communities to make decisions and undertake actions in their communities that would also be in the best interest of the Federal lands is most likely to occur when such decisionmaking and actions are built upon a foundation of cooperation and coordination.

(b) PURPOSE.—It is the purpose of this title to require Federal land managers to communicate, coordinate, and cooperate with gateway communities in order to—

(1) improve the relationships among Federal land managers, elected officials, and residents of gateway communities;

(2) enhance the facilities and services in gateway communities available to visitors to Federal lands, when compatible with the management of these lands; and

(3) result in better local land use planning and decisions by Federal land managers.

(c) DEFINITIONS.—In this section:

(1) GATEWAY COMMUNITY.—The term ''gateway community'' means a county, city, town, village, or other subdivision of a State, or a federally recognized American Indian tribe or Alaska Native village, that—

(A) is incorporated or recognized in a county or regional land use plan; and

(B) a Federal land manager (or the head of the tourism office for the State) determines is significantly affected economically, socially, or environmentally by planning and management decisions regarding Federal lands administered by that Federal land manager.

(2) FEDERAL LAND AGENCIES.—The term ''Federal land agencies'' means the National Park Service, United States Forest Service, United States Fish and Wildlife Service, and the Bureau of Land Management.

(3) FEDERAL LAND MANAGER.—The term ''Federal land manager'' means—

(A) the superintendent of a unit of the National Park System;

(B) the manager of a national wildlife refuge;

(C) the field office manager of a Bureau of Land Management area; or

(D) the supervisor of a unit of the National Forest System.

(d) PARTICIPATION IN FEDERAL PLANNING AND LAND USE.—

(1) PARTICIPATION IN PLANNING.—The Federal land agencies shall provide for meaningful public involvement at the earliest possible time by elected and appointed officials of governments of local gateway communities in the development of land use plans, programs, land use regulations, land use decisions, transportation plans, general management plans, and any other plans, decisions, projects, or policies for Federal public lands under the jurisdiction of these agencies that will have a significant impact on these gateway communities. To facilitate such involvement, the Federal land agencies shall provide these officials, at the earliest possible time, with a summary in nontechnical language of the assumptions, purposes, goals, and objectives of such a plan, decision, project, or policy and a description of any anticipated significant impact of the plan, decision, or policy on gateway communities.

(2) EARLY NOTICE OF PROPOSED DECISIONS.—To the extent practicable, the Federal land agencies shall provide local gateway communities with early public notice of proposed decisions of these agencies that may have a significant impact on gateway communities.

(3) TRAINING SESSIONS.—The Federal land agencies shall offer training sessions for elected and appointed officials of gateway communities at which such officials can obtain a better understanding of—

(A) agency planning processes; and

(B) the methods by which they can participate most meaningfully in the development of the agency plans, decisions, and policies referred to in paragraph (1).

(4) TECHNICAL ASSISTANCE.—At the request of the government of a gateway community, a Federal land agency shall assign, to the extent practicable, an agency employee or contractor to work with the community to develop data and analysis relevant to the preparation of agency plans, decisions, and policies referred to in paragraph (1).

(5) REVIEW OF FEDERAL LAND MANAGEMENT PLANNING.—At the request of a gateway community, and to the extent practicable, a Federal land manager shall assist the gateway community to conduct a review of land use, management, or transportation plans of the Federal land manager likely to affect the gateway community.

(6) COORDINATION OF LAND USE.—To the extent consistent with the laws governing the administration of the Federal public lands, a Federal land manager may enter into a cooperative agreement with a gateway community to provide for coordination between—

(A) the land use inventory, planning, and management activities for the Federal lands administered by the Federal land manager; and

(B) the land use planning and management activities of other Federal agencies, agencies of the State in which the Federal lands are located, and local and tribal governments in the vicinity of the Federal lands.

(7) INTERAGENCY COOPERATION AND COORDINATION.—To the extent practicable, when the plans and activities of two or more Federal land agencies are anticipated to have a significant impact on a gateway community, the Federal land agencies involved shall consolidate and coordinate their plans and planning processes to facilitate the participation of the gateway community in the planning processes.

(8) TREATMENT AS COOPERATING AGENCIES.—When a proposed action is determined to require the preparation of an environmental impact statement, the Federal land agencies shall, as soon as practicable, but not later than the scoping process, actively solicit the participation of gateway communities as cooperating agencies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) GRANTS TO ASSIST GATEWAY COMMUNITIES.—

(1) GRANTS AUTHORIZED; PURPOSES.—A Federal land manager may make grants to an eligible gateway community to enable the gateway community—

(A) to participate in Federal land planning or management processes;

(B) to obtain professional land use or transportation planning assistance necessary as a result of Federal action;

(C) to address and resolve public infrastructure impacts that are identified through these processes as a likely result of the Federal land management decisions and for which sufficient funds are not otherwise available; and

(D) to provide public information and interpretive services about the Federal lands administered by the Federal land manager and the gateway community.

(2) ELIGIBLE GATEWAY COMMUNITIES.—To be eligible for a grant under this subsection, a gateway community may not have a population in excess of 10,000 persons.

(f) FUNDING SOURCES.—

(1) GENERAL AGENCY FUNDS.—A Federal land agency may use amounts available for the general operation of the agency to provide funds to Federal land managers of that agency to make grants under subsection (e).

(2) OTHER PLANNING OR PROJECT DEVELOPMENT FUNDS.—Funds available to a Federal land manager for planning, construction, or project development may also be used to fund programs under subsection (d) and make grants under subsection (e).

(3) COMBINATION OF FUNDS.—Federal land managers from different Federal land agencies may combine financial resources to make grants under subsection (e).

TITLE III—MOUNT NEBO WILDERNESS BOUNDARY ADJUSTMENTS

SEC. 301. BOUNDARY ADJUSTMENTS, MOUNT NEBO WILDERNESS, UTAH.

(a) LANDS REMOVED.—The boundary of the Mount Nebo Wilderness is adjusted to exclude the following:

(1) MONUMENT SPRINGS.—The approximately 8.4 acres of land depicted on the Map as ''Monument Springs''.

(2) GARDNER CANYON.—The approximately 177.8 acres of land depicted on the Map as ''Gardner Canyon''.

(3) BIRCH CREEK.—The approximately 5.0 acres of land depicted on the Map as ''Birch Creek''.

(4) INGRAM CANYON.—The approximately 15.4 acres of land depicted on the Map as ''Ingram Canyon''.

(5) WILLOW NORTH A.—The approximately 3.4 acres of land depicted on the Map as ''Willow North A''.

(6) WILLOW NORTH B.—The approximately 6.6 acres of land depicted on the Map as ''Willow North B''.

(7) WILLOW SOUTH.—The approximately 21.5 acres of land depicted on the Map as ''Willow South''.

(8) MENDENHALL CANYON.—The approximately 9.8 acres of land depicted on the Map as ''Mendenhall Canyon''.

(9) WASH CANYON.—The approximately 31.4 acres of land depicted on the Map as ''Wash Canyon''.

(b) LANDS ADDED.—Subject to valid existing rights, the boundary of the Mount Nebo Wilderness is adjusted to include the approximately 293.2 acres of land depicted on the Map for addition to the Mount Nebo Wilderness. The Utah Wilderness Act of 1984 (Public Law 94–428) shall

apply to the land added to the Mount Nebo Wilderness pursuant to this subsection.

SEC. 302. MAP.

(a) DEFINITION.—In this title, the term ''Map'' means the map entitled ''Mt. Nebo Wilderness Boundary Adjustment'', numbered 531, and dated May 29, 2001.

(b) MAP ON FILE.—The Map and the final document entitled ''Mount Nebo, Proposed Boundary Adjustments, Parcel Descriptions (See Map #531)'' and dated June 4, 2001, shall be on file and available for inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(c) CORRECTIONS.—The Secretary of Agriculture may make technical corrections to the Map.

SEC. 303. TECHNICAL BOUNDARY ADJUSTMENT.

The boundary of the Mount Nebo Wilderness is adjusted to exclude the approximately 21.26 acres of private property located in Andrews Canyon, Utah, and depicted on the Map as ''Dale''.

TITLE IV—BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL SPECIAL RESOURCE STUDY

SEC. 401. FINDINGS.

The Congress finds the following:

(1) During World War II on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, setting in motion the forced exile of more than 110,000 Japanese Americans.

(2) In Washington State, 12,892 men, women and children of Japanese ancestry experienced three years of incarceration, an incarceration violating the most basic freedoms of American citizens.

(3) On March 30, 1942, 227 Bainbridge Island residents were the first Japanese Americans in United States history to be forcibly removed from their homes by the U.S. Army and sent to internment camps. They boarded the ferry Kehloken from the former Eagledale Ferry Dock, located at the end of Taylor Avenue, in the city of Bainbridge Island, Washington State.

(4) The city of Bainbridge Island has adopted a resolution stating that this site should be a National Memorial, and similar resolutions have been introduced in the Washington State Legislature.

(5) Both the Minidoka National Monument and Manzanar National Historic Site can clearly tell the story of a time in our Nation's history when constitutional rights were ignored. These camps by design were placed in very remote places and are not easily accessible. Bainbridge Island is a short ferry ride from Seattle and the site would be within easy reach of many more people.

(6) This is a unique opportunity to create a site that will honor those who suffered, cherish the friends and community who stood beside them and welcomed them home, and inspire all to stand firm in the event our Nation again succumbs to similar fears.

(7) The site should be recognized by the National Park Service based on its high degree of national significance, association with significant events, and integrity of its location and setting. This site is critical as an anchor for future efforts to identify, interpret, serve, and ultimately honor the Nikkei- persons of Japanese ancestry- influence on Bainbridge Island.

SEC. 402. EAGLEDALE FERRY DOCK LOCATION AT TAYLOR AVENUE STUDY AND REPORT.

(a) STUDY.—The Secretary of the Interior shall carry out a special resource study regarding the national significance, suitability, and feasibility of designating as a unit of the National Park System the property commonly known as the Eagledale Ferry Dock at Taylor Avenue and the historical events associated with it, located in the town of Bainbridge Island, Kitsap County, Washington.

(b) REPORT.—Not later than 1 year after funds are first made available for the study under subsection (a), the Secretary of the Interior shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the findings, conclusions, and recommendations of the study.

(c) REQUIREMENTS FOR STUDY.—Except as otherwise provided in this section, the study under subsection (a) shall be conducted in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)).

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with a further Bingaman amendment, which is at the desk; that the amendment be considered and agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

AMENDMENT NO. 4972

(Purpose: To concur in the House amendment with an amendment in the nature of a substitute)

The amendment (No. 4972) was agreed to.

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

MOCCASIN BEND NATIONAL HISTORIC SITE ESTABLISHMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 674, H.R. 980.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 980) to establish the Moccasin Bend National Historic Site in the State of Tennessee as a unit of the National Park System.

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

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

H.R. 980

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Moccasin Bend National Historic Site Establishment Act''.

[SEC. 2. DEFINITIONS.

[For the purposes of this Act the following definitions apply:

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

[(2) HISTORIC SITE.—The term ''historic site'' means the Moccasin Bend National Historic Site.

[(3) STATE.—The term ''State'' means the State of Tennessee.

[(4) MAP.—The term ''Map'' means the map entitled ''Boundary Map, Moccasin Bend National Historic Site'', numbered NAMB/80000A, and dated September 2001.

[SEC. 3. ESTABLISHMENT.

[(a) IN GENERAL.—In order to preserve, protect, and interpret for the benefit of the public the nationally significant archeological and historic resources located on the peninsula known as Moccasin Bend, Tennessee, there is established as a unit of the National Park System the Moccasin Bend National Historic Site.

[(b) BOUNDARIES.—The historic site shall consist of approximately 900 acres generally depicted on the Map. The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior. The Secretary may make minor revisions in the boundaries of the historic site in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(c)).

[(c) ACQUISITION OF LAND AND INTERESTS IN LAND.—

[(1) IN GENERAL.—The Secretary may acquire by donation or purchase from willing sellers, using donated or appropriated funds, lands and interests in lands within the exterior boundary of the historic site.

[(2) MOCCASIN BEND MENTAL HEALTH INSTITUTE.—Notwithstanding paragraph (1), the Secretary may acquire the State-owned land and interests in land (including structures on that land) known as the Moccasin Bend Mental Health Institute for inclusion in the historic site only by donation and only after the facility is no longer used to provide health care services, except that the Secretary may acquire by donation only, at any time, any such State-owned land or interests in land that the State determines is excess to the needs of the Moccasin Bend Mental Health Institute. The Secretary may work with the State through a cost sharing arrangement for the purpose of demolishing the structures located on that land that the Secretary determines should be demolished.

[(3) EASEMENT OUTSIDE BOUNDARY.—To allow access between areas of the historic site that on the date of the enactment of this Act are noncontiguous, the Secretary may acquire by donation or purchase from willing owners, using donated or appropriated funds, an easement connecting the areas generally depicted on the Map as the ''Moccasin Bend Archeological National Historic Landmark'' and the ''Rock-Tenn'' property.

[(d) MOCCASIN BEND GOLF COURSE.—On the date of the enactment of this Act, the boundary of the historic site shall not include the approximately 157 acres of land generally depicted on the Map as the ''Golf Course'' as such lands shall not be within the boundary of the historic site. In the event that those lands are no longer used as a public golf course, the Secretary may acquire the lands for inclusion in the historic site by donation only. Upon such acquisition, the Secretary shall adjust the boundary of the historic site to include the newly acquired lands.

[(e) RADIO TOWER PROPERTY.—On the date of the enactment of this Act, the boundary of the historic site shall not include the approximately 13 acres of land generally depicted on the Map as ''WDEF''. In the event that those lands are no longer used as a location from which to transmit radio signals, the Secretary may acquire the lands for inclusion in the historic site by donation or purchase from willing sellers with appropriated or donated funds. Upon such acquisition, the Secretary shall adjust the boundary of the historic site to include the newly acquired lands.

[SEC. 4. ADMINISTRATION.

[(a) IN GENERAL.—The historic site shall be administered by the Secretary in accordance with this Act and with the laws generally applicable to units of the National Park System.

[(b) COOPERATIVE AGREEMENT.—The Secretary may consult and enter into cooperative agreements with culturally affiliated

federally recognized Indian tribes, governmental entities, and interested persons to provide for the restoration, preservation, development, interpretation, and use of the historic site.

[(c) VISITOR INTERPRETIVE CENTER.—For purposes of interpreting the historical themes and cultural resources of the historic site, the Secretary may establish and administer a visitor center in the development of the center's operation and interpretive programs.

[(d) GENERAL MANAGEMENT PLAN.—Not later than three years after funds are made available for this purpose, the Secretary shall develop and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a general management plan for the historic site. The general management plan shall describe the appropriate protection and preservation of natural, cultural, and scenic resources, visitor use, and facility development within the historic area consistent with the purposes of this Act, while ensuring continued access to private landowners to their property.

[SEC. 5. REPEAL OF PREVIOUS ACQUISITION AUTHORITY.

[The Act of August 3, 1950 (Chapter 532; 16 U.S.C. 424a–4) is repealed.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Moccasin Bend National Archeological District Act''.

SEC. 2. DEFINITIONS.

As used in this Act:

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

(2) ARCHEOLOGICAL DISTRICT.—The term ''archeological district'' means the Moccasin Bend National Archeological District.

(3) STATE.—The term ''State'' means the State of Tennessee.

(4) MAP.—The term ''Map'' means the map entitled ''Boundary Map, Moccasin Bend National Archeological District'', numbered 301/80098, and dated September 2002.

SEC. 3. ESTABLISHMENT.

(a) IN GENERAL.—In order to preserve, protect, and interpret for the benefit of the public the nationally significant archeological and historic resources located on the peninsula known as Moccasin Bend, Tennessee, there is established as a unit of Chickamauga and Chattanooga National Military Park, the Moccasin Bend National Archeological District.

(b) BOUNDARIES.—The archeological district shall consist of approximately 780 acres generally depicted on the Map. The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(c) ACQUISITION OF LAND AND INTERESTS IN LAND.—

(1) IN GENERAL.—The Secretary may acquire by donation, purchase from willing sellers using donated or appropriated funds, or exchange, lands and interests in lands within the exterior boundary of the archeological district. The Secretary may acquire the State, county and city-owned land and interests in land for inclusion in the archeological district only by donation.

(2) EASEMENT OUTSIDE BOUNDARY.—To allow access between areas of the archeological district that on the date of enactment of this Act are noncontiguous, the Secretary may acquire by donation or purchase from willing owners using donated or appropriated funds, or exchange, easements connecting the areas generally depicted on the Map.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The archeological district shall be administered by the Secretary in accordance with this Act, with laws applicable to Chickamauga and Chattanooga National Military Park, and with the laws generally applicable to units of the National Park System.

(b) COOPERATIVE AGREEMENT.—The Secretary may consult and enter into cooperative agreements with culturally affiliated federally recognized Indian tribes, governmental entities, and interested persons to provide for the restoration, preservation, development, interpretation, and use of the archeological district.

(c) VISITOR INTERPRETIVE CENTER.—For purposes of interpreting the historical themes and cultural resources of the archeological district, the Secretary may establish and administer a visitor center in the archeological district.

(d) GENERAL MANAGEMENT PLAN.—Not later than three years after funds are made available for this purpose, the Secretary shall develop a general management plan for the archeological district. The general management plan shall describe the appropriate protection and preservation of natural, cultural, and scenic resources, visitor use, and facility development within the archeological district consistent with the purposes of this Act, while ensuring continued access to private landowners to their property.

SEC. 5. REPEAL OF PREVIOUS ACQUISITION AUTHORITY.

The Act of August 3, 1950 (Chapter 532; 16 U.S.C. 424a–4), is repealed.

Amend the title so as to read: ''An Act To establish the Moccasin Bend National Archeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Military Park.''.

Mr. REID. Mr. President, Senator BINGAMAN has a substitute amendment at the desk, and I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid upon the table; that the committee-reported substitute, as amended, be agreed to; that the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, and that the title amendment be agreed to, with no intervening action or debate, and that any statements be printed in the RECORD.

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

AMENDMENT NO. 4973

(Purpose: To provide a complete substitute)

The amendment (No. 4973), in the nature of a substitute, 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 (H.R. 980), as amended, was read the third time and passed.

The title amendment was agreed to.

AMENDING THE NATURAL TRAILS SYSTEM ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 576, H.R. 37.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 37) to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources 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.]

H.R. 37

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

[SECTION 1. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING NATIONAL HISTORIC TRAILS.

[The National Trails System Act is amended by inserting after section 5 (16 U.S.C. 1244) the following new section:

[''SEC. 5A. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING TRAILS FOR POSSIBLE TRAIL EXPANSION.

[''(a) IN GENERAL.—

[''(1) DEFINITIONS.—In this section:

[''(A) ROUTE.—The term 'route' includes a trail segment commonly known as a cutoff.

[''(B) SHARED ROUTE.—The term 'shared route' means a route that was a segment of more than one historic trail, including a route shared with an existing national historic trail.

[''(2) STUDY REQUIREMENTS AND OBJECTIVES.—The study requirements and objectives specified in section 5(b) shall apply to a study required by this section. The study shall also assess the effect that designation of the studied route as a component of an existing national scenic trail or national historic trail may have on private property along the proposed route.

[''(3) COMPLETION AND SUBMISSION OF STUDY.—A study listed in this section shall be completed and submitted to the Congress not later than three complete fiscal years from the date of the enactment of this section, or from the date of the enactment of the addition of the study to this section, whichever is later.

[''(4) IMPLEMENTATION OF STUDY RESULTS.—Upon completion of a study required by this section, if the Secretary conducting the study determines that a studied route is a feasible and suitable addition to the existing national scenic trail or national historic trail that was the subject of the study, the Secretary shall designate the route as a component of that national scenic trail or national historic trail. The Secretary shall publish notice of the designation in the Federal Register.

[''(b) OREGON NATIONAL HISTORIC TRAIL.—

[''(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in paragraph (2) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Oregon National Historic Trail.

[''(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[''(A) Whitman Mission route.

[''(B) Upper Columbia River.

[''(C) Cowlitz River route.

[''(D) Meek cutoff.

[''(E) Free Emigrant Road.

[''(F) North Alternate Oregon Trail.

[''(G) Goodale's cutoff.

[''(H) North Side alternate route.

[''(I) Cutoff to Barlow Road.

[''(J) Naches Pass Trail.

[''(c) PONY EXPRESS NATIONAL HISTORIC TRAIL.—The Secretary of the Interior shall

undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Pony Express National Historic Trail.

[''(d) CALIFORNIA NATIONAL HISTORIC TRAIL.—

[''(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in paragraph (2) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the California National Historic Trail.

[''(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[''(A) MISSOURI VALLEY ROUTES.—

[''(i) Blue Mills–Independence Road.

[''(ii) Westport Landing Road.

[''(iii) Westport–Lawrence Road.

[''(iv) Fort Leavenworth–Blue River route.

[''(v) Road to Amazonia.

[''(vi) Union Ferry Route.

[''(vii) Old Wyoming–Nebraska City cutoff.

[''(viii) Lower Plattsmouth Route.

[''(ix) Lower Bellevue Route.

[''(x) Woodbury cutoff.

[''(xi) Blue Ridge cutoff.

[''(xii) Westport Road.

[''(xiii) Gum Springs–Fort Leavenworth route.

[''(xiv) Atchison/Independence Creek routes.

[''(xv) Fort Leavenworth–Kansas River route.

[''(xvi) Nebraska City cutoff routes.

[''(xvii) Minersville–Nebraska City Road.

[''(xviii) Upper Plattsmouth route.

[''(xix) Upper Bellevue route.

[''(B) CENTRAL ROUTES.—

[''(i) Cherokee Trail, including splits.

[''(ii) Weber Canyon route of Hastings cutoff.

[''(iii) Bishop Creek cutoff.

[''(iv) McAuley cutoff.

[''(v) Diamond Springs cutoff.

[''(vi) Secret Pass.

[''(vii) Greenhorn cutoff.

[''(viii) Central Overland Trail.

[''(C) WESTERN ROUTES.—

[''(i) Bidwell–Bartleson route.

[''(ii) Georgetown/Dagget Pass Trail.

[''(iii) Big Trees Road.

[''(iv) Grizzly Flat cutoff.

[''(v) Nevada City Road.

[''(vi) Yreka Trail.

[''(vii) Henness Pass route.

[''(viii) Johnson cutoff.

[''(ix) Luther Pass Trail.

[''(x) Volcano Road.

[''(xi) Sacramento–Coloma Wagon Road.

[''(xii) Burnett cutoff.

[''(xiii) Placer County Road to Auburn.

[''(e) MORMON PIONEER NATIONAL HISTORIC TRAIL.—

[''(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Morman Pioneer Trail listed in paragraph (2) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Mormon Pioneer National Historic Trail.

[''(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[''(A) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

[''(B) 1856–57 Handcart route (Iowa City to Council Bluffs)

[''(C) Keokuk route (Iowa).

[''(D) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

[''(E) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon and California Trail routes used by Mormon emigrants).

[''(F) 1850 Golden Pass Road in Utah.

[''(f) SHARED CALIFORNIA AND OREGON TRAIL ROUTES.—

[''(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in paragraph (2) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

[''(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[''(A) St. Joe Road.

[''(B) Council Bluffs Road.

[''(C) Sublette cutoff.

[''(D) Applegate route.

[''(E) Old Fort Kearny Road (Oxbow Trail).

[''(F) Childs cutoff.

[''(G) Raft River to Applegate.''.]

SECTION 1. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING NATIONAL HISTORIC TRAILS.

Section 5 of the National Trails System Act (16 U.S.C. 1244) is amended by inserting the following new subsection(g):

''(g) The Secretary shall revise the feasibility and suitability studies for certain national trails for consideration of possible additions to the trails.

''(1) IN GENERAL.—

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

''(i) ROUTE.—The term 'route' includes a trail segment common known as a cutoff.

''(ii) SHARED ROUTE.—The term 'shared' route means a route that was a segment of more than one historic trail, including a route shared with an existing national historic trail.

''(B) STUDY REQUIREMENTS AND OBJECTIVES.—The study requirements and objectives specified in subsection (b) shall apply to a study required by this subsection.

''(C) COMPLETION AND SUBMISSION OF STUDY.—A study listed in this subsection shall be completed and submitted to the Congress not later than three complete fiscal years from the date of the enactment of this subsection, or from the date of the enactment of the addition of the study to this subsection, whichever is later.

''(2) OREGON NATIONAL HISTORIC TRAIL.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other routes of the Oregon Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Oregon National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) Whitman Mission route.

''(ii) Upper Columbia River.

''(iii) Cowlitz River route.

''(iv) Meek cutoff.

''(v) Free Emigrant Road.

''(vi) North Alternate Oregon Trail.

''(vii) Goodale's cutoff.

''(viii) North Side alternate route.

''(ix) Cutoff to Barlow Road.

''(x) Naches Pass Trail.

''(3) PONY EXPRESS NATIONAL HISTORIC TRAIL.—The Secretary of the Interior shall undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such other routes of the Pony Express Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Pony Express National Historic Trail.

''(4) CALIFORNIA NATIONAL HISTORIC TRAIL.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other and shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the California National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) MISSOURI VALLEY ROUTES.—

''(I) Blue Mills-Independence Road.

''(II) Westport Landing Road.

''(III) Westport-Lawrence Road.

''(IV) Fort Leavenworth-Blue River route.

''(V) Road to Amazonia.

''(VI) Union Ferry Route.

''(VII) Old Wyoming-Nebraska City cutoff.

''(VIII) Lower Plattsmouth Route.

''(IX) Lower Bellevue Route.

''(X) Woodbury cutoff.

''(XI) Blue Ridge cutoff.

''(XII) Westport Road.

''(XIII) Gum Springs-Fort Leavenworth route.

''(XIV) Atchison/Independence Creek routes.

''(XV) Fort Leavenworth-Kansas River route.

''(XVI) Nebraska City cutoff routes.

''(XVII) Minersville-Nebraska City Road.

''(XVIII) Upper Plattsmouth route.

''(XIX) Upper Bellevue route.

''(ii) CENTRAL ROUTES.—

''(I) Cherokee Trail, including splits.

''(II) Weber Canyon route of Hastings cutoff.

''(III) Bishop Creek cutoff.

''(IV) McAuley cutoff.

''(V) Diamond Springs cutoff.

''(VI) Secret Pass.

''(VII) Greenhorn cutoff.

''(VIII) Central Overland Trail.

''(iii) WESTERN ROUTES.—

''(I) Bidwell-Bartleson route.

''(II) Georgetown/Dagget Pass Trail.

''(III) Big Trees Road.

''(IV) Grizzly Flat cutoff.

''(V) Nevada City Road.

''(VI) Yreka Trail.

''(VII) Henness Pass route.

''(VIII) Johnson cutoff.

''(IX) Luther Pass Trail.

''(X) Volcano Road.

''(XI) Sacramento-Coloma Wagon Road.

''(XII) Burnett cutoff.

''(XIII) Placer County Road to Auburn.

''(5) MORMON PIONEER NATIONAL HISTORIC TRAIL.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Mormon Pioneer Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other routes of the Mormon Pioneer Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Mormon Pioneer National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

''(ii) 1856–57 Handcart route (Iowa City to Council Bluffs)

''(iii) Keokuk route (Iowa).

''(iv) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

''(v) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon and California Trail routes used by Mormon emigrants).

''(vi) 1850 Golden Pass Road in Utah.

''(6) SHARED CALIFORNIA AND OREGON TRAIL ROUTES.—

''(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

''(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

''(i) St. Joe Road.

''(ii) Council Bluffs Road.

''(iii) Sublette cutoff.

''(iv) Applegate route.

''(v) Old Fort Kearny Road (Oxbow Trail).

''(vi) Childs cutoff.

''(vii) Raft River to Applegate.''

Passed the House of Representatives June 6, 2001.

Mr. REID. Mr. President, Chairman BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table, and any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4974) in the nature of a substitute 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 (H.R. 37), as amended, was read the third time and passed.

NOXIOUS WEED CONTROL ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 600, S. 198.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 198) to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

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

[Striking the part shown in black brackets and insert the part shown in italic.]

S. 198

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 ''Harmful Nonnative Weed Control Act of 2000''.

[SEC. 2. FINDINGS AND PURPOSES.

[(a) FINDINGS.—Congress finds that—

[(1) public and private land in the United States faces unprecedented and severe stress from harmful, nonnative weeds;

[(2) the economic and resource value of the land is being destroyed as harmful nonnative weeds overtake native vegetation, making the land unusable for forage and for diverse plant and animal communities;

[(3) damage caused by harmful nonnative weeds has been estimated to run in the hundreds of millions of dollars annually;

[(4) successfully fighting this scourge will require coordinated action by all affected stakeholders, including Federal, State, and local governments, private landowners, and nongovernmental organizations;

[(5) the fight must begin at the local level, since it is at the local level that persons feel the loss caused by harmful nonnative weeds and will therefore have the greatest motivation to take effective action; and

[(6) to date, effective action has been hampered by inadequate funding at all levels of government and by inadequate coordination.

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

[(1) to provide assistance to eligible weed management entities in carrying out projects to control or eradicate harmful, nonnative weeds on public and private land;

[(2) to coordinate the projects with existing weed management areas and districts;

[(3) in locations in which no weed management entity, area, or district exists, to stimulate the formation of additional local or regional cooperative weed management entities, such as entities for weed management areas or districts, that organize locally affected stakeholders to control or eradicate weeds;

[(4) to leverage additional funds from a variety of public and private sources to control or eradicate weeds through local stakeholders; and

[(5) to promote healthy, diverse, and desirable plant communities by abating through a variety of measures the threat posed by harmful, nonnative weeds.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the advisory committee established under section 5.

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

[(3) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

[SEC. 4. ESTABLISHMENT OF PROGRAM.

[The Secretary shall establish in the Office of the Secretary a program to provide financial assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

[SEC. 5. ADVISORY COMMITTEE.

[(a) IN GENERAL.—The Secretary shall establish in the Department of the Interior an advisory committee to make recommendations to the Secretary regarding the annual allocation of funds to States under section 6 and other issues related to funding under this Act.

[(b) COMPOSITION.—The Advisory Committee shall be composed of not more than 10 individuals appointed by the Secretary who—

[(1) have knowledge and experience in harmful, nonnative weed management; and

[(2) represent the range of economic, conservation, geographic, and social interests affected by harmful, nonnative weeds.

[(c) TERM.—The term of a member of the Advisory Committee shall be 4 years.

[(d) COMPENSATION.—

[(1) IN GENERAL.—A member of the Advisory Committee shall receive no compensation for the service of the member on the Advisory Committee.

[(2) TRAVEL EXPENSES.—A member of the Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Advisory Committee.

[(e) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

[SEC. 6. ALLOCATION OF FUNDS TO STATES.

[(a) IN GENERAL.—In consultation with the Advisory Committee, the Secretary shall allocate funds made available for each fiscal year under section 8 to States to provide funding in accordance with section 7 to eligible weed management entities to carry out projects approved by States to control or eradicate harmful, nonnative weeds on public and private land.

[(b) AMOUNT.—The Secretary shall determine the amount of funds allocated to a State for a fiscal year under this section on the basis of—

[(1) the seriousness of the harmful, nonnative weed problem or potential problem in the State, or a portion of the State;

[(2) the extent to which the Federal funds will be used to leverage non-Federal funds to address the harmful, nonnative weed problems in the State;

[(3) the extent to which the State has made progress in addressing harmful, nonnative weed problems in the State;

[(4) the extent to which weed management entities in a State are eligible for base payments under section 7; and

[(5) other factors recommended by the Advisory Committee and approved by the Secretary.

[SEC. 7. USE OF FUNDS ALLOCATED TO STATES.

[(a) IN GENERAL.—A State that receives an allocation of funds under section 6 for a fiscal year shall use—

[(1) not more than 25 percent of the allocation to make a base payment to each weed management entity in accordance with subsection (b); and

[(2) not less than 75 percent of the allocation to make financial awards to weed management entities in accordance with subsection (c).

[(b) BASE PAYMENTS.—

[(1) USE BY WEED MANAGEMENT ENTITIES.—

[(A) IN GENERAL.—Base payments under subsection (a)(1) shall be used by weed management entities—

[(i) to pay the Federal share of the cost of carrying out projects described in subsection (d) that are selected by the State in accordance with subsection (d); or

[(ii) for any other purpose relating to the activities of the weed management entities, subject to guidelines established by the State.

[(B) FEDERAL SHARE.—Under subparagraph (A), the Federal share of the cost of carrying out a project described in subsection (d) shall not exceed 50 percent.

[(2) ELIGIBILITY OF WEED MANAGEMENT ENTITIES.—To be eligible to obtain a base payment under paragraph (1) for a fiscal year, a weed management entity in a State shall—

[(A) be established by local stakeholders—

[(i) to control or eradicate harmful, nonnative weeds on public or private land; or

[(ii) to increase public knowledge and education concerning the need to control or eradicate harmful, nonnative weeds on public or private land;

[(B)(i) for the first fiscal year for which the entity receives a base payment, provide to the State a description of—

[(I) the purposes for which the entity was established; and

[(II) any projects carried out to accomplish those purposes; and

[(ii) for any subsequent fiscal year for which the entity receives a base payment, provide to the State—

[(I) a description of the activities carried out by the entity in the previous fiscal year—

[(aa) to control or eradicate harmful, nonnative weeds on public or private land; or

[(bb) to increase public knowledge and education concerning the need to control or eradicate harmful, nonnative weeds on public or private land; and

[(II) the results of each such activity; and

[(C) meet such additional eligibility requirements, and conform to such process for determining eligibility, as the State may establish.

[(c) FINANCIAL AWARDS.—

[(1) USE BY WEED MANAGEMENT ENTITIES.—

[(A) IN GENERAL.—Financial awards under subsection (a)(2) shall be used by weed management entities to pay the Federal share of the cost of carrying out projects described in subsection (d) that are selected by the State in accordance with subsection (d).

[(B) FEDERAL SHARE.—Under subparagraph (A), the Federal share of the cost of carrying out a project described in subsection (d) shall not exceed 50 percent.

[(2) ELIGIBILITY OF WEED MANAGEMENT ENTITIES.—To be eligible to obtain a financial award under paragraph (1) for a fiscal year, a weed management entity in a State shall—

[(A) meet the requirements for eligibility for a base payment under subsection (b)(2); and

[(B) submit to the State a description of the project for which the financial award is sought.

[(d) PROJECTS.—

[(1) IN GENERAL.—An eligible weed management entity may use a base payment or financial award received under this section to carry out a project relating to the control or eradication of harmful, nonnative weeds on public or private land, including—

[(A) education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment; and

[(B) innovative projects, with results that are disseminated to the public.

[(2) SELECTION OF PROJECTS.—A State shall select projects for funding under this section on a competitive basis, taking into consideration (with equal consideration given to economic and natural values)—

[(A) the seriousness of the harmful, nonnative weed problem or potential problem addressed by the project;

[(B) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

[(C) the extent to which the payment will leverage non-Federal funds to address the harmful, nonnative weed problem addressed by the project;

[(D) the extent to which the entity has made progress in addressing harmful, nonnative weed problems;

[(E) the extent to which the project will provide a comprehensive approach to the control or eradication of harmful, nonnative weeds;

[(F) the extent to which the project will reduce the total population of a harmful, nonnative weed within the State; and

[(G) other factors that the State determines to be relevant.

[(3) SCOPE OF PROJECTS.—

[(A) IN GENERAL.—A weed management entity shall determine the geographic scope of the harmful, nonnative weed problem to be addressed through a project using a base payment or financial award received under this section.

[(B) MULTIPLE STATES.—A weed management entity may use the base payment or financial award to carry out a project to address the harmful, nonnative weed problem of more than 1 State if the entity meets the requirements of applicable State laws.

[(4) LAND.—A weed management entity may use a base payment or financial award received under this section to carry out a project to control or eradicate weeds on any public or private land with the approval of the owner or operator of the land, other than land that is devoted to the cultivation of row crops, fruits, or vegetables.

[(5) PROHIBITION ON PROJECTS TO CONTROL AQUATIC NOXIOUS WEEDS OR ANIMAL PESTS.—A base payment or financial award under this section may not be used to carry out a project to control or eradicate aquatic noxious weeds or animal pests.

[(e) ADMINISTRATIVE COSTS.—Not more than 5 percent of the funds made available under section 8 for a fiscal year may be used by the States or the Federal Government to pay the administrative costs of the program established by this Act, including the costs of complying with Federal environmental laws.

[SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Noxious Weed Control Act of 2002''.

SEC. 2. DEFINITIONS.

In this Act:

(1) NOXIOUS WEED.—The term ''noxious weed'' has the same meaning as in the Plant Protection Act (7 U.S.C. 7702(10)).

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

(3) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

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

(5) WEED MANAGEMENT ENTITY.—The term ''weed management entity'' means an entity that—

(A) is recognized by the State in which it is established;

(C) is established for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds; and

(D) is multijurisdictional and multidisciplinary in nature.

SEC. 3. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program to provide financial assistance through States to eligible weed management entities to control or eradicate weeds. In developing the program, the Secretary shall consult with the National Invasive Species Council, the Invasive Species Advisory Committee, representatives from States and Indian tribes with weed management entities or that have particular problems with noxious weeds, and public and private entities with experience in noxious weed management.

SEC. 4. ALLOCATION OF FUNDS TO STATES AND INDIAN TRIBES.

The Secretary shall allocate funds to States to provide funding to weed management entities to carry out projects approved by States to control or eradicate weeds on the basis of the severity or potential severity of the noxious weed problem, the extent to which the Federal funds will be used to leverage non-Federal funds, the extent to which the State has made progress in addressing noxious weed problems, and such other factors as the Secretary deems relevant. The Secretary shall provide special consideration for States with approved weed management entities established by Indian tribes, and may provide an additional allocation to a State to meet the particular needs and projects that such a weed management entity will address.

SEC. 5. ELIGIBILITY AND USE OF FUNDS.

(a) REQUIREMENTS.—The Secretary shall prescribe requirements for applications by States for funding, including provisions for auditing of and reporting on the use of funds and criteria to ensure that weed management entities recognized by the States are capable of carrying out projects, monitoring and reporting on the use of funds, and are knowledgeable about and experienced in noxious weed management and represent private and public interests adversely affected by noxious weeds. Eligible activities for funding shall include—

(1) applied research to solve locally significant weed management problems and solutions, except that such research may not exceed 8 percent of the available funds in any year;

(2) incentive payments to encourage the formation of new weed management entities, except that such payments may not exceed 25 percent of the available funds in any year; and

(3) projects relating to the control or eradication of noxious weeds, including education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment that promote such control or eradication, and other activities to promote such control or eradication, if the results of the activities are disseminated to the public.

(b) PROJECT SELECTION.—A State shall select projects for funding to a weed management entity on a competitive basis considering—

(1) the seriousness of the noxious weed problem or potential problem addressed by the project;

(2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

(3) the extent to which the payment will leverage non-Federal funds to address the noxious weed problem addressed by the project;

(4) the extent to which the weed management entity has made progress in addressing noxious weed problems;

(5) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(6) the extent to which the project will reduce the total population of a noxious weed;

(7) the extent to which the project uses the principles of integrated vegetation management and sound science; and

(8) such other factors that the State determines to be relevant.

(c) INFORMATION AND REPORT.—As a condition of the receipt of funding, States shall require such information from grant recipients as necessary and shall submit to the Secretary a report that describes the purposes and results of each project for which the payment or award was used, by not later than 6 months after completion of the projects.

(d) FEDERAL SHARE.—The Federal share of any project or activity approved by a State or Indian tribe under this Act may not exceed 50 percent unless the State meets criteria established by the Secretary that accommodates situations where a higher percentage is necessary to meet the needs of an underserved area or addresses a critical need that cannot be met otherwise.

SEC. 6. LIMITATIONS.

(a) LANDOWNER CONSENT; LAND UNDER CULTIVATION.—Any activity involving real property, either private or public, may be carried out under this Act only with the consent of the landowner and no project may be undertaken on property that is devoted to the cultivation of row crops, fruits, or vegetables.

(b) COMPLIANCE WITH STATE LAW.—A weed management entity may carry out a project to address the noxious weed problem in more than one State only if the entity meets the requirements of the State laws in all States in which the entity will undertake the project.

(c) USE OF FUNDS.—Funding under this Act may not be used to carry out a project—

(1) to control or eradicate animals, pests, or submerged or floating noxious aquatic weeds; or

(2) to protect an agricultural commodity (as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602)) other than—

(A) livestock (as defined in section 602 of the Agricultural Trade Act of 1949 (7 U.S.C. 1471); or

(B) an animal- or insect-based product.

SEC. 7. RELATIONSHIP TO OTHER PROGRAMS.

Assistance authorized under this Act is intended to supplement, and not replace, assistance available to weed management entities, areas, and districts for control or eradication of harmful, invasive weeds on public lands and private lands, including funding available under the Pulling Together Initiative of the National Fish and Wildlife Foundation; and the provision of funds to any entity under this Act shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code (commonly known as the Payments in Lieu of Taxes Act).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

To carry out this Act there is authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2002 through 2006, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.

Mr. REID. Mr. President, Senator BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

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

The amendment (No. 4975) in the nature of a substitute 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. 198), as amended, was read the third time and passed.

WILDFIRE PREVENTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 652, S. 2670.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2670) to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems of the interior West.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment, as follows:

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

S. 2670

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 ''Wildfire Prevention Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) there is an increasing threat of wildfire to millions of acres of forest land and rangeland throughout the United States;

(2) forest land and rangeland are degraded as a direct consequence of land management practices (including practices to control and prevent wildfires and the failure to harvest subdominant trees from overstocked stands) that disrupt the occurrence of frequent low-intensity fires that have periodically removed flammable undergrowth;

(3) at least 39,000,000 acres of land of the National Forest System in the interior West are at high risk of wildfire;

(4) an average of 95 percent of the expenditures by the Forest Service for wildfire suppression during fiscal years 1990 through 1994 were made to suppress wildfires in the interior West;

(5) the number, size, and severity of wildfires in the interior West are increasing;

(6) of the timberland in National Forests in the States of Arizona and New Mexico, 59 percent of such land in Arizona, and 56 percent of such land in New Mexico, has an average diameter of 9 to 12 inches diameter at breast height;

(7) the population of the interior West grew twice as fast as the national average during the 1990s;

(8) efforts to prioritize forests and communities for wildfire risk reduction have been inconsistent and insufficient and have resulted in funding to areas that are not prone to severe wildfires;

(9) catastrophic wildfires—

(A) endanger homes and communities;

(B) damage and destroy watersheds and soils; and

(C) pose a serious threat to the habitat of threatened and endangered species;

(10) a 1994 assessment of forest health in the interior West estimated that only a 15- to 30-year window of opportunity exists for effective management intervention before damage from uncontrollable wildfire becomes widespread, with 8 years having already elapsed since the assessment;

(11) following a catastrophic wildfire, certain forests in the interior West do not return to their former grandeur;

(12) healthy forest and woodland ecosystems—

(A) reduce the risk of wildfire to forests and communities;

(B) improve wildlife habitat and biodiversity;

(C) increase tree, grass, forb, and shrub productivity;

(D) enhance watershed values;

(E) improve the environment; and

(F) provide a basis in some areas for economically and environmentally sustainable uses;

(13) sustaining the long-term ecological and economic health of interior West forests and woodland, and their dependent human communities, requires preventing severe wildfires before the wildfires occur and permitting natural, low-intensity ground fires;

(14) more natural fire regimes cannot be accomplished without the reduction of excess fuels and thinning of subdorminant trees (which fuels and trees may be of commercial value);

(15) ecologically-based forest and woodland ecosystem restoration on a landscape scale will—

(A) improve long-term community protection;

(B) minimize the need for wildfire suppression;

(C) improve resource values;

(D) reduce rehabilitation costs;

(E) reduce loss of critical habitat; and

(F) protect forests for future generations;

(16) although the National Fire Plan, and the report entitled ''Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy'' (65 Fed. Reg. 67480), advocate a shift in wildfire policy from suppression to prevention (including restoration and hazardous fuels reduction), Federal land managers are not dedicating sufficient attention and financial resources to restoration activities that simultaneously restore forest health and reduce the risk of severe wildfire;

(17) although landscape scale restoration is needed to effectively reverse degradation, scientific understanding of landscape scale treatments is limited;

(18) the Federal wildfire research program is funded at approximately ⅓ of the amount that is required to address emerging wildfire problems, resulting in the lack of a cohesive strategy to address the threat of catastrophic wildfires; and

(19) rigorous, understandable, and applied scientific information is needed for—

(A) the design, implementation, and adaptation of landscape scale restoration treatments and improvement of wildfire management technology;

(B) the environmental review process; and

(C) affected entities that collaborate in the development and implementation of wildfire treatment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to enhance the capacity to develop, transfer, apply, and monitor practical science-based forest restoration treatments that will reduce the risk of severe wildfires, and improve forest and woodland health, in the interior West;

(2) to develop the practical scientific knowledge required to implement forest and woodland restoration on a landscape scale;

(3) to develop the interdisciplinary knowledge required to understand the socioeconomic and environmental impacts of wildfire control on ecosystems and landscapes;

(4) to require Federal agencies—

(A) to use ecological restoration treatments to reverse declining forest health and reduce the risk of severe wildfires across the forest landscape;

(B) to ensure that sufficient funds are dedicated to wildlife prevention activities, including restoration treatments; and

(C) to monitor and use wildfire treatments based on the use of adaptive ecosystem management;

(5) to develop, transfer, and assist land managers in treating acres with restoration-based treatments and use new management technologies (including the transfer of understandable information, assistance with environmental review, and field and classroom training and collaboration) to accomplish the goals identified in—

(A) the National Fire Plan;

(B) the report entitled ''Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy'' (65 Fed. Reg. 67480); and

(C) the report entitled ''10-Year Comprehensive Strategy: A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment'' of the Western Governors' Association; and

(6) to provide technical assistance to collaborative efforts by affected entities to develop, implement, and monitor adaptive ecosystem management restoration treatments that are ecologically sound, economically viable, and socially responsible.

SEC. 4. DEFINITIONS.

In this Act:

(1) ADAPTIVE ECOSYSTEM MANAGEMENT.—The term ''adaptive ecosystem management'' means a natural resource management process under which planning, implementation, monitoring, research, evaluation, and incorporation of new knowledge are combined into a management approach that is—

(A) based on scientific findings and the needs of society; and

(B) used to modify future management methods and policy.

(2) AFFECTED ENTITIES.—The term ''affected entities'' includes—

(A) land managers;

(B) stakeholders;

(C) concerned citizens; and

(D) the States of the interior West, including political subdivisions of the States.

(3) INSTITUTE.—The term ''Institute'' means an Institute established under section 5(a).

(4) INTERIOR WEST.—The term ''interior West'' means the States of Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah.

(5) LAND MANAGER.—

(A) IN GENERAL.—The term ''land manager'' means a person or entity that practices or guides natural resource management.

(B) INCLUSIONS.—The term ''land manager'' includes a Federal, State, local, or tribal land management agency.

(6) RESTORATION.—The term ''restoration'' means a process undertaken to return an ecosystem or habitat toward—

(A) the original condition of the ecosystem or habitat; or

(B) a condition that supports a related species, natural function, or ecological process (including a low intensity fire).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(8) SECRETARIES.—The term ''Secretaries'' means—

(A) the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) the Secretary of the Interior.

(9) STAKEHOLDER.—The term ''stakeholder'' means any person interested in or affected by management of forest or woodland ecosystems.

(10) STATES.—The term ''States'' means—

(A) the [State of Arizona] *State of Arizona at Northern Arizona University*;

(B) the State of New Mexico; and

(C) the State of Colorado.

SEC. 5. ESTABLISHMENT OF INSTITUTES.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall—

(1) not later than 180 days after the date of enactment of this Act, establish 3 Institutes to promote the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West; and

(2) provide assistance to the Institutes to promote the use of adaptive ecosystem management in accordance with paragraph (1).

(b) LOCATION.—

(1) EXISTING INSTITUTES.—The Secretary may designate an institute in existence on the date of enactment of this Act to serve as an Institute established under this Act.

(2) STATES.—Of the Institutes established under this Act, the Secretary shall establish 1 Institute in each of the States of Arizona, New Mexico, and Colorado.

(c) DUTIES.—Each Institute shall—

(1) plan, conduct, or promote research on the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West, including—

(A) research that assists in providing information on the use of adaptive ecosystem management practices to affected entities; and

(B) research that will be useful in the development and implementation of practical, science-based, ecological restoration treatments for forest and woodland ecosystems affected by wildfires; and

(2) provide the results of research described in paragraph (1) to affected entities.

(d) COOPERATION.—To increase and accelerate efforts to restore forest ecosystem health and abate unnatural and unwanted wildfires in the interior West, each Institute shall cooperate with—

(1) researchers at colleges and universities in the States that have a demonstrated capability to conduct research described in subsection (c); and

(2) other organizations and entities in the interior West (such as the Western Governors' Association).

(e) ANNUAL WORK PLANS.—As a condition of the receipt of funds made available under this Act, for each fiscal year, each Institute shall submit to the Secretary, for review by the Secretary, in consultation with the Secretary of the Interior, an annual work plan that includes assurances, satisfactory to the Secretaries, that the proposed work of the Institute will serve the informational needs of affected entities.

SEC. 6. COOPERATION BETWEEN INSTITUTES AND FEDERAL AGENCIES.

In carrying out this Act, the Secretary, in consultation with the Secretary of the Interior—

(1) shall ensure that adequate financial and technical assistance is provided to the Institutes to enable the Institutes to carry out the purposes of the Institutes under section 5, including prevention activities and ecological restoration for wildfires and affected ecosystems;

(2) shall use information and expertise provided by the Institutes;

(3) shall encourage Federal agencies to use, on a cooperative basis, information and expertise provided by the Institutes;

(4) shall encourage cooperation and coordination between Federal programs relating to—

(A) ecological restoration;

(B) wildfire risk reduction; and

(C) wildfire management technologies;

(5) notwithstanding chapter 63 of title 31, United States Code, may—

(A) enter into contracts, cooperative agreements, interagency personal agreements to carry out this Act; and

(B) carry out other transactions under this Act;

(6) may accept funds from other Federal agencies to supplement or fully fund grants made, and contracts entered into, by the Secretaries;

(7) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this Act;

(8) shall encourage professional education and public information activities relating to the purposes of this Act; and

(9) may promulgate such regulations as the Secretaries determine are necessary to carry out this Act.

SEC. 7. MONITORING AND EVALUATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Secretary, in consultation with the Secretary of Interior, shall complete and submit to the appropriate committees of Congress a detailed evaluation of the programs and activities of each Institute—

(1) to ensure, to the maximum extent practicable, that the research, communication tools, and information transfer activities of each Institutes meet the needs of affected entities; and

(2) to determine whether continued provision of Federal assistance to each Institute is warranted.

(b) TERMINATION OF ASSISTANCE.—If, as a result of an evaluation under subsection (a), the Secretary, in consultation with the Secretary of the Interior, determines that an Institute does not qualify for further Federal assistance under this Act, the Institute shall receive no further Federal assistance under this Act until such time as the qualifications of the Institute are reestablished to the satisfaction of the Secretaries.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $15,000,000 for each fiscal year.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed and the motion to reconsider be laid on the

table. Senator BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table; that the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table; that there be no intervening action or debate, and any statements related thereto be printed in the RECORD.

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

The committee amendment was agreed to.

The amendment (No. 4976) in the nature of a substitute was agreed to.

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

The bill (S. 2670), as amended, was read the third time and passed.

CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 599, S. 2222.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2222) to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

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

S. 2222

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

[SECTION 1. FINDINGS.

[Congress finds and declares that:

[(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended, (ANCSA) (43 U.S.C. 1601, et seq.) for the Native Village of Saxman.

[(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

[(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

[(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(1) of ANCSA.

[(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

[(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA.

[(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

[(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of split estate between national forest surface and Sealaska subsurface lands.

[(9) There is an additional need to resolve existing areas of Sealaska/Tongass National Forest split estate.

[(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve certain Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

[(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

[SEC. 2. SHORT TITLE.

[This Act may be cited as the ''Cape Fox Land Entitlement Adjustment Act of 2002''.

[SEC. 3. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN NON-PRODUCTIVE LANDS.

[Notwithstanding the provisions of section 16(b) of ANCSA, Cape Fox Corporation (Cape Fox) shall not be required to select or receive conveyance of approximately 160 nonproductive acres, more particularly described as within the following described lands:

[T. 75 S., R. 91 E., C.R.M., section 1.

[SEC. 4. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

[(a) In addition to lands made available for selection under ANCSA and [notwithstanding any other provision of law, within 24 months after the date of enactment of this Act, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

[T. 73 S., R. 90 E., C.R.M.

[Section 33: SW portion of SE¼: 38 acres.

[Section 33: NW portion of SE¼: 13 acres.

[Section 33: SE¼ of SE¼: 40 acres.

[Section 33: SE¼ of SW¼: 8 acres.

[(b) Upon conveyance to Cape Fox of the surface estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska Corporation (Sealaska) the subsurface estate to said lands.

[(c) The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

[SEC. 5. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

[(a) The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the Federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c).

[(b) The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled ''Proposed Kensington Project Land Exchange'', dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. The Secretary of Agriculture shall exclude from the lands offered all land from the mean high tide mark to a point five hundred feet inland of all marine shorelands in and adjacent to the waters of Berners Bay; Provided, said exclusion shall not include any lands in the Slate Creek Cove area within T. 36 S., R 62 E., C.R.M., section 1, W½ W½ or section 2, E½ E½.

[(c) Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify for exchange lands that the Secretary of Agriculture agrees are equal in value to the Federal exchange lands described in subsection (b). The lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 3,000 acres and designated as parcels A–1 to A–3, B–1 to B–3, and C upon a map entitled ''Cape Fox Corporation ANCSA Lands Exchange Proposal'', dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent national forest lands and in reasonably compact tracts. Cape Fox shall notify the Secretaries of Agriculture and the Interior and Sealaska in writing which lands and interests therein Cape Fox has identified for exchange. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise.

[(d) The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

[(e) The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to Cape Fox agreement and conveyance to the United States of all its right, title and interest in the Cape Fox lands included in the exchange, the Secretary of Agriculture shall complete the exchange. Subject only to said agreement and conveyance, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the Federal lands included in the exchange within 180 days after the date of enactment of this Act.

[SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

[(a) Upon conveyance by Cape Fox of all its right, title and interest in the Cape Fox lands included in the exchange under section 5 and conveyance and relinquishment by Sealaska Corporation of all its right, title and interest in the lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the Federal lands identified for exchange under subsection (b). Subject only to said Cape Fox and Sealaska conveyances and relinquishment, the Secretary of the Interior shall complete the interim conveyance to Sealaska of the Federal lands identified for exchange within 180 days after the date of enactment of this Act.

[(b) The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled ''Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area,'' dated April, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Sealaska shall be entitled, within 60 days after receiving notice of the identification of Cape Fox exchange lands under section 5(c), to identify for exchange to Sealaska lands that the Secretary of Agriculture agrees are equal in value to the Sealaska exchange lands described in subsection (c). Lands identified for exchange to Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 5(b). Sealaska shall notify Cape Fox and the Secretaries of Agriculture and the Interior in writing which lands Sealaska has identified for exchange. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands identified, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

[(c) The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to an additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2, and 3 lands set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

[(d) The exchange under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102–415 (October 14, 1992).

[SEC. 7. MISCELLANEOUS PROVISIONS.

[(a) For the exchanges described in this Act, estimates of value for exchange purposes shall be completed from available information, and detailed appraisals of the exchange lands or additional resource inventories shall not be required.

[(b) Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this Act shall be considered, for all purposes, land conveyed pursuant to ANCSA in partial fulfillment of, respectively, the entitlement of Cape Fox or Sealaska. The exchanges described in this Act shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States under this Act shall become and be administered as part of the Tongass National Forest.

[(c) Lands conveyed to or selected by the State of Alaska under Public Law 85–508 (72 Stat. 339, 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

[(d) The maps referred to in this Act shall be maintained on file in the Forest Service Region 10 regional office in Juneau, Alaska. The acreage cited in this section is approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

[SEC. 8. AUTHORIZATION OF APPROPRIATION.

[There is authorized to be appropriated to the Secretary of the Department of Agriculture such sums as may be necessary for any required surveys, value estimation and related costs of exchanging lands specified in this Act, and for habitat and timber stand improvement, including thinning and pruning, on lands acquired by the Department of Agriculture under this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Cape Fox Land Entitlement Adjustment Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that:

(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) for the Native Village of Saxman.

(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(1) of ANCSA (43 U.S.C. 1621(1)).

(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no known economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA (43 U.S.C. 1615(b)).

(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of additional split estate between National Forest System surface lands and Sealaska subsurface lands.

(9) There is an additional need to resolve existing areas of Sealaska/Tongass split estate, in which Sealaska holds title or conveyance rights to several thousand acres of subsurface lands that encumber management of Tongass National Forest surface lands.

(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve some of the Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

SEC. 3. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN LANDS.

Notwithstanding the provisions of section 16(b) of ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be required to select or receive conveyance of approximately 160 acres of federal unconveyed lands within Section 1, T. 75 S., R. 91 E., C.R.M.

SEC. 4. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

(a) SELECTION AND CONVEYANCE OF SURFACE ESTATE.—In addition to lands made available for selection under ANCSA, within 24 months after the date of enactment of this Act, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

(1) T. 73 S., R. 90 E., C.R.M.

(2) Section 33: SW portion of SE ¼: 38 acres.

(3) Section 33: NW portion of SE ¼: 13 acres.

(4) Section 33: SE ¼ of SE ¼: 40 acres.

(5) Section 33: SE ¼ of SW ¼: 8 acres.

(b) CONVEYANCE OF SUBSURFACE ESTATE.—Upon conveyance to Cape Fox of the surface estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska the subsurface estate to the lands.

(c) TIMING.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

SEC. 5. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c) and, to the extent necessary, lands and interests therein identified under subsection (d).

(b) LANDS TO BE EXCHANGED TO CAPE FOX.—The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled ''Proposed Kensington Project Land Exchange,'' dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify in writing to the Secretaries of Agriculture and the Interior the lands and interests in lands that Cape Fox proposes to exchange for the federal lands described in subsection (b). The lands and interests in lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 2,900 acres and designated as parcels A–1 to A–3, B–1 to B–3, and C upon a map entitled ''Cape Fox Corporation ANCSA Land Exchange Proposal,'' dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise. The value of the easement shall be included in determining the total value of lands exchanged to the United States.

(d) VALUATION OF EXCHANGE LANDS.—The Secretary of Agriculture shall determine whether the lands identified by Cape Fox under subsection (c) are equal in value to the lands described in subsection (b). If the lands identified under subsection (c) are determined to have insufficient value to equal the value of the lands described in subsection (b), Cape Fox and the Secretary shall mutually identify additional Cape Fox lands for exchange sufficient to equalize the value of lands conveyed to Cape Fox.

Such land shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts.

(e) CONDITIONS.—The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(f) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to conveyance from Cape Fox to the United States of all its rights, title and interests in the Cape Fox lands included in the exchange consistent with this Act, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the federal lands included in the exchange within 180 days after the execution of the exchange agreement by Cape Fox and the Secretary of Agriculture.

SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—Upon conveyance of the Cape Fox lands included in the exchange under section 5 and conveyance and relinquishment by Sealaska in accordance with this Act of the lands and interests in lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the federal lands identified for exchange under subsection (b).

(b) LANDS TO BE EXCHANGED TO SEALASKA.—The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled ''Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area,'' dated April 2002 and available for inspection in the Forest Service Region 10 Regional Office in Juneau, Alaska. Within 60 days after receiving notice of the identification by Cape Fox of the exchange lands under Section 5(c), Sealaska shall be entitled to identify in writing to the Secretaries of Agriculture and the Interior the lands that Sealaska selects to receive in exchange for the Sealaska lands described in subsection (c). Lands selected by Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 5(b). The Secretary of Agriculture shall determine whether these selected lands are equal in value to the lands described in subsection (c) and may adjust the amount of selected lands in order to reach agreement with Sealaska regarding equal value. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands selected and agreed to by the Secretary but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to be additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2 and 3 lands as set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

(d) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska under subsection (b), to enter into an agreement with Sealaska to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to the Cape Fox and Sealaska conveyances and relinquishments described in subsection (a), the Secretary of the Interior shall complete the interim conveyance to Sealaska of the federal lands selected for exchange within 180 days after execution of the agreement by Sealaska and the Secretary of Agriculture.

(e) MODIFICATION OF AGREEMENT.—The executed exchange agreement under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102–415 (October 14, 1992).

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) EQUAL VALUE REQUIREMENT.—The exchanges described in this Act shall be of equal value. Cape Fox and Sealaska shall have the opportunity to present to the Secretary of Agriculture estimates of value of exchange lands with supporting information.

(b) TITLE.—Cape Fox and Sealaska shall convey and provide evidence of title satisfactory to the Secretary of Agriculture for their respective lands to be exchanged to the United States under this Act, subject only to exceptions, reservations and encumbrances in the interim conveyance or patent from the United States or otherwise acceptable to the Secretary of Agriculture.

(c) HAZARDOUS SUBSTANCES.—Cape Fox, Sealaska, and the United States each shall not be subject to liability for the presence of any hazardous substance in land or interests in land solely as a result of any conveyance or transfer of the land or interests under this Act.

(d) EFFECT ON ANCSA SELECTIONS.—Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this Act shall be considered, for all purposes, land conveyed pursuant to ANCSA. Nothing in this Act shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA. Cape Fox and Sealaska shall remain charged for any lands they exchange under this Act and any lands conveyed pursuant to section 4, but shall not be charged for any lands received under section 5 or section 6. The exchanges described in this Act shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States under this Act shall become and be administered as part of the Tongass National Forest.

(e) EFFECT ON STATEHOOD SELECTIONS.—Lands conveyed to or selected by the State of Alaska under the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339; 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

(f) MAPS.—The maps referred to in this Act shall be maintained on file in the Forest Service Region 10 Regional Office in Juneau, Alaska. The acreages cited in this Act are approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

(g) EASEMENTS.—Notwithstanding section 17(b) of ANCSA, federal lands conveyed to Cape Fox or Sealaska pursuant to this Act shall be subject only to the reservation of public easements mutually agreed to and set forth in the exchange agreements executed under this Act. The easements shall include easements necessary for access across the lands conveyed under this Act for use of national forest or other public lands.

(h) OLD GROWTH RESERVES.—The Secretary of Agriculture shall add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF AGRICULTURE.—There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary for value estimation and related costs of exchanging lands specified in this Act, and for road rehabilitation, habitat and timber stand improvement, including thinning and pruning, on lands acquired by the United States under this Act.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary for land surveys and conveyances pursuant to this Act.

Mr. REID. Mr. President, I understand Senator BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table; that the committee-reported substitute, as amended, be agreed to, the motion to reconsider be laid on the table, that the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table; that there be no intervening action or debate, and that any statements related thereto be printed in the RECORD.

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

The amendment (No. 4977) in the nature of a substitute 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. 2222), as amended, was read the third time and passed.

FREMONT-MADISON CONVEYANCE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 645, S. 2556.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2556) to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

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

[Strike the part shown in black brackets and insert the part shown in Italic.]

S. 2556

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 ''Fremont-Madison Conveyance Act''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) AGREEMENT.—The term ''Agreement'' means the memorandum of agreement between the Secretary and the District identified as Contract No. 1425–01–MA–10–3310, and dated September 13, 2001.

[(2) DISTRICT.—The term ''District'' means the Fremont-Madison Irrigation District, an irrigation district organized under State law.

[(3) FACILITY.—The term ''facility'' means—

[(A) the Cross Cut Diversion Dam, the Cross Cut Canal, and the Teton Exchange Wells in the State;

[(B) any canal, lateral, drain, or other component of the water distribution and drainage system that, on the date of enactment of this Act, is operated or maintained by the District to deliver water to and drainage of water from land within the boundaries of the District; and

[(C) with respect to the Teton Exchange Wells—

[(i) Idaho Department of Water Resources permit number 22–7022, including drilled wells under the permit, as described in the Agreement; and

[(ii) any appurtenant equipment.

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

[(5) STATE.—The term ''State'' means the State of Idaho.

[SEC. 3. CONVEYANCE OF FACILITIES.

[(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, but not later than September 13, 2003, subject to applicable laws and in accordance with the Agreement, the Secretary shall convey to the District all right, title, and interest of the United States in and to the facilities.

[(b) CONSIDERATION.—

[(1) IN GENERAL.—In exchange for the conveyance of the facilities under subsection (a), the District shall pay to the Secretary an amount equal to the lesser of—

[(A) the net value of any remaining obligations owed to the United States by the District with respect to the facilities conveyed, as determined on the date of the conveyance; or

[(B) $280,000.

[(2) ADMINISTRATIVE COSTS.—

[(A) IN GENERAL.—In addition to amounts paid to the Secretary under paragraph (1), the District shall pay to the Secretary, subject to subparagraph (B), any administrative costs incurred by the Secretary in conveying the facilities, including the costs of carrying out a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(B) LIMITATION.—The District shall pay to the Secretary not more than $40,000 in administrative costs under subparagraph (A).

[(3) DEPOSIT.—Amounts received by the Secretary under paragraph (1) or (2) shall be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391).

[(c) CONDITION.—As a condition of the conveyance under subsection (a), the Secretary shall, not later than the date on which the facilities are conveyed, comply with any applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[SEC. 4. LIABILITY.

[(a) IN GENERAL.—Beginning on the date on which the facilities are conveyed under section 3(a), the United States shall not be liable, except as provided in subsection (b), under any Federal or State law for damage from any act, omission, or occurrence relating to the facilities.

[(b) EXCEPTION.—Notwithstanding subsection (a), the United States shall be liable for damage caused by acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date on which the facilities are conveyed under section 3(a).

[(c) FEDERAL TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (commonly known as the ''Federal Tort Claims Act'') as in effect on the date of enactment of this Act.

[SEC. 5. WATER SUPPLY TO DISTRICT LAND.

[(a) IN GENERAL.—The Secretary shall increase, by a quantity equal to the number of acres that are in the District on the date of enactment of this Act, the number of acres in the District that are eligible to receive water from the Minidoka Project and the Teton Basin Project.

[(b) EXTENSION OF WATER SERVICE CONTRACT.—The water service contract between the Secretary and the District, numbered 7–07–10–W0179, and dated September 16, 1977, is extended until the date on which the conditions of this Act are fulfilled, as determined by the Secretary.

[(c) EFFECT.—This section does not authorize the use of any additional water from a project carried out under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)) beyond that which is authorized on the date of enactment of this Act under—

[(1) water storage contracts; and

[(2) State water law.

[SEC. 6. EFFECT.

[Except as specifically provided in this Act, nothing in this Act affects—

[(1) the rights of any person with respect to the facilities; or

[(2) any contract executed by the United States or under State law with respect to any right of an irrigation district to use water made available by the facilities conveyed under this Act.

[SEC. 7. REPORT.

[If the Secretary has not conveyed the facilities to the District by the date that is 1 year after the date of enactment of this Act, the Secretary shall, not later than that date, submit to Congress a report that—

[(1) explains the reasons why the conveyance has not been completed; and

[(2) specifies the date by which the conveyance is proposed to be completed.

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fremont-Madison Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) DISTRICT.—The term ''District'' means the Fremont-Madison Irrigation District, an irrigation district organized under the law of the State of Idaho.

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

SEC. 3. CONVEYANCE OF FACILITIES.

(a) CONVEYANCE REQUIREMENT.—The Secretary of the Interior shall convey to the Fremont-Madison Irrigation District, Idaho, pursuant to the terms of the memorandum of agreement (MOA) between the District and the Secretary (Contract No. 1425–0901–09MA–0910–093310), all right, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained by the District for delivery of water to and drainage of water from lands within the boundaries of the District as they exist upon the date of enactment of this Act, consistent with section 8.

(b) REPORT.—If the Secretary has not completed any conveyance required under this Act by September 13, 2003, the Secretary shall, by no later than that date, submit a report to the Congress explaining the reasons that conveyance has not been completed and stating the date by which the conveyance will be completed.

SEC. 4. COSTS.

(a) IN GENERAL.—The Secretary shall require, as a condition of the conveyance under section 3, that the District pay the administrative costs of the conveyance and related activities, including the costs of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as described in Contract No. 1425–0901–09MA–0910–093310.

(b) VALUE OF FACILITIES TO BE TRANSFERRED.—In addition to subsection (a) the Secretary shall also require, as a condition of the conveyance under section 2, that the District pay to the United States the lesser of the net present value of the remaining obligations owed by the District to the United States with respect to the facilities conveyed, or $280,000. Amounts received by the United States under this subsection shall be deposited into the Reclamation Fund.

SEC. 5. TETON EXCHANGE WELLS.

(a) CONTRACTS AND PERMIT.—In conveying the Teton Exchange Wells referenced in section 3, the Secretary shall also convey to the District—

(1) Idaho Department of Water Resources permit number 22–097022, including drilled wells under the permit, as described in Contract No. 1425–0901–09MA–0910–093310; and

(2) all equipment appurtenant to such wells.

(b) EXTENSION OF WATER SERVICE CONTRACT.—The water service contract between the Secretary and the District (Contract No. 7–0907–0910–09W0179, dated September 16, 1977) is hereby extended and shall continue in full force and effect until all conditions described in this Act are fulfilled.

SEC. 6. ENVIRONMENTAL REVIEW

Prior to conveyance the Secretary shall complete all environmental reviews and analyses as set forth in the MOA.

SEC. 7. LIABILITY.

Effective on the date of the conveyance the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section may increase the liability of the United States beyond that currently provided in chapter 171 of title 28, United States Code.

SEC. 8. WATER SUPPLY TO DISTRICT LANDS.

The acreage within the District eligible to receive water from the Minidoka Project and the Teton Basin Projects is increased to reflect the number of acres within the District as of the date of enactment of this Act, including lands annexed into the District prior to enactment of this Act as contemplated by the Teton Basin Project. The increase in acreage does not alter deliveries authorized under their existing water storage contracts and as allowed by State water law.

SEC. 9. DROUGHT MANAGEMENT PLANNING.

Within 60 days of enactment of this Act, in collaboration with stakeholders in the Henry's Fork watershed, the Secretary shall initiate a drought management planning process to address all water uses, including irrigation and the wild trout fisherey, in the Henry's Fork watershed. Within 18 months of enactment of this Act, the Secretary shall report to Congress with a final drought management plan.

SEC. 10. EFFECT.

(a) IN GENERAL.—Except as provided in this Act, nothing in this Act affects—

(1) the rights of any person; or

(2) any right in existence on the date of enactment of this Act of the Shoshone-Bannock

Tribes of the Fort Hall Reservation to water based on a treaty, compact, executive order, agreement, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the ''Winters Doctrine''), or law.

(b) CONVEYANCES.—Any conveyance under this Act shall not affect or abrogate any provision of any contract executed by the United States or State law regarding any irrigation district's right to use water developed in the facilities conveyed.

Mrs. FEINSTEIN: Mr. President, I rise today in support of legislation to authorize the Secretary of the Interior and other Federal agency heads to carry out activities during fiscal years 2003 through 2005 to implement the Calfed Bay-Delta Program. This program is of tremendous importance to my home State of California. Its mission is to develop and implement a long-term comprehensive plan that will improve water management for the Bay-Delta and restore its ecological health. The program has several goals: improving water supply reliability, including additional water storage and conveyance; protecting drinking water quality; restoring ecological health; and protecting Delta levees.

Mr. President, on August 28, 2000, the Federal Government and the State of California entered into a Record of Decision (ROD) which selects a preferred program alternative for the Calfed Bay-Delta Program, setting forth the overall direction of this program. Under the ROD, the Calfed agencies (comprised of both Federal and State agencies) will proceed with the specific actions in Stage 1, which covers the first 7 years of this program. This legislation authorizes those Stage 1 actions which are to take place in fiscal years 2003 through 2005 for which there are appropriations. A fundamental tenet of this program is that all program elements proceed in a balanced manner. The Record of Decision explicitly requires balance in carrying out the program.

While the provision that the Senate is considering today is scaled back from the bills that I have previously introduced on this matter, the intent of the legislation is the same: to provide that the Calfed Program be carried out in a balanced manner consistent with the Record of Decision of August 28, 2000, including the principles and schedules stated therein, and other applicable law. I want to clarify that this provision in no way affects or modifies any other authority that an agency has to carry out activities related to, or in furtherance of, the Calfed Program.

Finally, this legislation would provide authority to the Secretary of the Interior and the other Federal agency heads identified in the ROD to participate in the Calfed Bay-Delta Authority established by the California Bay-Delta Authority Act, to the extent not inconsistent with other law.

Mr. President, early next Congress, Senator KYL and I plan to introduce additional Calfed authorizing legislation on which we have collaborated that would provide greater specificity. I thank Senator KYL for his willingness to work with me on this important matter.

Mr. President, I am pleased that the Senate is favorably considering this legislation today. The Calfed Bay-Delta Program enjoys broad-based support in California and is vital to the future of the State.

Mrs. BOXER. Mr. President, I am pleased today that the Senate is passing legislation to authorize the Secretary of the Interior and other Federal agency heads to participate in the implementation of the CALFED Bay-Delta Program.

For decades, water allocation in California was conducted through endless appeals, lawsuits, and divisive ballot initiatives. Such battles were painful and they prevented us from finding real solutions to our state's very real water problems. In 1994, a new state-federal partnership program called CALFED promised a better way. Through a plan to provide reliable, clean water to farms, businesses, and millions of Californians while at the same time restoring our fish, wildlife and environment, CALFED was committed to identifying a solution that all water users could share.

Over the years, what has made CALFED work is that it employs a consensus approach that balances the needs of the various interests competing for California's scarce water resources. This balance is most clearly articulated in the Record of Decision (ROD) that was agreed to on August 28, 2000 by the Federal Government and the State of California. The CALFED ROD outlines clearly the CALFED Bay-Delta Programs' goals and repeatedly reiterates the need to move forward with these goals in a balanced manner.

This legislation authorizes the federal agencies to undertake the actions and activities identified in the ROD. It is our intent that all activities are to be implemented in a manner consistent with the ROD. This legislation is not intended to authorize activities, such as major construction projects, that would otherwise require completion of feasibility studies, permits under section 404(a) of the Clean Water Act and other applicable laws, and project-specific authorizations. In addition, the legislation requires that federal participation in the CALFED Bay-Delta Program proceed in a way that is consistent with other laws.

I want to particularly thank my colleague, Senator FEINSTEIN, for her continued leadership on this legislation. This bill will help insure that the CALFED Bay-Delta Program continues to play a vital role in meeting California's water needs.

AMENDMENT NO. 4978

Mr. REID. Senator BINGAMAN has a substitute at the desk. I ask unanimous consent that the amendment be agreed to, the motion to reconsider be laid upon the table, the committee-reported substitute, as amended, be agreed to, and the motion to reconsider be laid upon the table, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon table, with no intervening action or debate, and that any statements relating to this matter be printed in the RECORD.

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

The amendment (No. 4978) was agreed to.

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

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

The bill (S. 2556), as amended, was read the third time and passed, as follows:

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

CONVEYANCE OF CERTAIN PUBLIC LANDS IN THE STATE OF ALASKA TO THE UNIVERSITY OF ALASKA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 640, S. 1816.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1816) to provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. 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 measure be printed in the RECORD, with no intervening action or debate.

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

The bill (S. 1816) was read the third time and passed, as follows:

S. 1816

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

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the University of Alaska is the successor to and the beneficiary of all Federal grants and conveyances to or for the Alaska Agricultural College and School of Mines;

(2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45 Stat. 1091, the United States granted to the Territory of Alaska certain Federal lands for the University of Alaska;

(3) the Territory did not receive most of the land intended to be conveyed by the Act of March 4, 1915, before repeal of that Act by section 6(k) of the Alaska Statehood Act (Public Law 85–508, 72 Stat. 339);

(4) only one other State land grant college in the United States has obtained a smaller land grant from the Federal Government

than has the University of Alaska, and all land grant colleges in the western States of the United States have obtained substantially larger land grants than has the University of Alaska;

(5) an academically strong and financially secure state university system is a cornerstone to the long-term development of a stable population and to a healthy, diverse economy and is in the national interest;

(6) the Federal Government now desires to acquire certain lands for addendum to various conservation units;

(7) the national interest is served by transferring certain Federal lands to the University of Alaska which will be able to use and develop the resources of such lands and by returning certain lands held by the University of Alaska located within certain Federal conservation system units to Federal ownership; and

(8) the University of Alaska holds valid legal title to and is responsible for management of lands transferred by the United States to the Territory and State of Alaska for the University and an exchange of lands for lands that are capable of producing revenues to support the education objectives of the original grants is consistent with and in furtherance of the purposes and terms of, and thus not in violation of, the Federal grant of such lands.

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

(1) to fulfill the original commitment of Congress to establish the University of Alaska as a land grant university with holdings sufficient to facilitate operation and maintenance of a university system for the inhabitants of the State of Alaska; and

(2) to acquire from the University of Alaska lands it holds within Federal parks, wildlife refuges, and wilderness areas to further the purposes for which those areas were established.

SEC. 2. LAND GRANT.

(a) Notwithstanding any other provision of law and subject to valid existing rights, the University of Alaska (''University'') is entitled to select up to 250,000 acres of Federal lands or interests in lands in or adjacent to Alaska as a land grant. The Secretary of the Interior (''Secretary'') shall promptly convey to the University the Federal lands selected and approved in accordance with the provisions of this Act.

(b)(1) Within forty-eight (48) months of the enactment of this Act, the University of Alaska may submit to the Secretary a description of lands or interests in lands for conveyance. The initial selection may be less than or exceed 250,000 acres and the University may add or delete lands or interests in lands, or until 250,000 patented acres have been conveyed pursuant to this Act, except that the total of land selected and conveyed shall not exceed 275,000 areas at any time.

(2) The University may select lands validly selected but not conveyed to the State of Alaska or to a Native Corporation organized pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), except that these lands or interests in lands may not be approved or convey to the University unless the State of Alaska or the Native Corporation relinquishes its selection in writing.

(3) The University may not make selections within a conversation system unit, as defined in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), or in the Tongass National Forest except within lands classified as LUD III or LUD IV by the United States Forest Service and limited to areas of second growth timber where timber harvest occurred after January 1, 1952.

(4) The University may make selections within the National Petroleum Reserve—Alaska (''NPRA''), except that—

(A) no selection may be made within an area withdrawn for village selection pursuant to section 11(a) of the Alaska Native Claims Settlement Act for the Native villages of Atkasook, Barrow, Nuiqsit and Wainwright;

(B) no selection may be made in the Teshekpuk Lake Special Management Area as depicted on a map that is included in the final environmental impact statement for the Northeast NPRA dated October 7, 1998; and

(C) No selections may be made within those portions of NPRA north of latitude 69 degrees North in excess of 92,000 acres and no selection may be made within such area during the two year period extending from the date of enactment of this Act. The Secretary shall attempt to conclude an agreement with the University of Alaska and the State of Alaska providing for sharing NPRA leasing revenues within the two year period. If the Secretary concludes such an agreement, the Secretary shall transmit it to the Congress, and no selection may be made within such area during the three year period extending from the date of enactment of this Act. If legislation has not been enacted within three years of the date of enactment of this Act approving the agreement, the University of Alaska may make selections within such area. An agreement shall provide for the University of Alaska to receive a portion of annual revenues from mineral leases within NPRA in lieu of any lands selections within NPRA north of latitude 69 degrees North, but not to exceed ten percent of such revenues or $9 million annually, whichever is less.

(5) Within forty-five (45) days of receipt of a selection, the Secretary shall publish notice of the selection in the Federal Register. The notice shall identify the lands or interest in lands included in the selection and provide for a period for public comment not to exceed sixty (60) days.

(6) Within six months of the receipt of such a selection, the Secretary shall accept or reject the selection and shall promptly notify the University of his decision, including the reasons for any rejection. A selection that is not rejected within six months of notification to the Secretary is deemed approved.

(7) The Secretary may reject a selection if the Secretary finds that the selection would have a significant adverse impact on the ability of the Secretary to comply with the land entitlement provisions of the Alaska Statehood Act or the Alaska Native Claims Settlement Act (43 U.S.C. 1601) or if the Secretary finds that the selection would have a direct, significant and irreversible adverse effect on a conservation system unit as defined in the Alaska National Interest Conservation Act.

(8) The Secretary shall promptly publish notice of an acceptance or rejection of a selection in the Federal Register.

(9) An action taken pursuant to this Act is not a major Federal action within the meaning of section 102(2)(C) of Public Law 91–190 (83 Stat. 852, 853).

(c) The University may not select Federal lands or interests in lands reserved for military purposes or reserved for the administration of a Federal agency, unless the Secretary of Defense or the head of the affected agency agrees to relinquish the lands or interest in lands.

(d) The University may select additional lands or interest in lands to replace lands rejected by the Secretary.

(e) Lands or interests in lands shall be segregated and unavailable for selection by and conveyance to the State of Alaska or a Native Corporation and shall not be otherwise encumbered or disposed of by the United States pending completion of the selection process.

(f) The University may enter selected lands on a non-exclusive basis to assess the oil, gas, mineral and other resource potential therein and to exercise due diligence regarding making a final selection. The University, and its delegates or agents, shall be permitted to engage in assessment techniques including, but not limited to, core drilling to assess the metalliferous or other values, and surface geological exploration and seismic exploration for oil and gas, except that exploratory drilling of oil and gas wells shall not be permitted.

(g) Within one year of the Secretary's approval of a selection, the University may make a final decision whether to accept these lands or interests in lands and shall notify the Secretary of its decision. The Secretary shall publish notice of any such acceptance or rejection in the Federal Register within six months. If the University has decided to accept the selection, effective on the date that the notice of such acceptance is published, all right, title, and interest of the United States in the described selection shall vest in the University.

(h) Lakes, rivers and streams contained within final selections shall be meandered and lands submerged thereunder shall be conveyed in accordance with section 901 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2430; 43 U.S.C. 1631).

(i) Upon completion of a survey of lands or interest in lands subject to an interim approval, the Secretary shall promptly issue patent to such lands or interests in lands.

(j) The Secretary of Agriculture and the heads of other Federal departments and agencies shall promptly take such actions as may be necessary to assist the Secretary in implementing this Act.

SEC. 3. RELINQUISHMENT OF CERTAIN UNIVERSITY OF ALASKA HOLDINGS.

(a) As a condition to any grant provided by section 2 of this Act, the University shall begin to convey to the Secretary those lands listed in ''The University of Alaska's Inholding Reconveyance Document'' and dated November 13, 2001.

(b) The University shall begin conveyance of the lands described in section 3(a) of this Act upon approval of selected lands and shall convey to the Secretary a percentage of these lands approximately equal to that percentage of the total grant represented by the approval. The University shall not be required to convey to the Secretary any lands other than those referred to in section 3(a) of this Act. The Secretary shall accept quitclaim deeds from the University for these lands.

SEC. 4. JUDICIAL REVIEW.

The University of Alaska may bring an appropriate action, including an action in the nature of mandamus, against the Department of the Interior, naming the Secretary, for violation of this Act or for review of a final agency decision taken under this Act. An action pursuant to this section may be filed in the United States District Court for the District of Alaska within two (2) years of the alleged violation or final agency decision and such court shall have exclusive jurisdiction over any such suit.

SEC. 5. STATE MATCHING GRANT.

(a) Notwithstanding any other provision of law and subject to valid existing rights, within forty-eight (48) months of receiving evidence of ownership from the State, the University may, in addition to the grant made available in section 2 of this Act, select up to 250,000 acres of Federal lands or interests in lands in or adjacent to Alaska to be conveyed on an acre-for-acre basis as a matching grant for any lands received from the State of Alaska after the date of enactment of this Act.

(b) Selections of lands or interests in lands pursuant to this section shall be in parcels of 25,000 acres or greater.

(c) Grants made pursuant to this section shall be separately subject to the terms and conditions applicable to grants made under section 2 of this Act.

MOUNT NEBO WILDERNESS BOUNDARY ADJUSTMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 673, H.R. 451.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 451) to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

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

The bill (H.R. 451) was read the third time and passed.

REINSTATE AND EXTEND THE DEADLINE FOR THE COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN THE STATE OF ILLINOIS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 663, S. 2872.

The ACTING PRESIDENT pro tempore. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2872) to reinstate the extended deadline for commencement of construction of a hydroelectric project in the State of Illinois.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider laid upon the table, that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

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

The bill (S. 2872) was read the third time and passed, as follows:

S. 2872

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

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 11214, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section—

(1) reinstate the license for the construction of the project as of the effective date of the surrender of the license; and

(2) extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods beyond the date that is 4 years after the date of issuance of the license.

GRAND TETON NATIONAL PARK LAND EXCHANGE ACT

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 1105.

The ACTING PRESIDENT pro tempore laid before the Senate a message from the House as follows:

Resolved, That the bill from the Senate (S. 1105) entitled ''An Act to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—GRAND TETON NATIONAL PARK LAND EXCHANGE

SEC. 101. DEFINITIONS.

As used in this title:

(1) FEDERAL LANDS.—The term ''Federal lands'' means public lands as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

(2) GOVERNOR.—The term ''Governor'' means the Governor of the State of Wyoming.

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

(4) STATE LANDS.—The term ''State lands'' means lands and interest in lands owned by the State of Wyoming within the boundaries of Grand Teton National Park as identified on a map titled ''Private, State & County Inholdings Grand Teton National Park'', dated March 2001, and numbered GTNP/0001.

SEC. 102. ACQUISITION OF STATE LANDS.

(a) AUTHORIZATION TO ACQUIRE LANDS.—The Secretary is authorized to acquire approximately 1,406 acres of State lands within the exterior boundaries of Grand Teton National Park, as generally depicted on the map referenced in section 101(4), by any one or a combination of the following—

(1) donation;

(2) purchase with donated or appropriated funds; or

(3) exchange of Federal lands in the State of Wyoming that are identified for disposal under approved land use plans in effect on the date of enactment of this Act under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) that are of equal value to the State lands acquired in the exchange.

(b) IDENTIFICATION OF LANDS FOR EXCHANGE.—In the event that the Secretary or the Governor determines that the Federal lands eligible for exchange under subsection (a)(3) are not sufficient or acceptable for the acquisition of all the State lands identified in section 101(4), the Secretary shall identify other Federal lands or interests therein in the State of Wyoming for possible exchange and shall identify such lands or interests together with their estimated value in a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives. Such lands or interests shall not be available for exchange unless authorized by an Act of Congress enacted after the date of submission of the report.

SEC. 103. VALUATION OF STATE AND FEDERAL INTERESTS.

(a) AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the value of any Federal lands eligible for exchange under section 102(a)(3) or State lands, then the Secretary and the Governor may select a qualified appraiser to conduct an appraisal of those lands. The purchase or exchange under section 102(a) shall be conducted based on the values determined by the appraisal.

(b) NO AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the selection of a qualified appraiser under subsection (a), then the Secretary and the Governor shall each designate a qualified appraiser. The two designated appraisers shall select a qualified third appraiser to conduct the appraisal with the advice and assistance of the two designated appraisers. The purchase or exchange under section 102(a) shall be conducted based on the values determined by the appraisal.

(c) APPRAISAL COSTS.—The Secretary and the State of Wyoming shall each pay one-half of the appraisal costs under subsections (a) and (b).

SEC. 104. ADMINISTRATION OF STATE LANDS ACQUIRED BY THE UNITED STATES.

The State lands conveyed to the United States under section 102(a) shall become part of Grand Teton National Park. The Secretary shall manage such lands under the Act of August 25, 1916 (commonly known as the ''National Park Service Organic Act'') and other laws, rules, and regulations applicable to Grand Teton National Park.

SEC. 105. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this title.

TITLE II—JAMES V. HANSEN SHOSHONE NATIONAL TRAIL

SEC. 201. SHOSHONE NATIONAL TRAIL.

(a) DEFINITIONS.—For the purposes of this section, the following definitions shall apply:

(1) APPROPRIATE SECRETARY.—The term ''appropriate Secretary'' means—

(A) the Secretary of Agriculture when referring to land under the jurisdiction of that Secretary; and

(B) the Secretary of the Interior when referring to any land except that under the jurisdiction of the Secretary of Agriculture.

(2) MAP.—The term ''Map'' means the map entitled ''James V. Hansen Shoshone National Trail'' and dated April 5, 2002.

(3) TRAIL.—The term ''Trail'' means the system of trails designated in subsection (b) as the James V. Hansen Shoshone National Trail.

(b) DESIGNATION.—The trails that are open to motorized use pursuant to applicable Federal and State law and are depicted on the Map as the Shoshone National Trail are hereby designated as the ''James V. Hansen Shoshone National Trail''.

(c) MANAGEMENT.—

(1) IN GENERAL.—Except as otherwise provided in this title, the appropriate Secretary shall manage the Trail consistent with the requirements of a national recreation trail in accordance with—

(A) the National Trails System Act (16 U.S.C. 1241 et seq.); and

(B) other applicable laws and regulations for trails on Federal lands.

(2) COOPERATION; AGREEMENTS.—The Secretary of the Interior and the Secretary of Agriculture shall cooperate with the State of Utah Department of Natural Resources and appropriate county governments in managing the Trail. The appropriate Secretary shall make every reasonable effort to enter into cooperative agreements with the State of Utah Department

of Natural Resources and appropriate county governments (separately, collectively, or in an any combination, as agreed by the parties) for management of the Trail.

(3) PRIMARY PURPOSE.—The primary purpose of this title is to provide recreational trail opportunities for motorized vehicle use on the Trail. The Trail shall be managed in a manner that is consistent with this purpose, ensures user safety, and minimizes user conflicts.

(4) ADDITION OF TRAILS.—

(A) IN GENERAL.—The appropriate Secretary may add trails to the Trail in accordance with the National Trails System Act and this title. The Secretary shall consider the Trail a national recreation trail for the purpose of making such additions.

(B) REQUIREMENT FOR ADDITION OF TRAILS ON NON-FEDERAL LAND.—If a trail to be added to the Trail is located on non-Federal land, the appropriate Secretary may add the trail only if the owner of the land upon which the trail is located has—

(i) consented to the addition of the trail to the Trail; and

(ii) entered into an agreement with the appropriate Secretary for management of the additional trail in a manner that is consistent with this title.

(5) NOTICE OF OPEN ROUTES.—The Secretary of the Interior and the Secretary of Agriculture shall ensure that the public is adequately informed regarding the routes open for the Trail, including by appropriate signage along the Trail.

(d) NO EFFECT ON NON-FEDERAL LAND AND INTERESTS IN LAND.—Nothing in this section shall be construed to affect ownership, management, or other rights related to any non-Federal land or interests in land, except as provided in an agreement related to that land entered into by the landowner under subsection (c)(4)(B)(ii).

(e) ACQUISITION OF LAND AND INTERESTS IN LAND.—The appropriate Secretary may acquire land and interests in land for the purposes of the Trail only from willing owners.

(f) MAP ON FILE; UPDATED.—The Map shall be—

(1) kept on file at the appropriate offices of the Secretary of the Interior and the Secretary of Agriculture; and

(2) updated by the appropriate Secretary whenever trails are added to the Trail.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE III—MCLOUGHLIN HOUSE PRESERVATION

SEC. 301. DEFINITIONS.

For the purposes of this title, the following definitions shall apply:

(1) ASSOCIATION.—The term ''Association'' means the McLoughlin Memorial Association, an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

(2) CITY.—The term ''City'' means Oregon City, Oregon.

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

SEC. 302. FINDINGS.

Congress finds the following:

(1) On June 27, 1941, Acting Assistant Secretary of the Interior W.C. Mendenhall, under the authority granted the Secretary under section 2 of the Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 et seq.), established the McLoughlin Home National Historic Site located in the City.

(2) Since January 16, 1945, the site has been known as McLoughlin House National Historic Site.

(3) The McLoughlin House National Historic Site includes both the McLoughlin House and Barclay House, which are owned and managed by the Association.

(4) The McLoughlin House National Historic Site is located in a Charter Park on Oregon City Block 40, which is owned by the City.

(5) A cooperative agreement was made in 1941 among the Association, the City, and the United States, providing for the preservation and use of the McLoughlin House as a national historic site.

(6) The Association has had an exemplary and longstanding role in the stewardship of the McLoughlin House National Historic Site but is unable to continue that role.

(7) The McLoughlin House National Historic Site has a direct relationship with Fort Vancouver National Historic Site due to Dr. John McLoughlin's importance as the Chief Factor of the Hudson Bay Company's Fort Vancouver, the headquarters for the Hudson Bay Company's Columbia Department, and his subsequent role in the early history of the settlement of the Oregon Territory to the extent that he is known as the ''Father of Oregon''.

(8) The McLoughlin House National Historic Site has been an affiliated area of the National Park System and is worthy of recognition as part of the Fort Vancouver National Historic Site.

SEC. 303. BOUNDARY OF FORT VANCOUVER NATIONAL HISTORIC SITE.

In recognition of the Secretary's role and responsibilities since June 27, 1941, and in order to preserve the McLoughlin House National Historic Site, the Secretary is authorized to acquire the McLoughlin House, consisting of approximately 1 acre, as generally depicted on the map entitled ''McLoughlin National Historic Site'', numbered 007/80,000, and dated 12/01/01, as an addition to the Fort Vancouver National Historic Site. The map shall be on file and available for inspection in the appropriate offices of the National Park Service, Department of the Interior.

SEC. 304. ACQUSITION AND ADMINISTRATION.

(a) ACQUISITION.—The Secretary is authorized to acquire the McLoughlin House from willing owners only, by donation, purchase with donated or appropriated funds, or exchange, except that lands or interests in lands owned by the City may be acquired by donation only.

(b) ADMINISTRATION.—The Secretary shall administer the McLoughlin House as an addition to Fort Vancouver National Historic Site in accordance with the provisions of law generally applicable to units of the National Park System.

TTLE IV—PRESIDENTIAL HISTORIC SITE STUDY

SEC. 401. PRESIDENTIAL HISTORIC SITE STUDY.

(a) STUDY AND REPORT.—Not later than 2 years after the date funds are made available, the Secretary of the Interior shall—

(1) carry out a study on the suitability and feasibility of designating the William Jefferson Clinton birthplace home located in Hope, Arkansas, as a national historic site; and

(2) submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the findings, conclusions, and recommendations of the study.

(b) REQUIREMENTS FOR STUDY.—Except with regard to deadline for completion provided in subsection (a), the study under subsection (a) shall be conducted in accordance with section 8(c) Public Law 91–383 (16 U.S.C. 1a–5(c)).

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment.

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

CORRECTING THE ENROLLMENT OF S. 1843

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 159, submitted earlier today by Senators BINGAMAN and MURKOWSKI; that the concurrent resolution be considered and agreed to and the motion to reconsider be laid upon the table, without intervening action or debate.

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

The concurrent resolution (S. Con. Res. 159) was agreed to, as follows:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 1843) To extend certain hydro-electric licenses in the State of Alaska the Secretary of the Senate is hereby authorized and directed, in the enrollment of the said bill, to make the following corrections, namely:

In subsection (c), delete ''3 consecutive 2-year time periods.'' and insert ''one 2-year time period.''.

VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 591, H.R. 2385.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2385) to convey certain property to the city of St. George, Utah, in order to provide for the protection and preservation of certain rare paleontological resources on that property, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with amendments, as follows:

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

H.R. 2385

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 ''Virgin River Dinosaur Footprint Preserve Act''.

SEC. 2. VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.

[(a) AUTHORIZATION FOR GRANT TO PURCHASE FOOTPRINT PRESERVE.—As soon as is practicable after the date of the enactment of this Act, if the City agrees to the conditions set forth in subsection (b), the Secretary of the Interior may award to the City a grant equal to the lesser of $500,000 or the fair market value of up to 10 acres of land (and all related facilities and other appurtenances thereon) generally depicted on the map entitled ''Proposed Virgin River Dinosaur Footprint Preserve'', numbered 09/06/2001–A, for purchase of that property.]

(a) AUTHORIZATION FOR GRANT TO PURCHASE PRESERVE.—Of the funds appropriated in the section entitled ''Land Acquisition'' of the Fiscal Year 2002 Interior and Related Agencies Appropriations Act, Public Law 107–63, the Secretary of the Interior shall grant $500,000 to the City for—

(1) the purchase of up to 10 acres of land within the area generally depicted as the ''Preserve Acquisition Area'' on the map entitled ''Map B'' and dated May 9, 2002; and

(2) the preservation of such land and paleontological resources.

(b) CONDITIONS OF GRANT.—The grant under subsection (a) shall be made only after the City agrees to the following conditions:

(1) USE OF LAND.—The City shall use the Virgin River Dinosaur Footprint Preserve in a manner that accomplishes the following:

(A) Preserves and protects the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve.

(B) Provides opportunities for scientific research in a manner compatible with subparagraph (A).

(C) Provides the public with opportunities for educational activities in a manner compatible with subparagraph (A).

(2) REVERTER.—If at any time after the City acquires the Virgin River Dinosaur Footprint Preserve, the Secretary determines that the City is not substantially in compliance with the conditions described in paragraph (1), all right, title, and interest in and to the Virgin River Dinosaur Footprint Preserve shall immediately revert to the United States, with no further consideration on the part of the United States, and such property shall then be under the administrative jurisdiction of the Secretary of the Interior.

(3) CONDITIONS TO BE CONTAINED IN DEED.—If the City attempts to transfer title to the Virgin River Dinosaur Footprint Preserve (in whole or in part), the conditions set forth in this subsection shall transfer with such title and shall be enforceable against any subsequent owner of the Virgin River Dinosaur Footprint Preserve (in whole or in part).

(c) COOPERATIVE AGREEMENT AND ASSISTANCE.—

[(1) COOPERATIVE AGREEMENT.—The Secretary shall enter into a cooperative agreement with the City for the management of the Virgin River Dinosaur Footprint Preserve by the City.

(2)] *(1)* ASSISTANCE.—The Secretary may provide to the City—

(A) financial assistance, if the Secretary determines that such assistance is necessary for protection of the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve; and

(B) technical assistance to assist the City in complying with subparagraphs (A) through (C) of subsection (b)(1).

[(3)] *(2)* ADDITIONAL GRANTS.—

(A) IN GENERAL.—In addition to funds made available under subsection (a) and paragraph (2) of this subsection, the Secretary may provide grants to the City to carry out its duties under the cooperative agreement entered into under paragraph (1).

(B) LIMITATION ON AMOUNT; REQUIRED NON-FEDERAL MATCH.—Grants under subparagraph (A) shall not exceed $500,000 and shall be provided only to the extent that the City matches the amount of such grants with non-Federal contributions (including in-kind contributions).

(d) MAP ON FILE.—The map shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.

(e) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) CITY.—The term ''City'' means the city of St. George, Utah.

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

(3) VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.—The term ''Virgin River Dinosaur Footprint Preserve'' means the property (and all facilities and other appurtenances thereon) described in subsection (a).

Mr. HATCH. Mr. President, I rise today to say a few words about S. 1497, the Virgin River Dinosaur Footprint Preserve Act and its companion measure in the House, H.R. 2385. This bill would convey certain property to the city of St. George, Utah, in order to provide for the protection and preservation of certain rare paleontological resources on that property.

This legislation would provide vital protections to one of our nation's most recent, and most intact pre-Jurassic paleontological discoveries. In February 2000, Sheldon Johnson of St. George, UT, began development preparations on his land when he uncovered one of the world's most significant collections of dinosaur tracks, tail draggings, and skin imprints in the surrounding rock. Without any advertising, the site has attracted many tens of thousands of visitors and the interest of some of the world's top paleontologists.

This was a fantastic discovery that has added important new insights into the Jurassic period. However, now that these prints have been uncovered, the fragile sandstone in which the impressions have been made is in jeopardy due to the heat and wind typical of the southern Utah climate. We must act quickly if these footprints from our past are to be preserved. This bill would authorize the Secretary of the Interior to purchase the land where the footprints and tail draggings are found and convey the property to the city of St. George. The city will work together with the property owners and Washington County to preserve and protect the area and the resources found there.

We owe a debt of gratitude to Sheldon and LaVerna Johnson who made this discovery on their land and have dedicated thousands of hours of their personal time and much of their own money to trying to preserve this site. They have done all they can to protect it, while at the same time opening up their land for visitors and scientists to view the new findings free of costs. They have given so much to this cause, but they cannot keep it up indefinitely. They desperately hope that the Government will step up and help carry the burden of managing this precious resource, and with passage of this legislation tonight we will provide them with the relief they deserve.

I thank Senators BINGAMAN and MURKOWSKI, the chairman and ranking member of the Senate Committee on Energy and Natural Resources, for their assistance in seeing this measure passed by Congress and sent to the President. I also thank Representative JAMES HANSEN, my good friend and the sponsor of the companion measure in the House for all he has done to make this legislation possible.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported amendments be agreed to; that the bill, as amended, be read the third time and passed; and that the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The committee amendments were agreed to.

The bill (H. R. 2385), as amended, was read the third time and passed.

Mr. REID. Mr. President, before we get to the next matter, let me express my appreciation to the Senator from Utah, Mr. BENNETT. He has been here all night. But for him, we would not have made the progress we have. All Senators should be very grateful for his weighing in on these delicate matters. I appreciate what the Senator from Utah has done to help us get to this point.

Mr. BENNETT. Mr. President, I thank the assistant majority leader. I wish to make it clear that without his leadership and cooperation, we would not be doing what we are doing. It takes two hands to clap. We were waving our hands uselessly in the air until the Senator from Nevada stepped in. I am very grateful to him.

TIMPANOGOS INTERAGENCY LAND EXCHANGE ACT

Mr. BENNETT. Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 1240.

The ACTING PRESIDENT pro tempore laid before the Senate a message from the House as follows:

Resolved, That the bill from the Senate (S. 1240) entitled ''An Act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—TIMPANOGOS INTERAGENCY LAND EXCHANGE

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in one facility would—

(A) facilitate interagency coordination;

(B) serve the public better; and

(C) improve cost effectiveness.

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

(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

SEC. 102. DEFINITIONS.

In this title:

(1) FACILITY.—The term ''facility'' means the facility constructed under section 106 to house—

(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

(2) FEDERAL LAND.—The term ''Federal land'' means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW¼, NE¼, E½, NW¼ and E½, SW¼, as depicted on the map entitled ''Long Hollow-Provo Canyon Parcel'', dated March 12, 2001;

(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW¼, as depicted on the map entitled ''Provo Sign and Radio Shop'', dated March 12, 2001;

(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE¼, as depicted on the map entitled ''Corner Canyon Parcel'', dated March 12, 2001;

(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S½, as depicted on the map entitled ''Beaver Administrative Site'', dated March 12, 2001;

(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE¼, SW¼, NE¼, as depicted on the map entitled ''Springville Parcel'', dated March 12, 2001; and

(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled ''Pleasant Grove Ranger District Parcel'', dated March 12, 2001.

(3) NON-FEDERAL LAND.—The term ''non-Federal land'' means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW¼, as depicted on the map entitled ''The Highland Property'', dated March 12, 2001.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 103. MAPS AND LEGAL DESCRIPTIONS.

(a) AVAILABILITY OF MAPS.—The maps described in paragraphs (2) and (3) of section 102 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the date on which the land depicted on the maps is exchanged under this title.

(b) TECHNICAL CORRECTIONS TO LEGAL DESCRIPTIONS.—The Secretary may correct minor errors in the legal descriptions in paragraphs (2) and (3) of section 102.

SEC. 104. EXCHANGE OF LAND FOR FACILITY SITE.

(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

(c) VALUATION OF NON-FEDERAL LAND.—

(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this title shall be determined by an appraisal that—

(A) is approved by the Secretary; and

(B) conforms with the Federal appraisal standards, as defined in the publication entitled ''Uniform Appraisal Standards for Federal Land Acquisitions''.

(2) SEPARATE APPRAISALS.—

(A) IN GENERAL.—Each parcel of Federal land described in subparagraphs (A) through (F) of section 102(2) shall be appraised separately.

(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may, as the circumstances require, either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.

(e) ADMINISTRATION OF LAND ACQUISITION BY UNITED STATES.—

(1) BOUNDARY ADJUSTMENT.—

(A) IN GENERAL.—On acceptance of title by the Secretary—

(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

(ii) the boundaries of the national forest shall be adjusted to include the land.

(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–099), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the ''Weeks Act''); and

(B) other laws (including regulations) that apply to National Forest System land.

SEC. 105. DISPOSITION OF FUNDS.

(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the ''Sisk Act'').

(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

SEC. 106. CONSTRUCTION AND OPERATION OF FACILITY.

(a) CONSTRUCTION.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this title, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 104.

(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE II—UTAH PUBLIC LANDS ARTIFACT PRESERVATION

SEC. 201. FINDINGS.

Congress finds that—

(1) the collection of the Utah Museum of Natural History in Salt Lake City, Utah, includes more than 1,000,000 archaeological, paleontological, zoological, geological, and botanical artifacts;

(2) the collection of items housed by the Museum contains artifacts from land managed by—

(A) the Bureau of Land Management;

(B) the Bureau of Reclamation;

(C) the National Park Service;

(D) the United States Fish and Wildlife Service; and

(E) the Forest Service;

(3) more than 75 percent of the Museum's collection was recovered from federally managed public land; and

(4) the Museum has been designated by the legislature of the State of Utah as the State museum of natural history.

SEC. 202. DEFINITIONS.

In this title:

(1) MUSEUM.—The term ''Museum'' means the University of Utah Museum of Natural History in Salt Lake City, Utah.

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

SEC. 203. ASSISTANCE FOR UNIVERSITY OF UTAH MUSEUM OF NATURAL HISTORY.

(a) ASSISTANCE FOR MUSEUM.—The Secretary shall make a grant to the University of Utah in Salt Lake City, Utah, to pay the Federal share of the costs of construction of a new facility for the Museum, including the design, planning, furnishing, and equipping of the Museum.

(b) GRANT REQUIREMENTS.—

(1) IN GENERAL.—To receive a grant under subsection (b), the Museum shall submit to the Secretary a proposal for the use of the grant.

(2) FEDERAL SHARE.—The Federal share of the costs described in subsection (a) shall not exceed 25 percent.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000, to remain available until expended.

TITLE III—SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE BOUNDARY ADJUSTMENT

SEC. 301. BOUNDARY ADJUSTMENT.

The first sentence of section 103(b) of the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Act of 1992 (16 U.S.C. 410tt–1(b)) is amended to read as follows: ''The park shall consist of approximately 1015 acres of lands, waters, and interests in lands as generally depicted on the map entitled 'Salt River Bay National Historical Park and Ecological Preserve, St. Croix, U.S.V.I.', numbered 141/80002, and dated May 2, 2002.''.

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate concur in the House amendment to the bill, and that the motion to reconsider be laid upon the table.

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

THE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that it be in order to consider en bloc the following measures: Calendar No. 577, H.R. 38; Calendar No. 437, H.R. 308; Calendar No. 606, H.R. 706; Calendar No. 587, H.R. 1712; Calendar No. 579, H.R. 1776; Calendar No. 580, H.R. 1814; Calendar No. 588, H.R. 1870; Calendar No. 589, H.R. 1906; Calendar No. 581, H.R. 1925; Calendar No. 612, H.R. 2099; Calendar No. 590, H.R. 2109; Calendar No. 607, H.R. 2115; Calendar No. 675, H.R. 2628; Calendar No. 676, H.R. 2818; Calendar No. 608, H.R. 2828; Calendar No. 677, H.R. 2990; Calendar No. 681, H.R. 3858; Calendar No. 592, H.R. 3048; Calendar No. 678, H.R. 3401; Calendar No. 682, H.R. 3909; Calendar No. 614, H.R. 3449; Calendar No. 684, H.R. 3954; Calendar No. 685, H.R. 4682; Calendar No. 687, H.R. 5125; Calendar No. 611, H.R. 4953; Calendar No. 613, H.R. 4638; Calendar No. 686, H.R. 5099. The following bills are at

the desk: H.R. 3747, H.R. 5436, H.R. 4750, H.J. Res. 117, H.R. 4129, H.R. 4874 and H.R. 4944. I ask unanimous consent that H.R. 2937, Clark County shooting range, be discharged from the Energy Committee and the Senate proceed to its consideration; that the bills be read three times and passed en bloc; the motions to reconsider be laid upon the table en bloc; that the consideration of these measures appear separately in the RECORD, and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

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

HOMESTEAD NATIONAL MONUMENT OF AMERICA ADDITIONS ACT

The bill (H.R. 38) to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

GUAM WAR CLAIMS REVIEW COMMISSION ACT

The bill (H.R. 308) to establish the Guam War Claims Review Commission, was considered, ordered to a third reading, read the third time, and passed.

LEASE LOT CONVEYANCE ACT OF 2002

The bill (H.R. 706) to direct the Secretary of the Interior to convey certain properties in the vicinity of the Elephant Butte Reservoir and Caballo Reservoir, New Mexico, was considered, ordered to a third reading, read the third time, and passed.

ADJUSTMENTS TO THE BOUNDARY OF THE NATIONAL PARK OF AMERICAN SAMOA

The bill (H.R. 1712) to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

BUFFALO BAYOU NATIONAL HERITAGE AREA STUDY ACT

The bill (H.R. 1776) to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Buffalo Bayou National Heritage Area in west Houston, Texas, was considered, ordered to a third reading, read the third time, and passed.

METACOMET–MONADNOCK–MATTABESETT TRAIL STUDY ACT OF 2001

The bill (H.R. 1814) to amend the National Trails System Act to desig-nate the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut for study for potential addition to the National Trails System, was considered, ordered to a third reading, read the third time, and passed.

FALLON RAIL FREIGHT LOADING FACILITY TRANSFER ACT

The bill (H.R. 1870) to provide for the sale of certain real property within the Newlands Project in Nevada, to the city of Fallon, Nevada, was considered, ordered to a third reading, read the third time, and passed.

PU'UHONUA O HONAUNAU NATIONAL PARK ADDITION ACT OF 2002

The bill (H.R. 1906) to amend the Act that established the Pu'uhonua O Honaunau National Historical Park to expand the boundaries of that park, was considered, ordered to a third reading, read the third time, and passed.

FEASIBILITY STUDY OF DESIGNATING THE WACO MAMMOTH SITE AS A UNIT OF THE NATIONAL PARK SYSTEM

The bill (H.R. 1925) to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

AMENDMENTS TO THE OMNIBUS PARKS AND PUBLIC LANDS MANAGEMENT ACT OF 1996

The bill (H.R. 2099) to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve, was considered, ordered to a third reading, read the third time, and passed.

A SPECIAL RESOURCE STUDY OF VIRGINIA KEY BEACH PARK IN BISCAYNE BAY, FLORIDA

The bill (H.R. 2109) to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System, was considered, ordered to a third reading, read the third time, and passed.

LAKEHAVEN, WASHINGTON, WATER RECLAMATION AND REUSE PROJECT

The bill (H.R. 2115) to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington, was considered, ordered to a third reading, read the third time, and passed.

MUSCLE SHOALS NATIONAL HERITAGE AREA STUDY ACT OF 2002

The bill (H.R. 2628) to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Muscle Shoals National Heritage Area in Alabama, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN LANDS WITHIN THE SAND MOUNTAIN WILDERNESS STUDY AREA IN THE STATE OF IDAHO

The bill (H.R. 2818) to authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971, was considered, ordered to a third reading, read the third time, and passed.

KLAMATH BASIN EMERGENCY OPERATION AND MAINTENANCE REFUND ACT OF 2001

The bill (H.R. 2828) to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

LOWER RIO GRANDE VALLEY WATER RESOURCES CONSERVATION AND IMPROVEMENT ACT OF 2002

The bill (H.R. 2990) to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

NEW RIVER GORGE BOUNDARY ACT OF 2002

The bill (H.R. 3858) to modify the boundaries of the New River Gorge National River, West Virginia, was considered, ordered to a third reading, read the third time, and passed.

RUSSIAN RIVER LAND ACT

The bill (H.R. 3048) to resolve the claims of Cook Inlet Region, Inc., to

lands adjacent to the Russian River in the State of Alaska, was considered, ordered to a third reading, read the third time, and passed.

CALIFORNIA FIVE MILE REGIONAL LEARNING CENTER TRANSFER ACT

The bill (H.R. 3401) to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

GUNN MCKAY NATURE PRESERVE ACT

The bill (H.R. 3909) to designate certain Federal lands in the State of Utah as the Gunn McKay Nature Preserve, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

REVISION OF THE BORDERS OF THE GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT

The bill (H.R. 3449) to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

CARIBBEAN NATIONAL FOREST WILD AND SCENIC RIVERS ACT OF 2002

The bill (H.R. 3954) to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

ALLEGHENY PORTAGE RAILROAD NATIONAL HISTORIC SITE BOUNDARY REVISION ACT

The bill (H.R. 4682) to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

CIVIL WAR BATTLEFIELD PRESERVATION ACT OF 2002

The bill (H.R. 5125) to amend the American Battlefield Protection Act of 1996 to authorize the Secretary of the Interior to establish a battlefield acquisition grant program, was considered, ordered to a third reading, read the third time, and passed.

GRANT OF A RIGHT-OF-WAY TO DESCHUTES AND CROOK COUNTIES IN THE STATE OF OREGON TO WEST BUTTE ROAD

The bill (H.R. 4953) to direct the Secretary of the Interior to grant Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road, was ordered to a third reading, read the third time, and passed.

REAUTHORIZATION OF THE MNI WICONI RURAL WATER SUPPLY PROJECT

The bill (H.R. 4638) to reauthorize the Mni Wiconi Rural Water Supply Project, was considered, ordered to a third reading, read the third time, and passed.

EXTENDING PERIOD OF AUTHORIZATION FOR INTERIOR SECRETARY TO IMPLEMENT CAPITAL CONSTRUCTION PROJECTS

The bill (H.R. 5099) to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins, was considered, ordered to a third reading, read the third time, and passed.

BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL STUDY ACT OF 2002

The bill (H.R. 3747) to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System, was considered, ordered to a third reading, read the third time, and passed.

EXTENDING DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF HYDROELECTRIC PROJECT IN STATE OF OREGON

The bill (H.R. 5436) to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon, was considered, ordered to a third reading, read the third time, and passed.

BIG SUR WILDERNESS AND CONSERVATION ACT OF 2002

The bill (H.R. 4750) to designate certain lands in the State of California as components of the National Wilderness Preservation System, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

FORMER PRESIDENT JOHN ADAMS MEMORIAL

The resolution (H.J. Res. 117) approving the location of the commemorative work in the District of Columbia honoring former President John Adams, was considered, ordered to a third reading, read the third time, and passed.

CENTRAL UTAH PROJECT COMPLETION ACT

The bill (H.R. 4129) to amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment, was considered, ordered to a third reading, read the third time, and passed.

DISCLAIMER OF ANY FEDERAL INTEREST IN LANDS ADJACENT TO SPIRIT LAKE AND TWIN LAKES IN STATE OF IDAHO

The bill (H.R. 4874) to direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey, was considered, ordered to a third reading, read the third time, and passed.

CEDAR CREEK AND BELLE GROVE NATIONAL HISTORICAL PARK ACT

The bill (H.R. 4944) to designate the Cedar Creek and Belle Grove National Historical Park as a unit of the National Park System, was considered, ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN PUBLIC LAND IN CLARK COUNTY, NEVADA

The bill (H.R. 2937) to provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range, was considered, ordered to a third reading, read the third time, and passed.

Mr. REID. Mr. President, I would like to engage my friend, the chairman of the Energy and Natural Resources Committee, in a discussion regarding the Clark County Shooting Range bill, S. 1451. The chairman has been very helpful in moving this important legislation through the process and I appreciate and am grateful for his hard work. As we moved this bill through the committee process, the chairman made two constructive suggestions regarding how my bill might be improved. I believe that it would benefit the full Senate for us to review those issues briefly at this time.

Mr. BINGAMAN. I share the assistant majority leader's view that this bill would address an important need for a safe recreational shooting facility

in southern Nevada and believe that S. 1451, which my committee reported favorably with amendment, is a good bill. The two primary concerns raised by many interested parties were that the original bill would have released land from wilderness study area status and that the parcel of land conveyed was possibly too large, and therefore the bill might set an unfortunate precedent on those two issues.

Mr. REID. As the chairman knows, we worked together on these two issues and developed a compromise solution that he, Senator MURKOWSKI, Senator ENSIGN, Congressman GIBBONS, Congresswoman BERKLEY, Clark County and I could all support. The compromise included conveying the full 2800 acres to Clark County but requiring that only the core of the area, 640 acres, be developed for facilities and that the remainder of the area remain as open space to serve as a valuable buffer around the range. This compromise if completely consistent with Clark County's intended use of the land because the county realizes the absolute necessity of having a substantial buffer around a shooting range. In fact, the county provided their plans for the facility, which embody the compromise.

As I have noted many times on the floor of the Senate, Clark County has nearly doubled in population from 770,000 to more than 1.4 million people since 1990. This growth has placed greater demands on public lands throughout Clark County for recreational activities such as hunting, fishing and target shooting. There are literally dozens, if not hundreds, of makeshift shooting ranges across Las Vegas Valley that pose extreme danger to nearby homes and our increasingly busy roads. This facility will provide a great public benefit by creating a safe centralized location for this important purpose. It will enhance public safety by reducing indiscriminate shooting. The need for this shooting range is crystal clear and I am grateful that the chairman has recognized the urgency associated with this issue.

In addition, I would like the RECORD to reflect that the issue of wilderness study area release is now a moot point because the wilderness study area in question was released earlier this month when President Bush signed the Clark County Conservation of Public Lands and Natural Resources Act into law. Public law 107–282 designated about 450,000 acres as wilderness and released 220,000 acres from wilderness study area consideration in Clark County. Having made this point, I would like to ask the chairman whether he shares my view that no precedent could be set on the issue of wilderness study area release given that there is no wilderness study area in existence?

Mr. BINGAMAN. I do share that view and appreciate the fact that wilderness study area release is no longer a concern in this legislation.

Mr. REID. I appreciate the chairman's concurrence on that point and his leadership on this and other public land related issues very much. We now face a dilemma. The very good Clark County Shooting Range bill that was earlier reported by the Senate Energy and Natural Resources Committee cannot pass this year because the House of Representatives has gone home for the year. However, the House passed a similar bill earlier this year. The substantive difference in the House bill is that it does not include the buffer requirement we put in the Senate version of the bill. Given that we agree that no wilderness study area precedents can be set here, and given that the county's plan for the range were used to create our buffer compromise. I hope the chairman might allow for the passage of the House version of this bill so that this important project can be started this year.

VIETNAM VETERANS MEMORIAL EDUCATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 444 S. 281; that the Bingaman amendment which is at the desk be considered and agreed to; that the committee-reported amendment, as amended, be agreed to; the motion to reconsider by laid upon the table; and there be no intervening action or debate.

The ACTING PRESIDENT pro tempore. Is there an objection?

Mr. BENNETT. On behalf of several Senators on this side, I do object.

The ACTING PRESIDENT pro tempore. The objection is heard.

Mr. REID. I am disappointed. The morning is early but there will be no speeches.

I suggest the absence of a quorum.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar No. 1137, Air Force promotions, with the exception of COL Bruce E. Burda, 0432, and COL Stephen L. Lanning, 6225; Calendar Nos. 1180 through 1186, and the nominations placed on the Secretary's desk; that the nominations be confirmed en bloc, and the motion to reconsider be laid upon the table.

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

The nominations considered and confirmed en bloc are as follows:

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Colonel Christ T. Anzalone, 9968
Colonel Dana T. Atkins, 1173
Colonel Philip M. Breedlove, 5587
Colonel Bradley W. Butler, 1210
Colonel Robert E. Dehnert, Jr., 2210
Colonel Delwyn R. Eulberg, 8929
Colonel Maurice H. Forsyth, 5072
Colonel Patrick D. Gillett, Jr., 1889
Colonel Sandra A. Gregory, 5776
Colonel Gregory J. Ihde, 1040
Colonel Kevin J. Kennedy, 0042
Colonel Lyle M. Koenig, Jr., 2231
Colonel Ronald R. Ladnier, 6699
Colonel Erwin F. Lessel, III, 5416
Colonel John W. Maluda, 2572
Colonel Mark T. Matthews, 6697
Colonel Gary T. McCoy, 2911
Colonel Kimber L. McKenzie, 0844
Colonel Stephen J. Miller, 1561
Colonel Richard Y. Newton, III, 8008
Colonel Thomas J. Owen, 4009
Colonel Richard E. Perraut, Jr., 4091
Colonel Polly A. Peyer, 0565
Colonel Douglas L. Raaberg, 5158
Colonel Robertus C.N. Remkes, 8917
Colonel Eric J. Rosborg, 2128
Colonel Paul J. Selva, 5397
Colonel Mark E. Stearns, 2739
Colonel Thomas E. Stickford, 4263
Colonel Johnny A. Weida, 0541
Colonel Thomas B. Wright, 4649

DEPARTMENT OF DEFENSE

Arthur James Collingsworth, of California, to be a Member of the National Security Education Board for a term of four years.

AIR FORCE

The following named officers for appointment in the Reserve of the Air Force to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Richard C. Collins, 4411
Brigadier General Scott R. Nichols, 8603
Brigadier General David A. Robinson, 7497
Brigadier General Mark V. Rosenker, 1990
Brigadier General Charles E. Stenner, Jr., 3274
Brigadier General Thomas D. Taverney, 6191
Brigadier General Kathy E. Thomas, 0940

To be Brigadier general

Colonel Ricardo Aponte, 0713
Colonel Frank J. Casserino, 3455
Colonel Charles D. Ethredge, 1223
Colonel Thomas M. Gisler, Jr., 1300
Colonel James W. Graves, 4813
Colonel John M. Howlett, 8450
Colonel Martin M. Mazick, 0371
Colonel Hanford J. Moen, Jr., 4733
Colonel James M. Mungenast, 7850
Colonel Jack W. Ramsaur, II, 8374
Colonel David N. Senty, 6128
Colonel Bradley C. Young, 0584

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Arthur J. Lichte, 5483

ARMY

The following Army National Guard officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., Section 12203:

To be brigadier general

Colonel Terry W. Saltsman, 7338

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Michael H. Sumrall, 4259

The following Army National Guard of the United States officers for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Daniel D. Densford, 0210
Brigadier General Daniel E. Long, Jr., 1267
Brigadier General Michael J. Squier, 8084
Brigadier General Roy M. Umbarger, 9266
Brigadier General Antonio J. Vicens-Gonzalez, 8687
Brigadier General Walter E. Zink, II, 8489

To be brigadier general

Colonel Norman E. Arflack, 1964
Colonel Jerry G. Beck, Jr., 8553
Colonel Raymond W. Carpenter, 7439
Colonel Herman M. Deener, 2720
Colonel Robert P. French, 1355
Colonel John T. Furlow, 1754
Colonel Charles L. Gable, 2112
Colonel Francis P. Gonzales, 1426
Colonel Dean E. Johnson, 0723
Colonel David A. Lewis, 0439
Colonel Thomas D. Mills, 4814
Colonel Vern T. Miyagi, 2805
Colonel Roque C. Nido Lanausse, 1486
Colonel J.W. Noles, 1201
Colonel Thomas R. Ragland, 6773
Colonel Terry L. Robinson, 1805
Colonel Charles G. Rodriguez, 8250
Colonel Charles D. Safley, 5588
Colonel Randall E. Sayre, 2290
Colonel Donald C. Storm, 7206
Colonel William H. Wade, 3027
Colonel Gregory L. Wayt, 4702
Colonel Merrel W. Yocum, 9183

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Stanley R. Szemborski, 8912

NOMINATIONS PLACED ON THE SECRETARY'S DESK

AIR FORCE

PN2276 Air Force nominations (2) beginning Branford J. McAllister, and ending Alice Smart, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2002.

PN2289 Air Force nominations of David G. Smith, which was received by the Senate and appeared in the Congressional Record of October 17, 2002.

ARMY

PN2294 Army nominations (2) beginning Tom R. Mackenzie, and ending Terrence D. Wright, which nominations were received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2295 Army nominations (759) beginning Stephen M. Ackman, and ending Joseph M. Zima, which nominations were received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2306 Army nominations (4) beginning William C. Cannon, and ending Charles F. Maguire, III, which nominations were received by the Senate and appeared in the Congressional Record of November 14, 2002.

NAVY

PN2277 Navy nominations (19) beginning Rowland E. McCoy, and ending Alan K. Wilmot, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2002.

PN2290 Navy nominations (459) beginning Rodney D. Abbott, and ending Bernerd C. Zwahlen, which nominations were received by the Senate and appeared in the Congressional Record of October 17, 2002.

PN2296 Navy nomination of Phillip K. Pall, which was received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2297 Navy nomination of Stephanie L. O'Neal, which was received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2298 Navy nomination of Thomas P. Rosdahl, which was received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2307 Navy nominations (34) beginning Robert D. Beal, and ending Steven J. Zaccari, which nominations were received by the Senate and appeared in the Congressional Record of November 14, 2002.

NOMINATIONS DISCHARGED

Mr. REID. I ask consent that the HELP Committee be discharged from further consideration of the following nominations, and the Senate proceed to their immediate consideration en bloc: Margaret Scarlett and David Donath to be members of the National Museum Services Board; Carmel Borders, William Hiller, Robin Morris, Jean Osborn, and Mark Yudof, to be members of the National Institute for Literacy Board; Michael Duffy to be a member of the Mine Safety and Health Review Commission; that these nominees be confirmed, and the motion to reconsider be laid on the table.

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

The nominations considered and confirmed en bloc are as follows:

Margaret Scarlett, of Wyoming, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

David Donath, of Vermont, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

Carmel Borders, of Kentucky, to be a Member of the National Institute for Literacy Advisory Board for a term of three years.

William T. Hiller, of Ohio, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Robin Morris, of Georgia, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Jean Osborn, of Illinois, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

Mark G. Yudof, of Minnesota, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

Michael F. Duffy, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2006.

Mr. REID. I ask consent that the Governmental Affairs Committee be discharged from further consideration of the following nominees, and the Senate proceed to their immediate consideration en bloc: Alejandro Sanchez, Andrew Saul, Gordon Whiting, to be members of the Federal Retirement Thrift Investment Board; that the nominees be confirmed, and the motion to reconsider be laid upon the table.

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

The nominations considered and confirmed en bloc are as follows:

Alejandro Modesto Sanchez, of Florida, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2006.

Andrew Saul, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2004.

Gordon Whiting, of New York, to be a member of the Federal Retirement Thrift Investment Board of a term expiring September 25, 2006.

NOMINATION OF WILLIAM CAMPBELL TO BE ASSISTANT SECRETARY OF VETERANS AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent the Veterans Affairs Committee be discharged from the following nomination and the Senate proceed to its immediate consideration: The nomination of William Campbell to be Assistant Secretary of Veterans Affairs; that the nomination be confirmed, the motion to reconsider be laid upon the table, and any statements relating to Mr. Campbell be printed in the RECORD—in fact, Mr. President, any statements on any of the above nominees that I have just read to the Chair be printed in the RECORD, the President be immediately notified of the Senate's action on all the nominations, and the Senate return to legislative session.

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

The nomination considered and confirmed is as follows:

William H. Campbell, of Maryland, to be an Assistant Secretary of Veterans Affairs (Management).

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will return to legislative session.

OMBUDSMAN REAUTHORIZATION ACT OF 2002

Mr. REID. I ask unanimous consent that the Senate proceed to Calendar No. 737, S. 606.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 606) to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency.

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

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

S. 606

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 ''Ombudsman Reauthorization Act of 2001''.

[SEC. 2. OFFICE OF OMBUDSMAN.

[The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) is amended by striking section 2008 (42 U.S.C. 6917) and inserting the following:

["SEC. 2008. OFFICE OF OMBUDSMAN.

["(a) DEFINITIONS.—In this section:

["(1) ASSISTANT ADMINISTRATOR.—The term 'Assistant Administrator' means the Assistant Administrator for Solid Waste and Emergency Response of the Environmental Protection Agency.

["(2) OFFICE.—The term 'Office' means the Office of the Assistant Administrator for Solid Waste and Emergency Response of the Environmental Protection Agency.

["(3) OMBUDSMAN.—The term 'Ombudsman' means the director of the Office of Ombudsman established under subsection (b).

["(b) ESTABLISHMENT.—

["(1) IN GENERAL.—The Administrator shall establish within the Office an Office of Ombudsman, to be directed by an Ombudsman.

["(2) OVERSIGHT.—The Ombudsman shall report directly to the Administrator.

["(c) DUTIES.—The Ombudsman shall—

["(1) receive, and render assistance concerning, any complaint, grievance, or request for information submitted by any person relating to any program or requirement under this Act; and

["(2)(A) identify areas in which citizens have, and assist citizens in resolving, problems with the Office;

["(B) propose changes in the administrative practices of the Environmental Protection Agency to eliminate or, to the maximum extent practicable, mitigate those problems; and

["(C) conduct investigations, make findings of fact, and make nonbinding recommendations concerning those problems.

["(d) POWERS AND RESPONSIBILITIES.—In carrying out this section, the Ombudsman—

["(1) may, on receipt of a complaint or at the discretion of the Ombudsman, investigate any action of the Assistant Administrator without regard to the finality of the action;

["(2) may, under the authority of this section or section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)), examine any record or document of, and enter and inspect without notice any property under the administrative jurisdiction of, the Environmental Protection Agency;

["(3) in a case in which the Ombudsman experiences difficulty in gathering information pertaining to an investigation conducted by the Ombudsman, may request the Inspector General of the Environmental Protection Agency to subpoena any person to appear to give sworn testimony concerning, or to produce documentary or other evidence determined by the Ombudsman to be reasonably material to, the investigation;

["(4) may carry out and participate in, and cooperate with any person or agency involved in, any conference, inquiry on the record, public hearing on the record, meeting, or study that, as determined by the Ombudsman—

["(A) is reasonably material to an investigation conducted by the Ombudsman; or

["(B) may lead to an improvement in the performance of the functions of the Office;

["(5) shall maintain as confidential and privileged any and all communications concerning any matter pending, and the identities of any parties or witnesses appearing, before the Ombudsman; and

["(6) shall administer a budget for the Office of Ombudsman.

["(e) ADMINISTRATION.—

["(1) IN GENERAL.—The Ombudsman may—

["(A) appoint an Associate Ombudsman for each region of the Environmental Protection Agency; and

["(B) evaluate and carry out personnel actions (including hiring and dismissal) with respect to any employee of the Office of Ombudsman.

["(2) CONTACT INFORMATION.—The Ombudsman shall maintain, in each region of the Environmental Protection Agency, a telephone number, facsimile number, electronic mail address, and post office address for the Ombudsman that are different from the numbers and addresses of the regional office of the Environmental Protection Agency located in that region.

["(3) COOPERATION.—All Federal agencies shall—

["(A) assist the Ombudsman in carrying out functions of the Ombudsman under this section; and

["(B) promptly make available, in such format as may be determined by the Ombudsman, all requested information concerning—

["(i) past or present agency waste management practices; and

["(ii) past or present hazardous waste facilities owned, leased, or operated by the agency.

["(4) REPORTS.—The Ombudsman shall, at least annually, publish in the Federal Register and submit to the Committee on Environment and Public Works of the Senate, the Committee on Energy and Commerce of the House of Representatives, the President, and, at the discretion of the Ombudsman, any other governmental agency, a report on the status of health and environmental concerns addressed in complaints and cases brought before the Ombudsman in the period of time covered by the report.

["(f) PENALTIES.—Any person that willfully—

["(1) obstructs or hinders the proper and lawful exercise of the powers of the Ombudsman; or

["(2) misleads or attempts to mislead the Ombudsman in the course of an investigation;

shall be subject, at a minimum, to penalties under sections 1001 and 1505 of title 18, United States Code.

["(g) APPLICABILITY.—

["(1) IN GENERAL.—This section—

["(A) shall not limit any remedy or right of appeal; and

["(B) may be carried out notwithstanding any provision of law to the contrary that provides that an agency action is final, not reviewable, or not subject to appeal.

["(2) EFFECT ON PROCEDURES FOR GRIEVANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—The establishment of the Office of Ombudsman shall not affect any procedure concerning grievances, appeals, or administrative matters under this Act or any other law (including regulations).

["(h) AUTHORIZATION OF APPROPRIATIONS.—

["(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

["(A) $2,000,000 for each of fiscal years 2002 and 2003;

["(B) $3,000,000 for each of fiscal years 2004 through 2006; and

["(C) $4,000,000 for each of fiscal years 2007 through 2010.

["(2) SEPARATE LINE ITEM.—In submitting the annual budget for the Federal Government to Congress, the President shall include a separate line item for the funding for the Office of Ombudsman.

["(i) TERMINATION.—The Office of Ombudsman shall cease to exist on the date that is 10 years after the date of enactment of the Ombudsman Reauthorization Act of 2001.".]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ombudsman Reauthorization Act of 2002".

SEC. 2. OFFICE OF OMBUDSMAN.

Section 2008 of the Solid Waste Disposal Act (42 U.S.C. 6917) is amended to read as follows:

"SEC. 2008. OFFICE OF OMBUDSMAN.

"(a) DEFINITIONS.—In this section:

"(1) AGENCY.—The term 'Agency' means the Environmental Protection Agency.

"(2) DEPUTY OMBUDSMAN.—The term 'Deputy Ombudsman' means any individual appointed by the Ombudsman under subsection (e)(1)(A)(i).

"(3) OFFICE.—The term 'Office' means the Office of the Ombudsman established by subsection (b)(1).

"(4) OMBUDSMAN.—The term 'Ombudsman' means the director of the Office.

"(b) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established within the Agency an office to be known as the 'Office of the Ombudsman'.

"(2) OVERSIGHT.—

"(A) IN GENERAL.—The Office shall be an independent office within the Agency.

"(B) STRUCTURE.—To the maximum extent practicable, the structure of the Office shall conform to relevant professional guidelines, standards, and practices.

"(3) HEAD OF OFFICE.—

"(A) OMBUDSMAN.—The Office shall be headed by an Ombudsman, who shall—

"(i) be appointed by the President by and with the advice and consent of the Senate; and

"(ii) report directly to the Administrator.

"(B) QUALIFICATIONS FOR AND RESTRICTIONS ON EMPLOYMENT.—A person appointed as Ombudsman—

"(i) shall have experience as an ombudsman in a Federal, State, or local government entity; and

"(ii) shall not have been an employee of the Agency at any time during the 1-year period before the date of appointment.

"(C) TERM.—The Ombudsman—

"(i) shall serve for a term of 5 years; and

"(ii) may be reappointed for not more than 1 additional term.

"(D) REMOVAL.—

"(i) IN GENERAL.—The President may remove or suspend the Ombudsman from office only for neglect of duty or malfeasance in office.

"(ii) COMMUNICATION TO CONGRESS.—If the President removes or suspends the Ombudsman, the President shall communicate the reasons for the removal or suspension to Congress.

"(c) DUTIES.—The Ombudsman shall—

"(1) receive, and render assistance concerning, any complaint, grievance, or request for information submitted by any person relating to any program or requirement under—

"(A) this Act;

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); or

"(C) any other program administered by the Office of Solid Waste and Emergency Response of the Agency; and

"(2) conduct investigations, make findings of fact, and make nonbinding recommendations to the Administrator concerning the programs and requirements described in paragraph (1).

"(d) POWERS AND RESPONSIBILITIES.—In carrying out this section, the Ombudsman—

"(1) may investigate any action of the Agency without regard to the finality of the action;

"(2) may select appropriate matters for action by the Office;

"(3) may—

"(A) prescribe the methods by which complaints shall be made to, and received and addressed by, the Office;

"(B) determine the scope and manner of investigations made by the Office; and

"(C) determine the form, frequency, and distribution of conclusions and recommendations of the Office;

''(4) may request the Administrator to provide the Ombudsman notification, within a specified period of time, of any action taken on a recommendation of the Ombudsman;

''(5) may request, and shall be granted by any Federal agency or department, assistance and information that the Ombudsman determines to be necessary to carry out this section;

''(6) may examine any record of, and enter and inspect without notice any property under the administrative jurisdiction of—

''(A) the Agency; or

''(B) any other Federal agency or department involved in a matter under the administrative jurisdiction of the Office of Solid Waste and Emergency Response of the Agency;

''(7) may—

''(A) issue a subpoena to compel any person to appear to give sworn testimony concerning, or to produce documentary or other evidence determined by the Ombudsman to be reasonable in scope and relevant to, an investigation by the Office; and

''(B) seek enforcement of a subpoena issued under subparagraph (A) in a court of competent jurisdiction;

''(8) may carry out and participate in, and cooperate with any person or agency involved in, any conference, inquiry on the record, public hearing on the record, meeting, or study that, as determined by the Ombudsman—

''(A) is material to an investigation conducted by the Ombudsman; or

''(B) may lead to an improvement in the performance of the functions of the Agency;

''(9) may administer oaths and hold hearings in connection with any matter under investigation by the Office;

''(10) may engage in alternative dispute resolution, mediation, or any other informal process that the Ombudsman determines to be appropriate to carry out this section;

''(11) may communicate with any person, including Members of Congress, the press, and any person that submits a complaint, grievance, or request for information under subsection (c)(1); and

''(12) shall administer a budget for the Office.

''(e) ADMINISTRATION.—

''(1) IN GENERAL.—The Ombudsman shall—

''(A)(i) appoint a Deputy Ombudsman for each region of the Agency; and

''(ii) hire such other assistants and employees as the Ombudsman determines to be necessary to carry out this section; and

''(B) supervise, evaluate, and carry out personnel actions (including hiring and dismissal) with respect to any employee of the Office.

''(2) DELEGATION OF AUTHORITY.—The Ombudsman may delegate to other employees of the Office any responsibility of the Ombudsman under this section except—

''(A) the power to delegate responsibility;

''(B) the power to issue subpoenas; and

''(C) the responsibility to make recommendations to the Administrator.

''(3) CONTACT INFORMATION.—The Ombudsman shall maintain, in each region of the Agency, a telephone number, facsimile number, electronic mail address, and post office address for the Ombudsman that are different from the numbers and addresses of the regional office of the Agency located in that region.

''(4) REPORTS.—The Ombudsman—

''(A) shall, at least annually, publish in the Federal Register and submit to the Administrator, the President, the Committee on Environment and Public Works of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report on the status of health and environmental concerns addressed in complaints and cases brought before the Ombudsman in the period of time covered by the report;

''(B) may issue reports, conclusions, or recommendations concerning any other matter under investigation by the Office;

''(C) shall solicit comments from the Agency concerning any matter under investigation by the Office; and

''(D) shall include any comments received by the Office in written reports, conclusions, and recommendations issued by the Office under this section.

''(f) PENALTIES.—An investigation conducted by the Ombudsman under this section constitutes—

''(1) a matter under section 1001 of title 18, United States Code; and

''(2) a proceeding under section 1505 of title 18, United States Code.

''(g) EMPLOYEE PROTECTION.—

''(1) IN GENERAL.—No employer may discharge any employee, or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment of the employee, because the employee (or any person acting at the request of the employee) complied with any provision of this section.

''(2) COMPLAINT.—Any employee that, in the opinion of the employee, is discharged or otherwise discriminated against by any person in violation of paragraph (1) may, not later than 180 days after the date on which the violation occurs, file a complaint in accordance with section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851).

''(h) APPLICABILITY.—

''(1) IN GENERAL.—This section—

''(A) does not limit any remedy or right of appeal; and

''(B) may be carried out notwithstanding any provision of law to the contrary that provides that an agency action is final, not reviewable, or not subject to appeal.

''(2) EFFECT ON PROCEDURES FOR GRIEVANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—The establishment of the Office does not affect any procedure concerning grievances, appeals, or administrative matters under this Act or any other law (including regulations).

''(i) AUTHORIZATION OF APPROPRIATIONS.—

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

''(A) $3,000,000 for each of fiscal years 2003 and 2004;

''(B) $4,000,000 for each of fiscal years 2005 through 2008; and

''(C) $5,000,000 for each of fiscal years 2009 through 2012.

''(2) SEPARATE LINE ITEM.—In submitting the annual budget for the Federal Government to Congress, the President shall include a separate line item for the funding for the Office.''.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read three times, 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 ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

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

The bill (S. 606), as amended, was read the third time and passed.

AMENDING THE PUBLIC HEALTH SERVICE ACT WITH RESPECT TO SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES AND INDIANS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5738.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5738) to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid on the table.

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

The bill (H.R. 5738) was read the third time and passed.

Mr. REID. I also ask that any statements be printed in the RECORD.

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

ORDERS FOR WEDNESDAY, NOVEMBER 20, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until today, November 20, at 10 a.m.; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. REID. There will be no rollcall votes today, or the rest of the year, we hope.

Again, Mr. President, before you bang the gavel, thank you very much for your patience and for waiting through all this for us.

The ACTING PRESIDENT pro tempore. It was my pleasure doing it.

ADJOURNMENT UNTIL 10 A.M. TODAY

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:45 a.m., adjourned until Wednesday, November 20, 2002, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 19, 2002:

DEPARTMENT OF JUSTICE

HUMBERTO S. GARCIA, OF PUERTO RICO, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF PUERTO RICO FOR THE TERM OF FOUR YEARS, VICE DANIEL F. LOPEZ ROMO, RESIGNED.

LEONARDO M. RAPADAS, OF GUAM, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF THE GUAM AND CONCURRENTLY UNITED STATES ATTORNEY FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS FOR THE TERM OF FOUR YEARS, VICE K. WILLIAM O'CONNOR, RESIGNED.

FEDERAL COMMUNICATIONS COMMISSION

ELLEN L. WEINTRAUB, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A

TERM EXPIRING APRIL 30, 2007, VICE KARL J. SANDSTROM, TERM EXPIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 19, 2002:

DEPARTMENT OF VETERANS AFFAIRS

WILLIAM H. CAMPBELL, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (MANAGEMENT).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

MICHAEL F. DUFFY, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF SIX YEARS EXPIRING AUGUST 30, 2006.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

ALEJANDRO MODESTO SANCHEZ, OF FLORIDA, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING OCTOBER 11, 2006.

ANDREW SAUL, OF NEW YORK, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2004.

GORDON WHITING, OF NEW YORK, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2006.

NATIONAL INSTITUTE FOR LITERACY

MARK G. YUDOF, OF MINNESOTA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF TWO YEARS.

NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD

CARMEL BORDERS, OF KENTUCKY, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF THREE YEARS.

WILLIAM T. HILLER, OF OHIO, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF ONE YEAR.

ROBIN MORRIS, OF GEORGIA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF ONE YEAR.

JEAN OSBORN, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF TWO YEARS.

NATIONAL MUSEUM SERVICES BOARD

MARGARET SCARLETT, OF WYOMING, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2007.

DAVID DONATH, OF VERMONT, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2004.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COLONEL CHRIS T. ANZALONE
COLONEL DANA T. ATKINS
COLONEL PHILIP M. BREEDLOVE
COLONEL BRADLEY W. BUTLER
COLONEL ROBERT E. DEHNERT, JR.
COLONEL DELWYN R. EULBERG
COLONEL MAURICE H. FORSYTH
COLONEL PATRICK D. GILLETT, JR.
COLONEL SANDRA A. GREGORY
COLONEL GREGORY J. IHDE
COLONEL KEVIN J. KENNEDY
COLONEL LYLE M. KOENIG, JR.
COLONEL RONALD R. LADNIER
COLONEL ERWIN F. LESSEL III
COLONEL JOHN W. MALUDA
COLONEL MARK T. MATTHEWS
COLONEL GARY T. MCCOY
COLONEL KIMBER L. MCKENZIE
COLONEL STEPHEN J. MILLER
COLONEL RICHARD Y. NEWTON III
COLONEL THOMAS J. OWEN
COLONEL RICHARD E. PERRAUT, JR.
COLONEL POLLY A. PEYER
COLONEL DOUGLAS L. RAABERG
COLONEL ROBERTUS C. N. REMKES
COLONEL ERIC J. ROSBORG
COLONEL PAUL J. SELVA
COLONEL MARK E. STEARNS
COLONEL THOMAS E. STICKFORD
COLONEL JOHNNY A. WEIDA
COLONEL THOMAS B. WRIGHT

THE JUDICIARY

DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

DEPARTMENT OF DEFENSE

ARTHUR JAMES COLLINGSWORTH, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL RICHARD C. COLLINS
BRIGADIER GENERAL SCOTT R. NICHOLS
BRIGADIER GENERAL DAVID A. ROBINSON
BRIGADIER GENERAL MARK V. ROSENKER
BRIGADIER GENERAL CHARLES E. STENNER, JR.
BRIGADIER GENERAL THOMAS D. TAVERNEY
BRIGADIER GENERAL KATHY E. THOMAS

To be brigadier general

COLONEL RICARDO APONTE
COLONEL FRANK J. CASSERINO
COLONEL CHARLES D. ETHREDGE
COLONEL THOMAS M. GISLER, JR.
COLONEL JAMES W. GRAVES
COLONEL JOHN M. HOWLETT
COLONEL MARTIN M. MAZICK
COLONEL HANFERD J. MOEN, JR.
COLONEL JAMES M. MUNGENAST
COLONEL JACK W. RAMSAUR II
COLONEL DAVID N. SENTY
COLONEL BRADLEY C. YOUNG

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ARTHUR J. LICHTE

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COLONEL TERRY W. SALTSMAN

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. MICHAEL H. SUMRALL

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL DANIEL D. DENSFORD

BRIGADIER GENERAL DANIEL E. LONG, JR.

BRIGADIER GENERAL MICHAEL J. SQUIER
BRIGADIER GENERAL ROY M. UMBARGER
BRIGADIER GENERAL ANTONIO J. VICENS-GONZALEZ
BRIGADIER GENERAL WALTER E. ZINK II

To be brigadier general

COLONEL NORMAN E. ARFLACK
COLONEL JERRY G. BECK, JR.
COLONEL RAYMOND W. CARPENTER
COLONEL HERMAN M. DEENER
COLONEL ROBERT P. FRENCH
COLONEL JOHN T. FURLOW
COLONEL CHARLES L. GABLE
COLONEL FRANCIS P. GONZALES
COLONEL DEAN E. JOHNSON
COLONEL DAVID A. LEWIS
COLONEL THOMAS D. MILLS
COLONEL VERN T. MIYAGI
COLONEL ROQUE C. NIDO LANAUSSE
COLONEL J. W. NOLES
COLONEL THOMAS R. RAGLAND
COLONEL TERRY L. ROBINSON
COLONEL CHARLES G. RODRIGUEZ
COLONEL CHARLES D. SAFLEY
COLONEL RANDALL E. SAYRE
COLONEL DONALD C. STORM
COLONEL WILLIAM H. WADE
COLONEL GREGORY L. WAYT
COLONEL MERREL W. YOCUM

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. STANLEY R. SZEMBORSKI

AIR FORCE NOMINATIONS BEGINNING BRANFORD J. MCALLISTER AND ENDING ALICE SMART, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2002.

AIR FORCE NOMINATION OF DAVID G. SMITH.

ARMY NOMINATIONS BEGINNING TOM R. MACKENZIE AND ENDING TERRENCE D. WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 12, 2002.

ARMY NOMINATIONS BEGINNING STEPHEN M. ACKMAN AND ENDING JOSEPH M. ZIMA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 12, 2002.

ARMY NOMINATIONS BEGINNING WILLIAM C. CANNON AND ENDING CHARLES F. MAGUIRE III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 14, 2002.

NAVY NOMINATIONS BEGINNING ROWLAND E MCCOY AND ENDING ALAN K. WILMOT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2002.

NAVY NOMINATIONS BEGINNING RODNEY D. ABBOTT AND ENDING BERNERD C. ZWAHLEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 17, 2002.

NAVY NOMINATION OF PHILLIP K. PALL.

NAVY NOMINATION OF STEPHANIE L. O'NEAL.

NAVY NOMINATION OF THOMAS P. ROSDAHL.

NAVY NOMINATIONS BEGINNING ROBERT D. BEAL AND ENDING STEVEN J. ZACCARI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 14, 2002.

Daily Digest

HIGHLIGHTS

Senate passed H.R. 5005, Homeland Security Act.

Senate agreed to conference report on H.R. 3210, Terrorism Risk Protection Act.

Senate passed H.J. Res. 124, Continuing Appropriations.

Senate confirmed the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Senate

Chamber Action

Routine Proceedings, pages S11357–S11659

Measures Introduced: Ten bills and three resolutions were introduced, as follows: S. 3–5, and S. 3173–3179, S. Res. 359–360, and S. Con. Res. 159. **Page S11574**

Measures Reported:

Report to accompany S. 2480, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns. (S. Rept. No. 107–345)

S. 2065, to provide for the implementation of air quality programs developed pursuant to an Intergovernmental Agreement between the Southern Ute Indian Tribes and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation. (S. Rept. No. 107–346)

S. 556, to amend the Clean Air Act to reduce emissions from electric powerplants, with an amendment in the nature of a substitute. (S. Rept. No. 107–347)

S. 2946, to reauthorize the Federal Trade Commission for fiscal years 2003, 2004, and 2005. (S. Rept. No. 107–348)

S. 3070, to authorize appropriations for the Merit Systems Protection Board and the Office of Special Counsel. (S. Rept. No. 107–349)

S. 1340, to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands, with an amendment in the nature of a substitute.

S. 1822, to amend title 5, United States Code, to allow certain catchup contributions to the Thrift Savings Plan to be made by participants age 50 or over. **Page S11573**

Measures Passed:

Homeland Security Act: By 90 yeas to 9 nays (Vote No. 249), Senate passed H.R. 5005, to establish the Department of Homeland Security, after taking action on the following amendments proposed thereto: **Pages S11358–S11404, S11405–S11511**

Adopted:

By 73 yeas to 26 nays (Vote No. 247), Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute. **Pages S11358, S11371–73**

Rejected:

By 47 yeas to 52 nays (Vote No. 245), Daschle (for Lieberman) Amendment No. 4953 (to Amendment No. 4911), of a perfecting nature. **Pages S11358–71**

Daschle (for Lieberman) Amendment No. 4911 (to Amendment No. 4901), to provide that certain provisions of the Act shall not take effect. **Pages S11358, S11371**

During consideration of this measure today, Senate also took the following actions:

By 69 yeas to 30 nays (Vote No. 246), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to waive section 302(f) of the Congressional Budget Act of 1974, with respect to Thompson (for Gramm) Amendment No. 4901, listed above. Subsequently, the point of order, stating that additional expenditures contained in the amendment are not provided for in the budget resolution adopted in 2001 for fiscal years 2002 through 2011 and therefore in violation of section 302(f) of the Congressional Budget Act of 1974, failed. **Page S11372**

By 83 yeas to 16 nays (Vote No. 248), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the bill. **Pages S11373–74**

Continuing Appropriations: By 92 yeas to 2 nays (Vote No. 253), Senate passed H.J. Res. 124, making further continuing appropriations for the fiscal year 2003, clearing the measure for the President.

Pages S11531–36

Congratulating Former President Jimmy Carter: Senate agreed to S. Res. 360, congratulating former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize, and commending him for his lifetime of dedication to peace.

Pages S11537–38

Oil Region National Heritage Area Act: Senate passed H.R. 695, to establish the Oil Region National Heritage Area, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Pages S11623–33

Reid (for Bingaman) Amendment No. 4970, to designate additional National Heritage Areas.

Page S11633

Moccasin Bend National Historic Site Establishment Act: Senate passed H.R. 980, to establish the Moccasin Bend National Archaeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Military Park, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto: **Pages S11636–37**

Reid (for Bingaman) Amendment No. 4973, in the nature of a substitute. **Page S11637**

National Historic Trails Studies: Senate passed H.R. 37, to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Pages S11637–39

Reid (for Bingaman) Amendment No. 4974, in the nature of a substitute. **Page S11639**

Harmful Nonnative Weed Control Act: Senate passed S. 198, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land, after agreeing to committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Pages S11639–41

Reid (for Bingaman) Amendment No. 4975, in the nature of a substitute. **Page S11641**

Wildfire Prevention Act: Senate passed S. 2670, to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems of the interior West, after agreeing to a committee amendment, and the following amendment proposed thereto:

Pages S11641–43

Reid (for Bingaman) Amendment No. 4976, in the nature of a substitute. **Page S11643**

Alternative Land Selections Under The Alaska Native Claims Settlement Act: Senate passed S. 2222, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Pages S11643–45

Reid (for Bingaman) Amendment No. 4977, in the nature of a substitute. **Page S11645**

Fremont-Madison Conveyance Act: Senate passed S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto: **Pages S11645–47**

Reid (for Bingaman) Amendment No. 4978, in the nature of a substitute. **Page S11647**

Alaska Land Conveyance: Senate passed S. 1816, to provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska.

Pages S11647–49

Mount Nebo Wilderness Boundary Adjustment Act: Senate passed H.R. 451, to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, clearing the measure for the President.

Page S11649

Illinois Hydroelectric Project Extension: Senate passed S. 2872, to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois. **Page S11649**

Enrollment Correction: Senate agreed to S. Con. Res. 159, to correct the enrollment of S. 1843.

Page S11650

Virgin River Dinosaur Footprint Preserve Act: Senate passed H.R. 2385, to convey certain property to the city of St. George, Utah, in order to provide

for the protection and preservation of certain rare paleontological resources on that property, after withdrawing the committee amendments. **Pages S11650–51**

Homestead National Monument of America Additions Act: Senate passed H.R. 38, to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, clearing the measure for the President. **Pages S11652–55**

Guam War Claims Review Commission Act: Senate passed H.R. 308, to establish the Guam War Claims Review Commission, clearing the measure for the President. **Pages S11652–55**

Lease Lot Conveyance Act: Senate passed H.R. 706, to direct the Secretary of the Interior to convey certain properties in the vicinity of the Elephant Butte Reservoir and the Caballo Reservoir, New Mexico, clearing the measure for the President. **Pages S11652–55**

American Samoa Park Adjustments: Senate passed H.R. 1712, to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, clearing the measure for the President. **Pages S11652–55**

Buffalo Bayou National Heritage Area Study Act: Senate passed H.R. 1776, to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Buffalo Bayou National Heritage Area in west Houston, Texas, clearing the measure for the President. **Pages S11652–55**

Metacomet-Monadnock-Mattabesett Trail Study Act: Senate passed H.R. 1814, to amend the National Trails System Act to designate the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut for study for potential addition to the National Trails System, clearing the measure for the President. **Pages S11652–55**

Fallon Rail Freight Loading Facility Transfer Act: Senate passed H.R. 1870, to provide for the sale of certain real property within the Newlands Project in Nevada, to the city of Fallon, Nevada, clearing the measure for the President. **Pages S11652–55**

Pu'uhonua O Honaunau National Historical Park Addition Act: Senate passed H.R. 1906, to amend the Act that established the Pu'uhonua O Honaunau National Historical Park to expand the boundaries of that park, clearing the measure for the President. **Pages S11652–55**

Waco Mammoth Site Area Study: Senate passed H.R. 1925, to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, clearing the measure for the President. **Pages S11652–55**

Vancouver National Historic Reserve Authorization: Senate passed H.R. 2099, to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve, clearing the measure for the President. **Pages S11652–55**

Virginia Key Beach Park Study: Senate passed H.R. 2109, to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System, clearing the measure for the President. **Pages S11652–55**

Lakehaven Utility District Wastewater Project: Senate passed H.R. 2115, to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington, clearing the measure for the President. **Pages S11652–55**

Muscle Shoals National Heritage Area Study Act: Senate passed H.R. 2628, to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Muscle Shoals National Heritage Area in Alabama, clearing the measure for the President. **Pages S11652–55**

Sand Mountain Wilderness Study Area Conveyance: Senate passed H.R. 2818, to authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971, clearing the measure for the President. **Pages S11652–55**

Klamath Basin Emergency Operation and Maintenance Refund Act: Senate passed H.R. 2828, to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, clearing the measure for the President. **Pages S11652–55**

Lower Rio Grande Valley Water Resources Conservation and Improvement Act: Senate passed H.R. 2990, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of

2000 to authorize additional projects under that Act, clearing the measure for the President.

Pages S11652–55

New River Gorge Boundary Act: Senate passed H.R. 3858, to modify the boundaries of the New River Gorge National River, West Virginia, clearing the measure for the President. **Pages S11652–55**

Russian River Land Act: Senate passed H.R. 3048, to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska, clearing the measure for the President. **Pages S11652–55**

California Five Mile Regional Learning Center Transfer Act: Senate passed H.R. 3401, to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, clearing the measure for the President. **Pages S11652–55**

Gunn McKay Nature Preserve Act: Senate passed H.R. 3909, to designate certain Federal lands in the State of Utah as the Gunn McKay Nature Preserve, clearing the measure for the President.

Pages S11652–55

George Washington Birthplace National Monument: Senate passed H.R. 3449, to revise the boundaries of the George Washington Birthplace National Monument, clearing the measure for the President.

Pages S11652–55

Caribbean National Forest Wild and Scenic Rivers Act: Senate passed H.R. 3954, to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, clearing the measure for the President.

Pages S11652–55

Allegheny Portage Railroad National Historic Site Boundary Revision Act: Senate passed H.R. 4682, to revise the boundary of the Allegheny Portage Railroad National Historic Site, clearing the measure for the President. **Pages S11652–55**

Civil War Battlefield Preservation Act: Senate passed H.R. 5125, to amend the American Battlefield Protection Act of 1996 to authorize the Secretary of the Interior to establish a battlefield acquisition grant program, clearing the measure for the President. **Pages S11652–55**

Oregon Right-of-Way: Senate passed H.R. 4953, to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road, clearing the measure for the President. **Pages S11652–55**

Mni Wiconi Rural Water Supply Project: Senate passed H.R. 4638, to reauthorize the Mni Wiconi Rural Water Supply Project, clearing the measure for the President. **Pages S11652–55**

Endangered Fish Recovery Implementation Programs: Senate passed H.R. 5099, to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins, clearing the measure for the President.

Pages S11652–55

Bainbridge Island Japanese-American Memorial Study Act: Senate passed H.R. 3747, to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System, clearing the measure for the President. **Pages S11652–55**

Oregon Hydroelectric Project: Senate passed H.R. 5436, to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon, clearing the measure for the President.

Pages S11652–55

Big Sur Wilderness and Conservation Act: Senate passed H.R. 4750, to designate certain lands in the State of California as components of the National Wilderness Preservation System, clearing the measure for the President. **Pages S11652–55**

President John Adams Commemorative Work: Senate passed H.J. Res. 117, approving the location of the commemorative work in the District of Columbia honoring former President John Adams, clearing the measure for the President.

Pages S11652–55

Central Utah Project Completion Act: Senate passed H.R. 4129, to amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment, clearing the measure for the President. **Pages S11652–55**

Spirit Lake and Twin Lakes Act: Senate passed H.R. 4874, to direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to

Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey, clearing the measure for the President. **Pages S11652–55**

Cedar Creek and Belle Grove National Historical Park Act: Senate passed H.R. 4944, to designate the Cedar Creek and Belle Grove National Historical Park as a unit of the National Park System, clearing the measure for the President. **Pages S11652–55**

Clark County Shooting Range: Committee on Energy and Natural Resources was discharged from further consideration of H.R. 2937, to provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range, and the bill was then passed, clearing the measure for the President. **Pages S11652–55**

Ombudsman Reauthorization Act: Senate passed S. 606, to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency, after agreeing to a committee amendment in the nature of a substitute. **Pages S11656–58**

Public Health Service Act Amendment: Senate passed H.R. 5738, to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians, clearing the measure for the President **Page S11658**

Terrorism Risk Protection Act Conference Report—Cloture Motion Filed: Pursuant to the order of November 15, 2002, a motion was entered to close further debate on the conference report on H.R. 3210, to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism. **Page S11525**

Terrorism Risk Protection Act Conference Report: By 86 yeas to 11 nays (Vote No. 252), Senate agreed to the conference report on H.R. 3210, to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, clearing the measure for the President. **Pages S11524–30**

During consideration of this measure today, Senate also took the following action:

By 85 yeas to 12 nays (Vote No. 251), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the conference report. **Page S11525**

Rancho Corral De Tierra Golden Gate National Recreation Area Boundary Adjustment Act: Senate concurred in the amendment of the House to S. 941, to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, with a further Reid (for Bingaman) Amendment No. 4971, to concur in the House amendment with an amendment in the nature of a substitute. **Pages S11633–34**

Miami Circle Site Act: Senate concurred in the amendment of the House to S. 1894, to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, with a further Reid (for Bingaman) Amendment No. 4972, to concur in the House amendment with an amendment in the nature of a substitute. **Pages S11634–36**

Grand Teton National Park Land Exchange Act: Senate disagreed to the amendment of the House to S. 1105, to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park. **Pages S11649–50**

Timpanogos Interagency Land Exchange Act: Senate concurred in the amendment of the House to S. 1240, to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, clearing the measure for the President. **Pages S11651–52**

Messages from the President: Senate received the following messages from the President of the United States:

Transmitting a report documenting The State of Small Business at the end of the Twentieth Century; to the Committee on Small Business and Entrepreneurship. (PM–121) **Page S11569**

Transmitting, pursuant to law, a report entitled Annual Report of the Railroad Retirement Board for the fiscal year ended September 30, 2001; to the Committee on Health, Education, Labor, and Pensions. (PM–122) **Page S11569**

Nominations Confirmed: Senate confirmed the following nominations:

By 55 yeas 44 nays (Vote No. EX. 250), Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit. **Pages S11512–22**

Carmel Borders, of Kentucky, to be a Member of the National Institute for Literacy Advisory Board for a term of three years. (Prior to this action, Committee on Health, Education, Labor, and Pensions was discharged from further consideration.)

William T. Hiller, of Ohio, to be a Member of the National Institute for Literacy Advisory Board for a term of one year. (New Position)

Robin Morris, of Georgia, to be a Member of the National Institute for Literacy Advisory Board for a

term of one year. (Prior to this action, Committee on Health, Education, Labor, and Pensions was discharged from further consideration.)

Jean Osborn, of Illinois, to be a Member of the National Institute for Literacy Advisory Board for a term of two years. (New Position)

Mark G. Yudof, of Minnesota, to be a Member of the National Institute for Literacy Advisory Board for a term of two years. (Prior to this action, Committee on Health, Education, Labor, and Pensions was discharged from further consideration.)

Michael F. Duffy, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2006. (Prior to this action, Committee on Health, Education, Labor, and Pensions was discharged from further consideration.)

Alejandro Modesto Sanchez, of Florida, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2006. (Prior to this action, Committee on Governmental Affairs was discharged from further consideration.)

Andrew Saul, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2004. (Prior to this action, Committee on Governmental Affairs was discharged from further consideration.)

Gordon Whiting, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2006. (Prior to this action, Committee on Governmental Affairs was discharged from further consideration.)

William H. Campbell, of Maryland, to be an Assistant Secretary of Veterans Affairs (Management). (Prior to this action, Committee on Veterans' Affairs was discharged from further consideration.)

Margaret Scarlett, of Wyoming, to be a Member of the National Museum Services Board for a term expiring December 6, 2007. (Prior to this action, Committee on Health, Education, Labor, and Pensions was discharged from further consideration.)

David Donath, of Vermont, to be a Member of the National Museum Services Board for a term expiring December 6, 2004. (Prior to this action, Committee on Health, Education, Labor, and Pensions was discharged from further consideration.)

Arthur James Collingsworth, of California, to be a Member of the National Security Education Board for a term of four years.

51 Air Force nominations in the rank of general.

31 Army nominations in the rank of general.

1 Navy nomination in the rank of admiral.

Routine lists in the Air Force, Army, Navy.

Pages S11655–56, S11659

Nominations Received: Senate received the following nominations:

Humberto S. Garcia, of Puerto Rico, to be United States Attorney for the District of Puerto Rico for the term of four years.

Leonardo M. Rapadas, of Guam, to be United States Attorney for the District of Guam and concurrently United States Attorney for the District of Northern Mariana Islands for the term of four years.

Ellen L. Weintraub, of Maryland, to be a Member of the Federal Election Commission for a term expiring April 30, 2007. **Pages S11658–59**

Messages From the House: **Pages S11569–70**

Enrolled Bills Presented: **Page S11570**

Executive Communications: **Pages S11570–73**

Executive Reports of Committees: **Pages S11573–74**

Additional Cosponsors: **Pages S11574–75**

Statements on Introduced Bills/Resolutions: **Pages S11575–80**

Additional Statements: **Pages S11563–69**

Amendments Submitted: **Pages S11580–S11618**

Privilege of the Floor: **Page S11618**

Record Votes: Nine record votes were taken today. (Total—253)

Pages S11371, S11372, S11373, S11374, S11462, S11522, S11525, S11530, S11536

Adjournment: Senate met at 9 a.m., and adjourned at 12:45 a.m. on Wednesday, November 20, 2002, until 10 a.m., on the same day. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S11658).

Committee Meetings

(Committees not listed did not meet)

NOMINATIONS

Committee on Armed Services: Committee ordered favorably report the nomination of Arthur James Collingsworth, of California, to be a Member of the National Security Education Board, Department of Defense, and 1,335 military nominations in the Air Force, Army, and Navy.

House of Representatives

Chamber Action

Measures Introduced: 5 public bills, H.R. 5758–5762, were introduced. **Page H9036**

Reports Filed: No reports were filed today.

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Thornberry to act as Speaker pro tempore for today. **Page H9027**

Call of the Private Calendar: Agreed to dispense with the call of the Private Calendar. **Page H9028**

Meeting Hour—Friday, Nov. 22: Agreed that when the House adjourns today, it adjourn to meet at 11 a.m. on Friday, Nov. 22. **Page H9029**

Benjamin Franklin Tercentenary Commission: Read a letter from the Minority Leader wherein he announced his appointment of Representatives Borski and Fattah to the Benjamin Franklin Tercentenary Commission. **Page H9029**

Congressional Hunger Fellows Program: The Chair announced the Speaker's appointment of Representatives Emerson and Mr. David Weaver, Jr., of Lubbock, Texas, to the Board of Trustees of the Congressional Fellows Program for a four year term. **Page H9029**

Recess: The House recessed at 12:31 p.m. and reconvened at 12:45 p.m. **Page H9031**

Return of Official Papers—Hydroelectric Licenses in Alaska: Agreed that the Clerk of the House be directed to request the Senate to return the official papers on S. 1843, to extend certain hydroelectric licenses in the State of Alaska. **Pages H9031–32**

Senate Message: Message received from the Senate today appears on page H9028.

Referrals: S. 754, to the Committees on Energy and Commerce and the Judiciary; S. 1052, held at the desk; S. 2799, to the Committee on Resources; S. 2869 to the Committee on Energy and Commerce; S. 2949 to the Committees on Transportation and Infrastructure and Energy and Commerce; S. 2951, to the Committee on Science; S. 3172 to the Committees on the Budget and Small Business; S. Con. Res. 94, held at the desk; and S. Con. Res. 122 to the Committee on International Relations. **Pages H9032–33**

Quorum Calls—Votes: No quorum calls or recorded votes developed during the proceedings of the House today.

Adjournment: The House met at 12 noon and adjourned at 1:01 p.m.

Committee Meetings

COMPUTER SECURITY—FEDERAL GOVERNMENT

Committee on Government Reform: Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations held an oversight hearing on "Computer Security in the Federal Government: How Do the Agencies Rate?" Testimony was heard from Mark A. Forman, Associate Director, Information Technology and E-Government, OMB; Robert Dacey, Director, Information Security, GAO; James B. Lockhart III, Deputy Commissioner and Chief Operating Officer, Social Security, SSA; Kenneth M. Mead, Inspector General, Department of Transportation; and a public witness.

COMMITTEE MEETINGS FOR WEDNESDAY, NOVEMBER 20, 2002

(Committee meetings are open unless otherwise indicated)

Senate

Committee on the Judiciary: to hold hearings to examine an assessment of the tools needed to fight the financing of terrorism, 10 a.m., SD–226.

House

No Committee meetings are scheduled.

Next Meeting of the SENATE

10 a.m., Wednesday, November 20

Senate Chamber

Program for Wednesday: After the transaction of any morning business, Senate will consider any cleared legislative and executive business.

Next Meeting of the HOUSE OF REPRESENTATIVES

11 a.m., Friday, November 22

House Chamber

Program for Friday: Pro forma session.

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