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Senate

The Senate met at 10 a.m. and was called to order by the Honorable LINDSEY O. GRAHAM, a Senator from the State of South Carolina.

The PRESIDING OFFICER. Our morning prayer will be offered by the Reverend Canon Martyn Minns, Truro Episcopal Church of Fairfax, VA.

PRAYER

The guest Chaplain offered the following prayer:

Almighty God, You have given us this good land for our heritage, and You have blessed us with freedom, peace, and prosperity. Save us from pride and arrogance that we may be a people of peace among ourselves and a blessing to other nations of the Earth.

We ask that You direct the women and men of this Senate as they take counsel together and enact laws to govern this Nation. Give them wisdom to discern what is pleasing in Your sight and the courage to follow Your will. Remind them of Your love for the poor and oppressed, for those in prison, for children who are at risk, for refugees, and for those whose lives are without hope because of ill health or joblessness.

Protect them from selfish desires and petty divisions. Grant them the desire to do only those things that will glorify Your name and provide for the welfare of all Your people.

All this we pray because of the love first shown to us in the call of Abraham and Sarah and now revealed to us in the life and witness of Jesus the Christ. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LINDSEY O. GRAHAM led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 30, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LINDSEY GRAHAM, a Senator from the State of South Carolina, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. GRAHAM of South Carolina thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Wyoming is recognized.

SCHEDULE

Mr. ENZI. Mr. President, today the Senate will be in a period of morning business until 11 a.m. Following morning business, the Senate will begin consideration of S. 196, the digital and wireless technology program legislation. Under the consent agreement reached, there will be 1 hour for debate prior to the vote on passage. Senators should therefore expect a vote at approximately 12 noon today. Following that vote, the Senate may consider any other legislative or executive items ready for action.

The two leaders have been working on an agreement to allow for the consideration of several judicial nominations, and it is possible that those nominations would be considered today. The Senate may also resume consideration of the Owen nomination during today's session. As a reminder, a cloture motion was filed with respect to Priscilla Owen to be a U.S. circuit court judge for the Fifth Circuit. That cloture vote will occur tomorrow.

Finally, there are a number of other legislative matters that also may be considered this week, including the State Department authorization and the bioshield bill.

Mr. REID. Mr. President, we have scheduled to appear in the Capitol today Secretary Wolfowitz from 2 to 3. I think it would be to everyone's best interest if we were not in session at that time. I would ask the acting majority leader to visit with the majority leader and find out if we could enter into a unanimous consent that we could be in recess during that period of time.

Mr. ENZI. I will check with the leader and see if that cannot be arranged.

Mr. REID. We have had a lot of interest on this side. This is the first major briefing we will have the opportunity to have after the recess. I think a lot of people will want to attend.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to exceed beyond the hour of 11 a.m., with the time to be equally divided between the two leaders or their designees.

ORDER TO RECOMMIT—EXECUTIVE CALENDAR NO. 35

Mr. ENZI. As in executive session, I now ask unanimous consent that Executive Calendar No. 35, John Roberts, be

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

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recommitted to the Judiciary Committee.

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

The Senator from Minnesota.

RECOGNITION OF THE GOLDEN GOPHERS

Mr. COLEMAN. Mr. President, I am proud to stand here with my distinguished colleague, the senior Senator from Minnesota, MARK DAYTON, to offer congratulations to a group of young men of great accomplishment. In these difficult and troubled times, it is wonderful to recognize the accomplishment of young people. This accomplishment is something that is very close to the hearts of Minnesotans and folks in other parts of the country. It is about hockey.

Hockey is a sport in which it is not about individual team stars. It is about folks working as a team and toughing it out and showing courage and determination. Hockey is a family sport. Moms and dads, hockey moms and dads are folks who get up at 4, 5 o'clock in the morning to find ice time for their kids. And if it is not in the formal rink, it is a little rink outside where you kind of dust away the snow so your kids can skate. It represents so much of the best of America.

I am proud to announce I will be introducing, with my colleague Senator DAYTON, a resolution later today commending the University of Minnesota Golden Gophers men's hockey team for winning the NCAA Division I National Championship. And again, I am pleased to be joined by my colleague.

Hockey is not a partisan sport. I don't know whether hockey players are Democrats or Republicans. They are good Americans, and they are good young people.

I understand that upon this resolution's introduction, the Senate will take up and pass this fitting tribute to the Golden Gophers.

During their championship game against New Hampshire, a Gophers fan in attendance held up a sign that said, ''The Dynasty Begins.'' With this as their second straight championship, the first team to accomplish this in 31 years, I would have to agree. At last year's Frozen Four, they defeated Maine in overtime 4 to 3, and this year's championship win came by a score of 5 to 1. Their first and second round games were also big wins, leading them to face Michigan in the semifinals, where they defeated the Wolverines in overtime.

With their achievements on the ice, it is clear this hockey team has exceptional athletic abilities. But they should also be recognized for their academic excellence; they maintained a grade point average above the university-wide average.

On a side note, allow me the opportunity to mention that the Minnesota-New Hampshire match in the final led to a similar competition here in the Senate between my good friend and colleague, Senator GREGG. As to that outcome, let me just say I am looking forward to my lobster and maple syrup. I will be presenting this very stylish Minnesota necktie with the Golden Gopher colors to my good friend, the senior Senator from New Hampshire, for him to wear proudly as a sign of the great triumph for the people of Minnesota over the folks from New Hampshire. On behalf of all Minnesotans, I am pleased to make this addition to his wardrobe and, again, I look forward to his wearing this good-looking gopher tie on one of his many high profile days in the Senate.

I am proud to stand today to commend the Golden Gophers hockey team for winning the national championship and to recognize the outstanding achievements of all the team players, their coach Don Lucia and his staff.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. DAYTON. I rise with my colleague on the morning after a difficult night for Minnesota sports fans with both of our teams, the Timberwolves and the Wild, losing playoff games at home. This is a way to remind ourselves of days of former glory, and certainly with my distinguished colleague, Senator COLEMAN, who was instrumental and probably deserves more credit than any other person in Minnesota for bringing professional hockey back to St. Paul and Minnesota. The Minnesota Wild, which is now in its third year, is performing so well, it is fitting that we can rise together here for the second time this year to pay tribute to a Minnesota team, its collegiate hockey team; in this case, the Golden Gophers of the University of Minnesota, who have repeated now as national champions for the second time, the first time in 31 years that a college team has repeated for the men's championship.

They join the University of Minnesota women's team, the Duluth Bulldogs women's team, who earlier this year won their third consecutive national collegiate hockey championship.

As they were playing the Golden Gophers for the national title, I happened to be flying across the Pacific Ocean on a codel headed by Majority Leader BILL FRIST, and it turns out that his press secretary was a graduate of the University of New Hampshire. So we had a friendly wager on the outcome. I am delighted to soon be the recipient of a quart of maple syrup, which makes it as sweet a victory for me as for the team, and certainly for all the hockey fans throughout Minnesota.

This was supposed to be a rebuilding year for this team. Nobody thought they would make the playoffs, much less win the national championship. They had a new goalie and were the defending national champions. That made them everyone's target. They kept getting better and better as the year went on. When they reached the playoffs, they were unbeatable. They won four straight victories to win the WCHA championship and then four straight victories, over stiff competition—the best in the Nation—in order to win the national championship for the second straight year. Once again, they accomplished this with almost entirely Minnesota talent.

Some people ask why it took 23 years—from 1979 to 1992—for Minnesota, which is the hockey capital of the Nation, to repeat as the national collegiate champion. In 1979, when they won, there were only two Division I college teams in Minnesota. Presently there are five. There is that increase in competition among the Minnesota colleges themselves and for our Minnesota hockey talent. In addition, the other programs—in the West, WCHA, and in the east, the CCHA—recruited extensively in Minnesota, and even eastern hockey spent heavily on Canadian talent. In my days of playing, in the 1960s, for example, in Division I hockey, it used to be said that Canadian boys dreamed of playing in the National Hockey League, and if those hopes and dreams were dashed, they went on to college in the United States.

Despite all that fierce competition for the talent and the pressures on that team, Coach Don Lucia has built, in just 5 years, an extraordinary program, a world class program in Minnesota that has restored collegiate hockey to its rightful place, at the very top in Minnesota. It is a real tribute to Coach Lucia and his entire team, all the players who performed extraordinarily well under the circumstances, and who are now, once again, the national collegiate champions.

It is Senator COLEMAN's and my hope that the President will be gracious enough to invite our two teams, the University of Minnesota Golden Gophers men's team and the University of Minnesota Duluth women's team, to the White House for recognition, as he had in the previous year with both teams, and before that with the women's team.

I went to college with the President. He was a year ahead of me, and he was not a hockey player. He was a rugby player. He was a sports fan. He roomed in college with a college All-American from Minnesota, Jack Morrison. He was a frequent attendee at our hockey games at Yale University. Two years ago, when the UMD women won the first championship, the President was gracious and responded instantaneously and invited the women's team, as he had previously invited the men's championship team from Boston College, to be feted at the White House. It could not have been a more exciting moment for the players, their families, friends, and the coaches at the University of Minnesota Duluth. Last year, we had the good fortune of having both championship teams, and the President was gracious enough to invite them both, along with the families, friends, and coaches, to the White House.

Senator COLEMAN and I have put in our request and soon expect that the President will be gracious enough to once again invite the teams and commend all those who play sports throughout the Nation, such as hockey, as they should be played—with all the enthusiasm and the best of their talent and ability, learning the values of sportsmanship, teamwork, competition. Sometimes they don't come out as well as they would like, but every once in a while they may reach the pinnacle of success of a national championship. I am sure the President would concur with that.

Again, I salute my favorite teams in Minnesota.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming is recognized.

(The remarks of Mr. ENZI, Mr. BAUCUS, and Mr. DORGAN pertaining to the introduction of S. 950 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

BIPARTISAN SENATORIAL TRIP TO JAPAN, TAIWAN, SOUTH KOREA, AND CHINA

Mr. DAYTON. Mr. President, I want to share some of my experiences over the last 2 weeks as part of a bipartisan delegation of Senators who traveled to Japan, Taiwan, South Korea, and China. Upon my return to Minnesota last week, directly from Beijing, I never had so many inquiries from people meeting with me as to my health and well-being. Fortunately, I assured them I was not carrying SARS, which is something to be taken obviously very seriously.

The trip was led by our Senate majority leader BILL FRIST, and was led extraordinarily well by him. I cannot say enough to reflect my respect and admiration for his demeanor, his leadership, his poise, and his presence when facing the heads of state when we had these meetings in China, South Korea, and Taiwan.

We may be Republicans and Democrats, but occasionally we need to be reminded that at our core all of us are Americans. Ultimately, we all succeed or we do not succeed together, and that was certainly the spirit of this bipartisan delegation of five Republican Senators and three Democratic Senators. We got along very well. I do not think there was a cross word among us. We enjoyed very much the privilege of representing the United States of America as we did, and I believe under Senator FRIST's leadership we did so responsibly and hopefully honorably.

After careful consideration, at the end of our trip, the principal reason we decided to go through with our plans to go to China was the opportunity it presented to meet with the new Chinese leadership and particularly to discuss the situation concerning North Korea's nuclear weapons program. We certainly carefully considered and Senator FRIST, of course, being a doctor, was in the forefront of considering very carefully the exposure we would have, the risks that would be entailed in regard to SARS. We took every possible precaution. I washed my hands and face more in 2 and a half days in Beijing than I usually do in about 2 weeks in Minnesota. So far, knock on wood, it seems to have been effective.

As I said, we believed the opportunity to converse directly with the new President of China, President Hu Jintao, as well as the other new Chinese leadership, and to press upon them the urgency we felt about resolving the nuclear situation in North Korea was worth that trip, and it proved to be. I was pleasantly surprised to learn that, in fact, China shares our goal, as their leadership expressed several times, to bring about a nuclear-free Korean peninsula, and that position which was stated by them was corroborated by our Ambassador, Clark T. Randt, Jr., who apparently was a classmate of the President who appointed him, President Bush. Both of them, it turns out, were fraternity brothers of mine back in college.

I had a chance to reminisce with him. He reassured all of us that the Chinese Government had been very influential in bringing North Korea to the negotiating table last week, the trilateral talks that commenced in Beijing. They could have been more timely but at least they are underway. Hopefully, they will continue actively with the top-level attention they certainly need.

It was a signal of a great opportunity to work in partnership with the new Chinese Government to reach the shared objective of ridding North Korea of its nuclear weapons and to create a nuclear-free Korean peninsula. What a great way to build a partnership for the next 10, 20 years, which is what this Government in China now professes it wants with the United States. President Hu said himself their primary objective for the next two decades is to increase and expand the economic progress that has been made in their country, to raise the standard of living of more and more of their citizens through the United States and other foreign investment through additional trade and economic growth there which has been staggering in the last 10 to 15 years. As they pointed out, especially in the middle and western parts of the country, so much more needs to be done to bring those areas up to the eastern seaboard, mainland of China.

That, hopefully, will be their priority and one that will serve to increase the likelihood of peace and economic and international security throughout the world. There would be nothing we could do that would be any more beneficial to our national interests than to encourage their economic progress and to build a relationship that is economic, that is cultural and social after they have resolved their current health crisis, and also provide the strong influence of both countries for peaceful resolution of the situation in North Korea and others that will arise inevitably in that part of the world.

They also stressed, as did the South Korean and Taiwanese Governments, the importance of peacefully resolving the situation in North Korea. Anyone who believes a military resolution would be advisable should go over and meet with the leaders of those three respective countries—South Korea, China, and Taiwan, and even in Japan, as well. From the leadership with whom we met there, there is no one in that part of the world in responsible positions who wants to see a military threat or military action initiated there.

There has been a great deal of economic progress in the areas of South Korea and Taiwan. While claiming to suffer from the worldwide economic slowdown, the rates of economic growth they are realizing in those countries, from 3.5- to 5-percent growth annually, is something that certainly this country and other nations in the world would be delighted to achieve. For them, that is a slowdown, creating unemployment they have not had heretofore and economic and social problems and welfare and safety net problems they have not had to deal with for the last decade.

They also have a vital stake in having North Korea's nuclear program eliminated, as the President has said properly so, but continued so in a way that does not threaten the security and the stability of that region of the world.

We also had the opportunity to travel to the demilitarized zone between North Korea and South Korea and had dinner with the 2nd Army Division—''second to none'' is one of their mottos, and appropriately so. They are second to none in their dedication and courage and commitment for being there. We stood right there on the DMZ and looked, as they do night after night, across the border. Another motto of theirs is ''fight tonight.'' They are in a constant State of readiness and alert, and all Americans should be mindful and respectful and enormously grateful to those brave men and women who put their lives on the line day and night, one after the other, without the kind of recognition their compatriots get in other parts of the globe—just as well trained, just as well prepared, every bit as willing to stand and defend the beacon of freedom in Korea as our forces have done so outstandingly in Iraq and previously in Afghanistan and anywhere else in the world.

That is a reminder, once again, that freedom is priceless, but it is not free. It has to be won and preserved through dedication of the brave men and women in the 2nd Army Division. And to all of them, and their leader, GEN Leon LaPorte, commander of the United States forces in Korea, we all have the utmost respect and admiration.

It reminded me why I introduced, along with Senator SESSIONS last year,

legislation that would provide for financial incentive for troops involved, particularly those who reenlist in areas of the world such as Korea where they are separated from their families for long periods of time. It is one of the most difficult places in the military, we are told by the commanders, in which to recruit and especially re-recruit men and women to serve terms of duty because of the hardships, because of the additional costs that have to be borne because usually their families are left behind and that involves two parallel tracks of expenses—separation and phone bills. Senator SESSIONS and I proposed an income tax exemption for troops who serve in far-flung areas of the world such as Korea. I will renew my efforts this year to see that legislation enacted because it is the least we can do and the least that is deserved by these brave men and women.

The commanders in those areas have asserted it would be invaluable in recruiting efforts.

I see the real leader and the commander of the Senate when it comes to the Armed Services, my very distinguished chairman of the committee on which I am proud to serve, the chairman of the Senate Armed Services Committee, the Senator from Virginia.

I yield the floor.

Mr. WARNER. Before my colleague departs, I commend him for the interest the Senator has taken in the men and women of the Armed Forces, the national security policy of this country as a Member of the Senate Armed Services Committee. Well done, sir.

I have been privileged to be on that committee now, this being my 25th year in the Senate, and the personal rewards from it for the association that the Senator has as a member of the committee with the men and women in uniform is beyond expectation. I thank the Senator for his service.

(The remarks of Mr. WARNER and Mr. DAYTON pertaining to the introduction of S. 951 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. WARNER. I thank the Presiding Officer for his courtesies, and 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. ALLEN. 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.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

DIGITAL AND WIRELESS NETWORK TECHNOLOGY ACT OF 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of S. 196. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 196) to establish a digital and wireless network technology program, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the committee amendments are agreed to.

AMENDMENT NO. 532

Mr. ALLEN. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. ALLEN], for himself, Mr. HOLLINGS, and Mr. MCCAIN, proposes an amendment numbered 532.

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

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

The amendment is as follows:

(Purpose: To ensure that the assistance is focused on supporting science, mathematics, engineering, and technology at eligible institutions, and provide for appropriate review of grant proposals)

On page 2, strike lines 2 and 3, and insert the following:

This Act may be cited as the ''Minority Serving Institution Digital and Wireless Technology Opportunity Act of 2003''.

On page 2, line 6, insert ''Minority Serving Institution'' before ''Digital''.

On page 2, line 7, strike ''Network''.

On page 3, strike lines 1 through 5, and insert the following:

(2) to develop and provide educational services, including faculty development, related to science, mathematics, engineering, or technology;

On page 3, line 18, after ''development'' insert ''in science, mathematics, engineering, or technology''.

On page 4, line 18, after ''accept'' insert ''and review''.

On page 4, line 24, strike ''section 3.'' and insert section 3, and for reviewing and evaluating proposals submitted to the program.''.

On page 5, line 7, after ''issues.'' insert ''Any panel assembled to review a proposal submitted to the program shall include members from minority serving institutions. Program review criteria shall include consideration of—

(1) demonstrated need for assistance under this Act; and

(2) diversity among the types of institutions receiving assistance under this Act.''.

Mr. ALLEN. Mr. President, I ask unanimous consent that the managers' amendment be agreed to on S. 196.

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

The amendment (No. 532) was agreed to.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 1 hour for debate to be equally divided by the Senator from Virginia, Mr. ALLEN, and the ranking member, with 5 minutes of the time under majority control for the Senator from Arizona, Mr. MCCAIN.

The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, Senator MCCAIN, the chairman of the Commerce Committee, is tied up right now, but I thank him for his thoughtful leadership and his continued effort and dedication on this important bipartisan measure.

I rise today to respectfully urge my colleagues to support S. 196, the minority-serving institution Digital and Wireless Technology Opportunity Act of 2003. This legislation will provide vital resources to address the technology gap that exists at many minority-serving institutions. It establishes a new grant program within the National Science Foundation that provides annually for 5 years up to $250 million to help historically black colleges and universities, Hispanic serving institutions, and tribal colleges to close what is often called the digital divide, when, in fact, what it really is is an ''economic opportunity divide.''

Since the days before I was elected to the Senate, my goal was to look for ways to improve education and empower all our young people, regardless of race, ethnicity, gender, religious beliefs, or their economic background, so that they can compete and succeed in life.

Additionally, I strongly believe we need to embrace the advancements and innovations in technology—especially as a means to provide greater opportunities or security for Americans.

In my view, increasing access to technology provides our young people with an important tool for success, both in the classroom and in the workforce.

We all know that the best jobs in the future will go to those who are the best prepared. However, I am increasingly concerned that when it comes to high-technology jobs, which pay higher wages, this country runs the risk of economically limiting many college students in our society. It is important for all Americans that we close this opportunity gap.

Now, we know the demand for workers with skills in science and technology continues to grow. Unfortunately, since 1996, the number of bachelor degrees awarded in the physical sciences has dropped 29 percent, mathematics is down 19 percent, and engineering is down 21 percent.

We also know that information technology companies are still relying on H–1B visas and using foreign workers to fill important IT jobs and positions. I want to be clear that I am not against legal immigration, but I say let's properly educate and train Americans so they can get those good high-technology jobs.

Now, minority-serving institutions, when one looks at them, still lack desired information and digital technology infrastructure in many cases. I encourage my colleagues to read the Commerce Committee report findings on minority-serving institutions' technology deficiencies.

I will share with you some of the pertinent facts from this report and, in particular, a study completed by the Department of Commerce and the National Association for Equal Opportunity in Higher Education, which indicated, among other facts, that no historically black college or university requires computer ownership for their undergraduate students; 13 HBCUs reported having no students—not one—owning their own personal computer; over 70 percent of the students at historically black colleges and universities rely on the college or the university to provide computers, but only 50 percent of those universities can provide their students with access to computers and computer labs, libraries, classrooms, or other locations; most of these minority-serving colleges do not have the private foundation resources to provide financial support to upgrade their network infrastructure.

So it is not surprising that most HBCUs do not have high-speed Internet access, especially the desired ATM or asynchronous transfer mode technology and that only 3 percent of historically black colleges and universities have financial aid available to help students close the computer ownership gap.

Access to the Internet is no longer a luxury, it is a necessity. Because of the rapid advancement and growing dependence on technology, being technologically proficient has become more essential to educational achievement. The fact is, 60 percent of all jobs require information technology skills. Jobs in information technology pay significantly higher salaries than jobs in the noninformation technology fields. Thus, students who lack access to these information technology tools are at an increasing disadvantage. Consequently, it is vitally important that all institutions of higher education provide their students with access to the most current IT and digital equipment. It would also help those universities to attract professors if they have that equipment to help them impart that knowledge to their students.

This proposed technology program will allow eligible historically black colleges and universities, Hispanic-serving institutions, and tribal institutions the opportunity to acquire equipment, networking capability, hardware and software, digital network technology, and wireless technology and infrastructure, such as wireless fidelity, or Wi-Fi, to develop and provide educational services. Additionally, the funds in this bill could be used to offer students much needed universal access to campus networks, dramatically increasing their connectivity rates or make necessary infrastructure improvements.

At the request of some of my colleagues, we recently added provisions to assure that diversity among these minority serving institutions includes public and private colleges and universities, both 2-year and 4-year institutions, and public and private postsecondary technical institutions.

Under Chairman MCCAIN's leadership, and with the ranking member, Senator HOLLINGS, and colleagues from across the aisle, the Commerce Committee heard testimony from the presidents of various colleges and universities representing each of the major national associations—the Hispanics Association of Colleges and Universities, the American Indian Higher Education Consortium, National Association for Equal Opportunity in Higher Education, the United Negro College Fund, and also we heard specifically from former Congressman Floyd Flake, who is president of Wilberforce University; and Dr. Marie McDemmond, president of Norfolk State University; Dr. William DeLauder, president of Delaware State; Dr. Ricardo Fernandez, president of Herbert Lehman College in New York; and Dr. Cary Monette, president of Turtle Mountain Community College testified in support of S. 196.

In testimony before the committee, it was estimated that in 10 years minorities will comprise nearly 40 percent of all college-age Americans. One-third of all African Americans with undergraduate degrees, earned them from an HBCU. According to the Hispanic Association of Colleges and Universities, their institutions educate two-thirds of the 1.6 million Hispanic Americans enrolled in higher education today.

There are over 200 Hispanic Serving Institutions; over 100 Historically Black Colleges and Universities and 34 tribal colleges throughout our country.

It is clear that minority-serving institutions in the United States are providing a valuable service to the educational strength and future growth of our Nation. And these institutions must upgrade their technology capabilities for their students.

I am proud to say Virginia is home to 5 HBCUs—Norfolk State University, St. Paul's College, Virginia Union University, Hampton University, and Virginia State University.

I will continue to look for ways to improve education, create new jobs, and seek out new opportunities to benefit the people of my Commonwealth and indeed our entire Nation. By improving technology-education programs in minority-serving institutions, we can accomplish all three of these goals for students throughout our Nation.

S. 196 is also supported by the technology industry—The Information Technology Association of America; Computer Associates International; Oracle; Gateway Computers; BearingPoint Technologies; and Motorola all support this measure.

We all recognize the technology requirements on the 21st century workforce call for tangible action, not rhetoric. Our future economic and national security needs depend on and demand that all of our eager young students have the highly technical skills needed to compete and succeed in the workforce.

We must tap the underutilized talent of our minority serving institutions to ensure that America's workforce is prepared to lead the world.

I thank my colleagues for joining me today. I thank the chairman of our committee, Senator MCCAIN, and other sponsors of this measure, including Senators STEVENS, HOLLINGS, MILLER, WARNER, DEWINE, SANTORUM, TALENT, COCHRAN, GRASSLEY, HUTCHISON, SESSIONS, GRAHAM of South Carolina, the occupant of the chair, FITZGERALD, LOTT, DOMENICI, CAMPBELL, KERRY, BINGAMAN, DASCHLE, MURKOWSKI, and JOHNSON.

I also thank our former colleague, Max Cleland, for his work last year on a measure that is similar to what we will soon be voting on. I thank Floyd DesChamps of the Commerce Committee staff, who has done a great job, and my staff, Frank Cavaliere.

Indeed, this legislation is a significant, constructive, and positive action to ensure that many more of our college students are provided access to better technology and education; and most importantly, even greater opportunities in life. And, with the passage of this bill, we will close the opportunity gap. We will leave no college student behind.

I yield the floor.

Mr. WARNER. Mr. President, I wish to applaud my distinguished colleague, Senator ALLEN, for his leadership. We are privileged in Virginia, primarily in the northern area, and then to an extent in the Tidewater and Richmond areas, to have a very heavy concentration of technology firms.

Under the leadership of Senator ALLEN and other Senate colleagues we are addressing the needs of the technology improvements at historically black colleges and universities. Sixty percent of all jobs require information technology skills, and jobs in information technology can pay significantly higher salaries than jobs in other fields.

At the same time, many of our historically black colleges and universities often lack the resources and the capital to offer an educational program and assistance to their students to bridge the digital divide that exists in many places in America.

The bill will establish a grant program for these institutions of higher learning to bring increased access to computer technology and the Internet to their student populations.

In Virginia, there are five historically black colleges and universities that will be given an opportunity for grants and/or matching funds to achieve this most noble goal of bridging the digital divide.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I begin by congratulating Senator ALLEN for his very important work on this legislation. Senator ALLEN has long been an advocate of equal opportunity, but he has also displayed a great deal of expertise and knowledge on a number of

high-tech issues. As a member of the Commerce Committee, he has continuously displayed that leadership and worked actively, particularly on telecommunications and high-tech issues. So I commend him for his leadership and his commitment to this important legislation. He had a lot of help, but the fact is that Senator ALLEN was the leader in this legislation, and I thank him for his outstanding work. This legislation could provide an opportunity for those who would never have an opportunity in America to grow and to prosper and to take advantage of incredible opportunities that this legislation provides.

The Digital and Wireless Network Technology Act of 2003 would establish a $250 million per year program within the National Science Foundation for fiscal years 2004 to 2008. The purpose of the grant program is to help strengthen the ability of minority-serving institutions, which includes Historically Black Colleges and Universities, Hispanic-Serving Institutions, and tribal colleges and universities, to provide educational instructions through digital and wireless network technologies.

As we look at the scenes of the war in Iraq, we are amazed at the technological capabilities of our Armed Forces. They are able to do things that we simply were not available to do just a few years ago. Nevertheless, this superiority must be supplied with a constant supply of new technologies, which are the result of the Nation's investment in a research and development infrastructure.

During these times of economic slowdown and global threat, it is imperative that our Nation's institutions of higher education are prepared to produce a technologically advanced workforce. As the demographics of the Nation become more and more diverse, minority institutions of higher education take on an even greater importance. It is estimated that in 10 years, minorities will comprise 40 percent of the college-age Americans, the pool from which the Nation's future engineers and scientist will emerge.

Rita Colwell, Director of the National Science Foundation, stated in a letter earlier this year to new members of Congress that, ''. . . American science and technology is failing to tap a vast pool of talent among our women and ethnic minorities.'' In an effort to enable the Nation to tap this underutilized pool of future engineers and scientists, it is essentially to provide assistance to minority institutions. The hundreds of MSI's should be provided with the resources to ensure that we are indeed utilizing their large student populations.

The legislation before us is not the result of any special interest groups or highly financed lobbying efforts. It is based upon data provided by 80 of the 118 HBCUs in a study entitled, ''HBCU Technology Assessment Study,'' funded by the U.S. Department of Commerce and conducted by a national black college association and a minority business.

The study assessed the computing resources, networking, and connectivity of HBCUs and other institutions that provide educational services to predominately African-American populations.

The study concluded that [During this era of continuous innovation and change, continual upgrading of networking and connectivity systems is critical if HBCUs are to continue to cross the digital divide and not fall victim to it. Failure to do this may result in what is a manageable digital divide today, evolving into an unmanageable digital gulf tomorrow. Based upon testimony provided during the February hearing held by the Commerce Committee, we concluded that the findings from the study also would apply to Hispanic-serving institutions, and tribal colleges and universities.

This legislation builds upon the work begun by Senator Cleland and many others during the last Congress. In testimony before the Commerce Committee last year, the President of the United Negro College Fund, Congressman William Gray, stated that we can ill afford to promote college graduates who enter the workforce without mastering the basic computer skills and understanding how information technology applies to their work or profession.

This point was further illuminated by the Dr. Marie McDemmond, President of Norfolk State University, when she testified at the Commerce Committee's February hearing that over 175,000 foreign nationals have come to our country in efforts to fill quality, high paying jobs in science and technology, mainly because our own workforce does not possess the skills and training necessary to fill these essential jobs.

At the same hearing, other college presidents from the Nation's HBCU's Hispanic-serving institutions and Native-American schools also testified about the daunting task of building their technology infrastructure. While these problems apply to all of our Nation's universities, they are more severe at many of our minority-serving institutions. Within the State of Arizona, for example, many of the tribal colleges and universities and Hispanic-serving institutions are facing daily technical challenges of the new millennium. They struggle, as do many other institutions, to keep up with an ever-changing networking technology environment.

I again thank Senator ALLEN for his leadership on this important issue. I think he had it right when he said this bill is about closing an economic opportunity divide. In this case, it is a divide that exists primarily because of the difference in the educational base of our citizens which affects economic opportunities.

I especially thank Senator ALLEN for including the Hispanic and tribal institutions in this legislation. I remind my friend from Virginia that in my State of Arizona, one of the poorest areas of our Nation exists in northern Arizona on the Navajo Reservation, the largest Indian reservation by far in America. These Native Americans have been left behind, as well as have African Americans and Hispanics. I thank the Senator for including especially our Native Americans but also our Hispanic populations and institutions in this legislation.

Again, I congratulate him for his commitment in this time of economic difficulties and perhaps less opportunities, and because of that, he is making, I believe, a significant step forward.

I yield the floor.

Mr. HOLLINGS. Mr. President, I would like to thank Senator ALLEN for bringing this legislation, S. 196, to the floor today. As many of you know, this bill had its genesis with our former colleague, Senator Max Cleland.

Senator Cleland knew that access to the Internet is no longer a luxury, but a necessity, and he wanted to make sure that all of our institutions of higher learning could provide their students with access to the most current technologies. That is why he introduced this legislation last Congress and I am glad that Senator ALLEN and I can bring Senator Cleland's vision to fruition today.

After all, according to a 2000 study, African Americans, Hispanics, and Native Americans constitute one-quarter of the total U.S. workforce and 30 percent of the college-age population. Yet, members of these minorities comprise only 7 percent of the U.S. computer and information science labor force; 6 percent of the engineering workforce; and less than 2 percent of the computer science faculty. These statistics are all the more important because 60 percent of all jobs require information technology skills. Furthermore, jobs in information technology pay significantly higher salaries than jobs in non-information technology fields.

So you can see, technology is rapidly advancing and we are increasingly growing dependent on it. Being digitally connected is becoming ever more critical to economic and educational advancement. Now that a multitude of Americans regularly use the Internet to conduct daily activities, people who lack access to these tools are at an increasing disadvantage. Consequently, it is crucial that all institutions of higher education provide their students with access to the most current information technology.

Unfortunately, however, due to economic constraints, many minority-serving institutions are unable to provide adequate access to the Internet and other information technology tools and applications. According to a 2000 study completed by the Department of Commerce and the National Association for Equal Opportunity in Higher Education, while 98 percent of Historically Black Colleges and Universities, HBCUs, have a campus network, half of

those surveyed did not have computers available in the location most accessible to students, their dormitories. Additionally, most HBCUs do not have high-speed connectivity to the Internet, and only 3 percent of these colleges and university indicated that financial aid was available to help their students close the computer ownership gap.

While minority-serving institutions are making progress in upgrading their network capacity, progress is not quick enough. In his testimony before the Commerce Committee on February 13, 2003, Dr. Ricardo Fernandez, president of Herbert H. Lehman College in New York City explained the challenge these institutions face:

> At my own institution . . . we are struggling to provide network access to students and faculty. Providing fiber and copper cabling, switches, and routers to every building and classroom is simply very expensive for us and cost prohibitive. . . . At the pace that we are moving, the technology we are installing may well be obsolete before the project is finished.

S. 196, the Digital and Wireless Technology Program Act of 2003, seeks to help institutions such as Lehman College or the eight eligible South Carolina colleges and universities by authorizing a program at the National Science Foundation to bring digital technologies to minority-serving institutions. These funds could be used for a variety of activities from campus wiring, to equipment upgrades, and to technology training. We need to pass this bill now so these colleges and universities—and their students—don't have to wait until the technology is obsolete before they get it.

Working with Senator ALLEN and Senator MCCAIN, we have made several changes to the bill before we brought it to the floor. At the request of the HELP Committee, we have clarified that training grants under S. 196 would be used for technology-related training and professional development. By narrowing the scope of the training, however, we do not think we would narrow the scope of the bill. Infrastructure projects like wiring classrooms or dorms could still be eligible for funding under this bill if they fit into an overall program to strengthen an institution's technological capacity.

We have also tried to address some concerns about the NSF's peer review process. I have said it before, peer review is all well and good—if you are one of the peers. Too often, the institutions that S. 196 is trying to serve are left out of NSF's peer review process. We hope that NSF, working with the advisory council established under section 4, will develop a fair and equitable process for reviewing these grants. To that end, we have added a requirement that any peer review panel should include members from eligible institutions.

Finally, we have instructed NSF to review the program with an eye toward insuring that grant recipients have demonstrated the need for this assistance so that we can address the most trenchant problems first. In addition, the grants should go to a wide variety of institutions, large and small, throughout the country.

I thank Senator ALLEN and Senator MCCAIN for helping us move this legislation. I thank the staff who worked on this bill, particularly Allison McMahan, Chan Lieu, and Jean Toal Eisen of my Commerce Committee staff and Floyd DesChamps of the majority staff. Moreover, I commend my friend Max Cleland for bringing this issue to the Senate's attention. I look forward to the passage of S. 196.

Mr. REID. Mr. President, the Senator from Iowa is yielded such time as he may consume. Rather, the Senator from Illinois.

Mr. MCCAIN. It is all the same.

Mr. DURBIN. I thank the Senator from Nevada, and I assure the Senator that Iowa and Illinois are not the same, as my colleague said. Iowa does grow more corn, but we grow more soybeans. I make that clear now.

I support this bill. This bill is introduced by Senator ALLEN and cosponsored by many of my colleagues, and I am sure it will pass with flying colors. It is a great bill that seeks to address the technology gap that exists at many minority-serving institutions across America. I commend Senator ALLEN for his leadership on this bill. I am sure that it is going to make a difference.

I also take the floor to acknowledge a man who is not here today. His name is Max Cleland. Max Cleland, during the 107th Congress, introduced S. 414, the Digital Network Technology Program Act. The bill was a work product that Senator Cleland put together with Atlanta University Center, as well as national organizations such as the Historically Black Colleges and Universities, Hispanic-serving institutions, tribal colleges and universities, and other minority-serving institutions.

Senator Cleland pushed for the Commerce Committee to hold a hearing on the bill which he chaired on February 27, 2002. After that, the committee reported the bill favorably. The bill was held on the floor by another Member of the Senate, as Senator Cleland was up for reelection. It is not uncommon when a Senator is up for reelection that people in the Senate want to try to hold back passage of legislation so that it does not create an advantage for them in the campaign. So Senator Cleland fell victim to that particular strategy. He was not a vengeful or spiteful man. I am sure he understands it, but this concept underlying this bill meant a lot to him personally.

I stand here today to make sure, as Senator ALLEN has mentioned, Senator MCCAIN mentioned, that Max Cleland's name be part of this debate. I think it should be much more than just an acknowledgment in the CONGRESSIONAL RECORD that Max Cleland worked so hard for this concept. Max Cleland, former colleague of ours, a Senator from Georgia, used to have his chair right behind me. Max became one of our favorites in the Senate over a period of 6 years. We came to know and love Max Cleland.

This is a man who was a triple amputee, a Vietnam veteran, with a disability that might have stopped the lives of so many but never stopped his will and determination. He came out of a veterans hospital with extensive rehabilitation, dealt with his disability, and became a leader in so many different areas. He, of course, was the head of the Veterans' Administration under President Carter, Secretary of State in the State of Georgia, and then ran successfully for the Senate. He came here and was one of the hardest working Members.

Those who got up this morning and felt a little tired should stop and think about what every morning was like for Max Cleland, getting out of bed and facing the reality of being a triple amputee as a Vietnam veteran. But he came to his job with joy and determination, identified causes that made a difference, and dedicated his career to pursuing them. This bill was one of them.

I am sorry that Max Cleland's name is not included within the bill. It should be. But I stand here today and say to those who follow these debates that many times those who have been the precursors and the early pioneers on ideas may not be in the Senate when the day comes for their final passage. I have seen that happen time and again in the history of this body. But I know Max Cleland can take pride, as we all do, that Senator ALLEN has picked up this torch and ran with it. He has taken the original Cleland bill, made improvements to it, changes to it, and now we have a bill which carried on in Max Cleland's tradition and I hope will serve this Nation well. I am certain that it will.

I commend Senator ALLEN and want to pay special recognition to Max Cleland for initiating conversations which led to this moment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. TALENT. I thank my friend from Virginia for yielding, and I congratulate him for his great work in getting this bill together. It is very much needed.

We cannot operate a modern college or university today without being up to date with information technology. The range of uses and needs for that kind of technology are almost unlimited. They cover everything from long distance learning to access to research for students to the ability to teach your students about information technology. Of course, most jobs include a requirement that you be up to date in that kind of technology.

Another important use for universities is helping the communities around them. I will talk about an example of that in just a few minutes. Most modern colleges and universities,

whatever their background, are networking very close to the communities which they serve. As centers of excellence in information technology there is a wide variety of ways to make a difference. That is an important contribution that historically black universities and minority institutions make.

It is important to understand these institutions are not just important for the students who attend. That is their primary function, but they are very important centers of achievement and community activities in the communities of which they are a part. That is the reason this bill is so important and why I am pleased to cosponsor it and pleased to speak for just a few minutes today on its behalf.

Most of the background has been given here and I appreciate very much the work of the chairman and Senator ALLEN in supporting this bill and assembling this information. They had a great hearing.

Let me talk about a couple of historically black colleges in Missouri that would benefit from this bill. One is Lincoln University in Jefferson City. Lincoln was founded in 1866 by former officers and soldiers of the Union Army. It has 2,500 undergraduates, 200 graduate students. David Henson, the president of Lincoln University, told us that the passage of the bill would give Lincoln the opportunity to acquire equipment, networking capability, digital network technology, wireless technology, and infrastructure to develop and provide educational services to its students, its faculties, and its staff, and also give Lincoln students universal access to campus networks around the country.

Another historically black college is Harris-Stowe State College with a rich tradition in the St. Louis area. Henry Givens, Jr., the president of Harris-Stowe State College, said this would enable their students and faculty to take advantage of a variety of sources, such as distance learning, online services, and continuing education.

I mentioned before that the colleges are very important parts of the communities they serve. Harris-Stowe helps educate young kids from the community. This kind of a grant would benefit the local public elementary school. It sends its children ranging from first to fifth grade to learn at the Southwestern Bell Library and Technology Resource Center at Harris-Stowe College. Harris-Stowe got a grant to build the center, but the technology is now very much out of date. This is another aspect that this bill will help address, and I think it is important.

Of course, most historically black colleges and minority-serving institutions have not had a lot of money and do not have access to a lot of money to build these kinds of information technology centers in the first place. But even when they can get the money to do that, it is extremely difficult for them to maintain and upgrade and update that technology. There is no area where it is more important to be up to date than the area of information technology. That is the situation with Harris-Stowe. Their resource center is 5 years old. It is greatly in need of a technology upgrade. Without Federal legislation of this type, as a practical matter that is simply not going to be possible on an ongoing basis.

But with this support it will be possible, not only because of the Federal dollars we can help provide but also because the Federal dollars will be leveraged by these institutions with foundations, with State money, and will be an important way for them to gather resources from around the community and help serve their students and their communities with information technology.

I am grateful the Senator from Virginia has taken up this legislation and pushed it. A lot of what we do here is an attempt to directly fund or subsidize what some people are doing. It works so much better when we work through institutions that already have strong records of performance and strong records of service to constituencies around the country. That is what this bill does. I am very pleased to support it.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi.

Mr. LOTT. Mr. President, I want to take this opportunity to rise in support of what I consider to be very significant legislation, S. 196, the Minority Serving Institution Digital and Wireless Technology Opportunity Act of 2003.

We have a very important opportunity in this country to make sure our universities and colleges not only do a good job in education in general, but in particular in addressing the technology gap. We know in our Historically Black Colleges and Universities and Hispanic-serving Institutions and Tribal Colleges, our Native-Hawaiian-serving Institutions and Alaska-Native-serving Institutions, there is a digital divide. This legislation would create a new grant program within the National Science Foundation that provides up to $250 million to help these colleges and universities.

In my own State of Mississippi I decided a few years ago we were trying to shoot at too many targets and we were not hitting many of them. We were missing them or we were not doing enough to make a difference. So I concluded the best thing to do was try to get a targeted focus on where we were going to put our efforts and where we were going to put our money. Those areas have been education, transportation—which can also be referred to as infrastructure, and jobs. It is not just about highways and bridges, it is also about ports and harbors and railroads and aviation, the whole package, as well as industrial sites where you can have the physical and technological infrastructure and roads that lead to jobs.

So education, transportation, and jobs are critical all over this country and in my own State, which has been one that has struggled for years to have advancement in education and economic opportunity.

I think this legislation is really important in helping to provide the up-to-date technological education that today's society demands. As we focus on education, not only at the higher education level where the Federal Government plays a critical role, but also when you look at what we need to do in kindergarten, and elementary, and secondary education—if you are going to have the whole package, you have to make sure our young people have access to a good education that allows them to read and write and do basic arithmetic. Furthermore, they must be able to perform these basic skills at the fifth grade level, at the eighth grade level, and in high school, but then be able to get into a community college, some sort of a vocational training program, or our colleges and universities, and when they get there that they will have the tools and resources that they need.

It is fair to say I am from the generation that has been struggling with technology and computers. We are sort of computer illiterates. Yet we see our children who are able to do astonishing things because they have had the exposure to the new technology.

We have to make sure that the Nation's focus applies not only to our major colleges and universities in America that primarily get the students who make very high scores on the SATs, but we also have to make sure all students—whether they attend a private university or college or a State university or our historically Black or other minority institutions—have access to good education and what is needed in the technology field. Not just computers, but the whole high-tech area.

My own State of Mississippi is home to roughly 9 percent of the Nation's Historically Black Colleges and Universities. I am pleased to be able to recognize these great eight schools in Mississippi: Alcorn State University, Coahoma Community College, Hinds Community College—Utica, Jackson State University, Mary Holmes College, Mississippi Valley State University, Rust College and Tougaloo College.

I am happy to be a cosponsor of the minority serving institution Digital and Wireless Technology Opportunity Act of 2003, because it provides another opportunity to help expand the digital and telecommunications infrastructure at the Historically Black Colleges and Universities in Mississippi. I always pay careful attention to legislation that could be beneficial for higher education institutions in my state. In fact, earlier this year, I cosponsored an amendment to the omnibus appropriations bill for fiscal year 2003 that authorizes additional funding for grants to preserve and restore historic buildings at Historically Black Colleges and Universities.

Additionally, I would like to note an example of my ongoing commitment to assist Mississippi's Historically Black Colleges and Universities in bridging the technology gap. In 2001, I worked with Allstate Insurance in their $17 million donation of a facility to establish the Mississippi e-Center at Jackson State. The e-Center is an impressive state-of-the-art complex with advanced computing and network infrastructure, and information technology faculty and support staff. Through the e-Center, Jackson State is able to fulfill its educational mission and leverage its unique strengths in the areas of remote sensing, engineering, and science and technology. I am also pleased to report that Jackson State is the only Historically Black College or University in the Nation with three supercomputers. We are making strides in Mississippi to provide all our students with access to information technology, but the Nation still has much progress to make when it comes to providing these opportunities to our minority serving institutions of higher learning and all Americans.

It is clear that while our minority serving institutions of higher learning stand ready to drive from the ''on ramp'' onto the Information Superhighway, they still lag far behind other universities in America when adjusting to the new technological innovations and changes on the forefront, such as third generation technology. I urge the passage of this legislation today so that we can hand some of America's best institutions of higher learning the technology keys they need to compete with their peers.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI.) Who yields time?

Mr. ALLEN. Madam President, we were supposed to vote on this measure at noon. There is a question of whether or not we will be voting at noon. There is a Holocaust Memorial Service at noon. At this moment, until we determine how we are going to correlate all of that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Madam President, I rise today in support of S. 196, the Digital and Wireless Technology Program Act, which will provide $250 million annually for the next 5 years to address the technology needs of Historically Black Colleges and Universities, as well as colleges and universities that serve substantial numbers of Hispanic and Native American students. The ''digital divide'' has been the subject of much discussion in both the public and private sectors, and this bipartisan bill, introduced by Senators ALLEN and HOLLINGS, will help to bridge that divide.

Internet access is an increasingly critical part of the educational process. The Internet provides a critical research tool, especially for students at institutions that cannot afford to offer world-class libraries and other facilities. Indeed, internet access can be a great democratizing force if we can make it universal.

Although almost all Historically Black Colleges and Universities have a campus network in place, only about half have computers available to students in their dormitories, and only 3 percent offer financial aid to students looking to buy a computer. In addition, a majority of these schools do not use high-speed connections, even when those connections are available in their areas. Additional funding for these colleges should make a difference.

The schools struggling most mightily are those that serve Native American students. Nearly 85 percent of students at tribal colleges live at or below the poverty level, so few if any students can afford their own computers. But at Dull Knife Memorial College in Montana, 240 students must share two computers with internet access. Fewer than half of the 32 tribal colleges have access to a T–1 line. There are some success stories, however, and with additional Federal assistance we can create more.

While I am concerned about the lack of internet access among minority students, I do hope that these colleges and universities will work closely with their local communities in siting wireless facilities. The 1996 Telecommunications Act regrettably cut out local communities in deciding where new towers for wireless devices are located. The new grant program created by this bill should not be used to exacerbate this problem.

This issue is not new to the Senate. Senator Cleland introduced very similar legislation in the last Congress, and his bill was reported by the Commerce committee. Regrettably, it was held up by the Republican leadership in the Senate, presumably in order to deny Senator Cleland any victory as he sought re-election. Given the dire state of many of the schools this bill seeks to help, it is quite frustrating that Senator Cleland's bill fell victim to political machinations. It is doubly unfortunate that suggestions to name this program after Senator Cleland were rebuffed by the Republican side. It would have been a fitting tribute to the Senator who brought this and many other issues to the Senate's attention.

Despite my disappointment about that issue, however, I still believe that this is a good bill that deserves every Senator's support. It will help institutions around our Nation provide the education that their students need and deserve.

Mr. ALLEN. Madam President, I ask unanimous consent that all time be yielded back on S. 196. I believe all Senators—and I thank those who have spoken in favor of this legislation: Senators MCCAIN, TALENT, DURBIN, and LOTT, as well as myself—who wanted to speak on the legislation have.

Madam President, I yield back all time on S. 196. I also ask unanimous consent that the vote occur on passage at 1:30 p.m. today.

Mr. REID. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, it is my understanding the distinguished Senator from Virginia has spoken with the majority leader, and the majority leader is going to let this vote go for some time. It is my understanding there are people on both sides who are doing other things—early and late—and this vote may have to be dragged for some time.

Is that right?

Mr. ALLEN. I say to the Senator from Nevada, that is correct. Due to the Holocaust Memorial and a variety of other things that have arisen at noon, the vote will be at 1:30. But it will be held open. It will not be a 15-minute vote. The vote will undoubtedly stay open for at least a half an hour. And at 2 o'clock there is the top-secret briefing with those officials from Defense.

Mr. REID. Madam President, further reserving the right to object, as I indicated early today, I certainly think we should be in recess during the Wolfowitz briefing, but there is a ranking member's meeting, for example, that does not end until 2 o'clock. So I ask that there be some consideration given to extending the vote for 5 or 10 minutes past 2 o'clock.

Mr. ALLEN. Madam President, I think that would be the intention. It is not just a Republican or Democrat scheduling conflict, and it will not be a 15-minute vote as such. It will be held open until all Members who are going to be here have an opportunity to vote on this measure.

Mr. REID. Madam President, I am wondering if my friend would also allow me to modify the unanimous consent request, that following the closure of the vote the Senate stand in recess until 3 o'clock.

Mr. ALLEN. Madam President, I say to the Senator from Nevada, that is under consideration. I do not have the authority to make that decision. I suspect there will not be many people here. There are a variety of things people need to do. And I certainly want to listen to Secretary Wolfowitz, but at this point I do not have the authority to make that decision. All I can say is, being patron of this measure, I want to make sure everyone is allowed to vote on it, and the vote will be held open.

Mr. REID. I have no objection.

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

Mr. ALLEN. Madam President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

MORNING BUSINESS

Mr. ALLEN. Madam President, I ask unanimous consent that there now be a period of morning business until 1:30 p.m., with Senators permitted to speak for up to 10 minutes each.

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

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

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

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

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

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

DIGITAL AND WIRELESS NETWORK TECHNOLOGY ACT OF 2003—Continued

Mr. ALLEN. Mr. President, I ask unanimous consent we now proceed to the vote on S. 196.

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

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM) and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—97

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Schumer
Carper	Hollings	Sessions
Chafee	Hutchison	Shelby
Chambliss	Inouye	Smith
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Coleman	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Sununu
Cornyn	Kyl	Talent
Corzine	Landrieu	Thomas
Craig	Lautenberg	Voinovich
Crapo	Leahy	Warner
Daschle	Levin	Wyden
Dayton	Lieberman	
DeWine	Lincoln	

NOT VOTING—3

Graham (FL)	Inhofe	Sarbanes

The bill (S. 196), as amended, was passed, as follows:

S. 196

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 ''Minority Serving Institution Digital and Wireless Technology Opportunity Act of 2003''.

SEC. 2. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—There is established within the National Science Foundation an Office of Minority Serving Institution Digital and Wireless Technology to carry out the provisions of this Act.

(b) PURPOSE.—The Office shall—

(1) strengthen the ability of eligible institutions to provide capacity for instruction in digital and wireless network technologies by providing grants to, or executing contracts or cooperative agreements with, those institutions to provide such instruction; and

(2) strengthen the national digital and wireless infrastructure by increasing national investment in telecommunications and technology infrastructure at eligible institutions.

SEC. 3. ACTIVITIES SUPPORTED.

An eligible institution shall use a grant, contract, or cooperative agreement awarded under this Act—

(1) to acquire the equipment, instrumentation, networking capability, hardware and software, digital network technology, wireless technology, and infrastructure;

(2) to develop and provide educational services, including faculty development, related to science, mathematics, engineering, or technology;

(3) to provide teacher education, library and media specialist training, and preschool and teacher aid certification to individuals who seek to acquire or enhance technology skills in order to use technology in the classroom or instructional process;

(4) to implement joint projects and consortia to provide education regarding technology in the classroom with a State or State education agency, local education agency, community-based organization, national non-profit organization, or business, including minority businesses;

(5) to provide professional development in science, mathematics, engineering, or technology to administrators and faculty of eligible institutions with institutional responsibility for technology education;

(6) to provide capacity-building technical assistance to eligible institutions through remote technical support, technical assistance workshops, distance learning, new technologies, and other technological applications;

(7) to foster the use of information communications technology to increase scientific, mathematical, engineering, and technology instruction and research; and

(8) to develop proposals to be submitted under this Act and to develop strategic plans for information technology investments.

SEC. 4. APPLICATION AND REVIEW PROCEDURE.

(a) IN GENERAL.—To be eligible to receive a grant, contract, or cooperative agreement under this Act, an eligible institution shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. The Director, in consultation with the advisory council established under subsection (b), shall establish a procedure by which to accept and review such applications and publish an announcement of such procedure, including a statement regarding the availability of funds, in the Federal Register.

(b) ADVISORY COUNCIL.—The Director shall establish an advisory council to advise the Director on the best approaches for involving eligible institutions in the activities described in section 3, and for reviewing and evaluating proposals submitted to the program. In selecting the members of the advisory council, the Director may consult with representatives of appropriate organizations, including representatives of eligible institutions, to ensure that the membership of the advisory council reflects participation by technology and telecommunications institutions, minority businesses, eligible institution communities, Federal agency personnel, and other individuals who are knowledgeable about eligible institutions and technology issues. Any panel assembled to review a proposal submitted to the program shall include members from minority serving institutions. Program review criteria shall include consideration of—

(1) demonstrated need for assistance under this Act; and

(2) diversity among the types of institutions receiving assistance under this Act.

(c) DATA COLLECTION.—An eligible institution that receives a grant, contract, or cooperative agreement under section 2 shall provide the Office with any relevant institutional statistical or demographic data requested by the Office.

(d) INFORMATION DISSEMINATION.—The Director shall convene an annual meeting of eligible institutions receiving grants, contracts, or cooperative agreements under section 2 for the purposes of—

(1) fostering collaboration and capacity-building activities among eligible institutions; and

(2) disseminating information and ideas generated by such meetings.

SEC. 5. MATCHING REQUIREMENT.

The Director may not award a grant, contract, or cooperative agreement to an eligible institution under this Act unless such institution agrees that, with respect to the costs to be incurred by the institution in carrying out the program for which the grant, contract, or cooperative agreement was awarded, such institution will make available (directly or through donations from public or private entities) non-Federal contributions in an amount equal to ¼ of the

amount of the grant, contract, or cooperative agreement awarded by the Director, or $500,000, whichever is the lesser amount. The Director shall waive the matching requirement for any institution or consortium with no endowment, or an endowment that has a current dollar value lower than $50,000,000.

SEC. 6. LIMITATIONS.

(a) IN GENERAL.—An eligible institution that receives a grant, contract, or cooperative agreement under this Act that exceeds $2,500,000, shall not be eligible to receive another grant, contract, or cooperative agreement under this Act until every other eligible institution that has applied for a grant, contract, or cooperative agreement under this Act has received such a grant, contract, or cooperative.

(b) AWARDS ADMINISTERED BY ELIGIBLE INSTITUTION.—Each grant, contract, or cooperative agreement awarded under this Act shall be made to, and administered by, an eligible institution, even when it is awarded for the implementation of a consortium or joint project.

SEC. 7. ANNUAL REPORT AND EVALUATION.

(a) ANNUAL REPORT REQUIRED FROM RECIPIENTS.—Each institution that receives a grant, contract, or cooperative agreement under this Act shall provide an annual report to the Director on its use of the grant, contract, or cooperative agreement.

(b) EVALUATION BY DIRECTOR.—The Director, in consultation with the Secretary of Education, shall—

(1) review the reports provided under subsection (a) each year; and

(2) evaluate the program authorized by section 3 on the basis of those reports every 2 years.

(c) CONTENTS OF EVALUATION.—The Director, in the evaluation, shall describe the activities undertaken by those institutions and shall assess the short-range and long-range impact of activities carried out under the grant, contract, or cooperative agreement on the students, faculty, and staff of the institutions.

(d) REPORT TO CONGRESS.—The Director shall submit a report to the Congress based on the evaluation. In the report, the Director shall include such recommendations, including recommendations concerning the continuing need for Federal support of the program, as may be appropriate.

SEC. 8. DEFINITIONS.

In this Act:

(1) ELIGIBLE INSTITUTION.—The term ''eligible institution'' means an institution that is—

(A) a historically Black college or university that is a part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)), an institution described in section 326(e)(1)(A), (B), or (C) of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C)), or a consortium of institutions described in this subparagraph;

(B) a Hispanic-serving institution, as defined in section 502(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5));

(C) a tribally controlled college or university, as defined in section 316(b)(3) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(3));

(D) an Alaska Native-serving institution under section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b));

(E) a Native Hawaiian-serving institution under section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b)); or

(F) an institution determined by the Director, in consultation with the Secretary of Education, to have enrolled a substantial number of minority, low-income students during the previous academic year who received assistance under subpart I of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) for that year.

(2) DIRECTOR.—The term ''Director'' means the Director of the National Science Foundation.

(3) MINORITY BUSINESS.—The term ''minority business'' includes HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p)).

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director of the National Science Foundation $250,000,000 for each of the fiscal years 2004 through 2008 to carry out this Act.

The PRESIDING OFFICER. The majority leader.

RECESS

Mr. FRIST. Mr. President, I ask unanimous consent the Senate now stand in recess until 3 p.m. today.

There being no objection, the Senate, at 2:11 p.m., recessed until 3 p.m. and reassembled when called to order by the Presiding Officer (Mrs. DOLE).

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to resume consideration of Executive Calendar No. 86, which the clerk will report.

The legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I wish to speak about the nomination of Priscilla Owen. I thank the Senator from North Dakota for allowing me to go first.

I rise in opposition to the nomination of Priscilla Owen to the U.S. Court of appeals for the Fifth Circuit. I know the President has the constitutional responsibility to appoint Federal judges. I respect that right. In fact, I have voted for President Bush's judicial nominations 97 percent of the time. Yet the Senate also has the constitutional responsibility to advise and consent. We cannot rubberstamp nominations. Our courts are charged with safeguarding the very principles on which our country was built: justice, equality, individual liberty, and the basic implicit right of privacy.

When I look at a nominee, I have three criteria: judicial competence, personal integrity, and a commitment to core constitutional principles.

I carefully reviewed Judge Owen's rulings and opinions. I read the dissenting opinions of other judges and the views of legal scholars. I have concluded that Judge Owen does not meet my criteria. Her decisions appear to be driven by ideology—not by law. She appears to be far outside the mainstream of judicial thinking, and her extreme and ideological agenda would make her unsuitable to sit on the Court of Appeals for the Fifth Circuit.

What we are considering with an appellate nomination is a lifetime appointment for a court that is only one step below the Supreme Court. The decisions made by this court have a lasting impact on the lives of all Americans for generations to come. This court's decisions will affect America's fundamental protections involving civil rights, individual liberty, health, and safety, and the implicit right of privacy. We need to be very careful about what we do.

That is why President Bush and all Presidents should nominate competent, moderate judges who reflect broad American values. No President should try to place ideologues on the court. If they do, I am concerned that it will slow the pace of confirmations, backlog our courts, and deny justice for too many Americans. Yet in nominating Judge Owen, the President has chosen someone with an extreme ideological agenda on civil rights, individual rights, and the rights of privacy.

Judge Owen has pursued an extreme activist agenda. Can anyone be surprised that this nomination has so many flashing yellow lights?

When President Bush discussed what would be his criteria for nominating judges, he said his standard for judicial nominees would be that they ''share a commitment to follow and apply the law, not to make law from the bench.''

We applaud that criteria from the President. But I must say when we look at Priscilla Owen, that is exactly what she does. She makes law and does not limit herself to interpreting law, and, therefore, fails the President's own criteria.

The Texas court-watching journal, Juris Publici, said that Owen is a ''conservative judicial activist.'' That means she has a consistent pattern of putting her ideology above the law and ignoring statutory language and substituting her own views.

She has offered over 16 significant activist opinions and joined 15 others. Even White House counsel Judge Alberto Gonzales, who served with Judge Owen on the Texas Supreme Court, once called her dissent in the case ''unconscionable . . . judicial activist.''

In a different case, Judge Gonzales called a dissent by Judge Owen an attempt to ''judicially amend'' a Texas statute. A number of dissents she wrote or joined in would have effectively rewritten or disregarded the law usually to the detriment of ordinary citizens.

An example: Quantum Chemical Corp v. Toennies was a case concerning age discrimination based on a civil rights statute. The majority of the Texas Supreme Court found for the plaintiff. Owen's dissent stated that the plaintiff needed to show that discrimination was a motivating factor. Her dissent would have changed Texas law and

weakened Texas civil rights protections.

On the issue of individual rights to seek justice, I think we all believe the courthouse door must always be open. When you walk through that door, you must find an independent judiciary. Yet Owen's rulings show a bias against the rights of consumers, victims, and individuals. She has consistently ruled against workers, accident victims, and victims of discrimination. These decisions would impair the rights of ordinary people from having access to the courts to obtain justice.

In Montgomery Independent School District v. Davis, a case concerning a teacher whose contract was not renewed, the teacher requested a hearing, which is allowed under the Texas Education Code. The hearing examiner found that the school district didn't have a justification to fire the teacher and said her contract should be renewed. The school board fired her.

The majority of the Texas Supreme Court found the school board went over its legal authority, and Judge Owen's dissent ignored the language and it would have weakened the rights of this teacher and all of those before the court. The majority of the court found that Owen's dissent showed ''disregard of the procedural elements the legislation established to ensure the hearing examiner's process is fair and efficient for both teachers and school boards.''

On the right to privacy, zealous opposition to women's rights to choose is a hallmark of Judge Owen's legal rulings. She used her position on the Texas Supreme Court to restrict women's rights to choose by ignoring the statute to create additional barriers for women seeking an abortion. Her opinions have been biased and unfair.

An example: Texas law requires that a minor's parent be notified before she can obtain an abortion. Many of us agree with that. But we also agree with the fact that there is a judicial bypass enabling a mature, well-informed minor to obtain a court order permitting abortion without parental notification, which in several cases Judge Owen dissented vigorously from the majority of the court. That would have resulted in the rewriting of Texas law to place more hurdles in front of minors.

In Jane Doe, the majority actually included an extremely unusual section explaining the proper role of judges admonishing the dissent, including Owen's duty to interpret the law and not attempt to create policy. Judge Owen has ignored the law, seeking to impose new and impossibly high standards for minors who seek abortions.

Based on her rulings and written arguments, I can only conclude that Judge Owen would use her position to undermine existing laws and the constitutional protection of a woman's right to choose. When you do that, you undermine the principles related to the implicit right of privacy.

Also very troubling to me is that in her opinions Judge Owen has often substituted her authority for that of civil juries. She has a consistent and persistent pattern of overriding juries' decisions. When the jury has taken a position of awarding claims to accident victims and victims of discrimination, Judge Owen has tried to undermine them.

In Uniroyal Goodrich Tire Company v. Martinez, in a product liability suit brought by a man who was severely injured when a tire he was working on exploded, a jury found in favor of the plaintiff. A key issue was whether the manufacturer could be held liable because it knew of a safer alternative product design.

The majority of the Texas Supreme Court sided with the jury's verdict. But Owen dissented. Had her opinion prevailed, it would have overturned a jury verdict.

I could give example after example after example. I am not going to go on just for the sake of going on. There are others who wish to speak. I believe we should have full debate on the Owen nomination.

Let me conclude by saying that the President does have the right to nominate judges, but I cannot consent to the nomination of Judge Owen. My advice to the President is to give us moderate judges. We have approved of many of them. We want to be supportive. But in this instance, she is so far outside the mainstream of judicial thinking.

My advice to the President is to withdraw the nomination and appoint a nominee who will fairly interpret the law for all Americans, and follow the Bush test of interpreting the law and not making the law.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I listened to my colleague from Maryland and appreciate her comments. Let me make a couple of additional comments with respect to this issue of judgeships.

I have spoken previously on the floor of the Senate about the Estrada nomination. What I indicated then was that Mr. Estrada, who aspires to have a lifetime seat on the second highest court in the country, the DC Circuit Court, did not answer basic questions put to him by the Judiciary Committee at his hearing.

The administration has not released the information that has been requested by Members of the Senate with respect to Mr. Estrada's work at the Solicitor General's Office. That is information that has been requested of him and the administration so we might understand a bit more about Mr. Estrada and his qualifications. Despite the fact that Mr. Estrada did not answer the basic questions at his hearing, the administration has not released the information that has been requested of his nomination.

There are some in the Senate—and perhaps some in the country—who believe there is a requirement for the Senate to proceed in any event to give Mr. Estrada his vote. There is no such requirement.

The Constitution provides the mechanism by which we give citizens of this country lifetime appointments to the judiciary on the Federal bench. And that Constitution provides two steps: One, the President shall propose, by sending a nomination to the Senate; and, second, the Senate shall advise and consent, by deciding whether they wish this candidate to have a lifetime appointment on the Federal bench. It is not some entitlement that any President—Republican or Democratic—has to be able to send a nomination to the Senate and have that nomination automatically considered. In fact, in recent years, this particular circuit court, the DC Circuit Court, has had a number of nominations sent to the Senate from another President of a different party, and the Senate not only did not bring it to the floor, the candidates did not even get a hearing—not a 5-minute hearing—let alone a hearing and a vote in the committee and then going to the floor and having a vote.

Those candidates never even got a hearing. Mr. Estrada got a hearing. He received the hearing I think he should have received, but he did not answer the questions at the hearing. And the administration and Mr. Estrada have not provided information requested of him. Therefore, Mr. Estrada's nomination is not proceeding.

The Members of the Senate have the right, and perhaps the obligation, if they choose, to stop a nomination they think represents a nomination offered by a President trying to stack the judiciary or pack the judiciary with those of a certain extreme philosophy. It is not out of bounds for any group of Senators to decide to say to the President: This is a partnership. You propose; we dispose. You nominate; we provide advice and consent.

In order to have candidates on the Federal bench, they have to be candidates who are going to be approved by the Senate. I expect a Republican President will nominate Republican judges. In North Dakota, we have had two recent open judgeships—one in Bismarck, one in Fargo. Both judgeships have now been filled by Republican judges. I am a Democrat. I supported both candidates. Both are exceptionally well qualified. I am proud of both of them. They have both assumed their duties. I voted for both. I told the President I fully supported both. That is the way this process should work.

Regrettably, it is not working that way with respect to some nominations. The White House, instead, is saying: We intend to strain candidates through a philosophical filter, and notwithstanding what we think might or might not happen in the Senate, we are going to send people to the Senate who are to the far edge of the philosophical spectrum. If the Senate does not like it, tough luck; we are somehow going

to auger up a lot of noise around the country that says the Senate has an obligation to proceed. We have no such obligation. The President and the Senate have an obligation in this partnership to make sure we get good judges on the Federal bench.

I just want everyone to be clear, I have voted for almost all of the nominations for Federal judges sent to us by the President. I voted, I believe, for 112 of them. I have only voted against a very few. I intend to support most of the President's nominees.

But when the President sends us the nomination of a candidate whose positions are well off the norm, way off to the side of the philosophical chart, we have every right—in fact, an obligation—to make our judgment known in the Senate. That is what is going to happen if Mr. Gonzales and President Bush decide they are going to try to stack or pack, as it were, circuit judgeships with candidates for those judgeships who philosophically are not anywhere near the center of Republican and Democratic philosophies in this country.

In any event, I just wanted to make that point. I think the comments made by the Senator from Maryland are right on point, and I hope at some point we are able to move ahead.

We have another Hispanic judge who has been waiting who has been cleared on the Judiciary Committee. We are wondering why that judge is not on the floor. He should be on the floor. Perhaps his nomination is coming to the floor, but we have been calling for that. I believe the minority leader yesterday asked unanimous consent to bring that judgeship to the floor. He has the support of most everyone.

FREE TRADE AGREEMENT WITH SINGAPORE

Mr. DORGAN. Madam President, on Thursday of next week, U.S. officials will sign a trade agreement with Singapore. It will be the first free trade agreement that is negotiated under so-called fast track. Fast track, incidentally, is a procedure that the Senate adopted in a Byzantine way. They did it without my vote, but enough Senators did it so that we have a fast-track procedure, which is a guarantee that your trade negotiators can go overseas, go in a closed room, close the door, keep the public out, and then you reach a negotiation with another country.

When you bring it back to the Senate, we will agree that none of us will be able to offer any amendment at any time. What we have said is, bring us a straitjacket so we can put it on and we can all grin.

It makes no sense. That is what the Senate has done. So now we will have a free trade agreement coming back to the Senate, the first one under the so-called fast-track procedure, and it is done with the country of Singapore.

Let me read what is in the trade agreement, just one piece. There are many, and I will talk about them in future days. All of this is cloaked in language that is hard to understand, but the implications are not hard to understand because it is related to American jobs. It all relates to waving goodbye to American manufacturing jobs. Article 32, treatment of certain products, under chapter 3: A party shall consider a good listed in annex 2 when imported into its territory from the territory of another port to be an originating good. Within 6 months after entry into force of the agreement, the parties shall meet to explore the expansion of the product coverage of annex 2.

This sounds like six or eight people sitting around drinking, but these are pretty smart people who have reached a trade agreement. This is the way they write it: A party shall consider a good listed in annex 2 when imported into its territory from the territory of another party to be an originating good.

What does that mean? What that means is that, in the circumstances of a free trade agreement with Singapore, products such as electronics, semiconductors, computers, telecommunications equipment, cell phones, fiber cables, optical cables, photocopy equipment, medical instruments, appliances, a wide range of high-tech products can come in through the free trade agreement with Singapore, even if they are not produced there. If they are produced elsewhere, they come through Singapore and come into this country under a free trade agreement.

It is fascinating to me that in the last 12 years we have lost 2 million jobs. I am not talking about decreasing the rate of growth of jobs. This country has lost over 2 million jobs. We are off negotiating new trade agreements—and, incidentally, proposing new fiscal policies that will exacerbate the loss of jobs with huge Federal deficits—and we say to other countries, by the way, we will give you a special deal. We don't care much about providing basic protection of fair competition for America's domestic manufacturers. We will give you a special deal.

The special deal is this, Singapore: You can move goods through Singapore, high-tech goods, the product of high-skilled labor, good jobs. You can move them through Singapore through a free trade agreement into the United States and displace American jobs. That is what this says.

In every single circumstance we have negotiated trade agreements—United States-Canada, NAFTA, the WTO—in agreement after agreement, we have said to American workers and companies producing goods, we want you to compete with others overseas that don't have to meet any basic standards. It doesn't matter if the country will not allow them to organize as workers, if they don't have worker rights, if they hire kids, work them 16 hours a day, pay them 16 cents an hour. That doesn't matter. They should be able to produce those products, these agreements say, and run them through Singapore, some other country, run them through Mexico, for that matter, and move them into Toledo and Pittsburgh and Bismarck and Los Angeles and Pierre, and then have American workers and businesses compete with that labor.

What does it mean? It means we can't compete. Is there an American worker who decides they can compete against 16-cents-an-hour labor performed by a 14-year-old who works 16 hours a day in a plant where they don't have basic safety standards, where they can pump pollution into the air and water; is there anybody who can compete with that? The answer is no. And they should not be expected to.

This Singapore free trade agreement is coming here under fast track. We cannot offer amendments. There isn't one single parliamentary step that will be missed as we move to try to consider this. When they sign this next Thursday—and they certainly should not sign it with this provision in it; this is a loophole big enough to drive a semi truck through—let them understand that there will be no unanimous consent agreement for anything under any circumstance at any step of the way to get this considered by the Senate.

They will get it considered, no doubt, and no doubt those Senators who decided they would like to put themselves in the straitjacket and prevent themselves from offering an amendment—God forbid they should try to correct this—they will vote for it. And no doubt the Senate will ratify this free trade agreement. I am just serving notice that it is going to take some time. We will have some lengthy discussion about it.

There is no justification, in my judgment, for this kind of nonsense. I will come to the floor in a day or so to also talk about China. We did a bilateral trade agreement with them 2 years ago that has not meant a thing. It is like spitting in a high wind. They agreed to everything so they could join the World Trade Organization. We have a $103 billion trade deficit with China. Our jobs have been exported.

The fact is, China has not done what they said they would do in the bilateral agreement. And nobody seems to care. We have all these bureaucrats running around, most of them negotiating incompetent trade agreements. We have a few of them down at the Department of Commerce who are supposed to enforce the trade agreements.

Take a look at what we have. We have this miserable skeleton of an enforcement unit. We have no more than a dozen people who are supposed to enforce the trade agreements in China. If you gave them a pop quiz, they would not have the foggiest idea of what is in the agreements, let alone enforce them. I think we have a growing scandal with the imbalance in Chinese trade, especially since we had a bilateral agreement 2 years ago with them and they have complied with none of it.

Madam President, I want to serve notice on the Singapore free trade agreement that there is a lot to fix in this agreement. It doesn't mean a thing when people such as I talk about this because our trade negotiators don't care; they don't see; they are in their little cocoon, and they will negotiate, and the success of their life is reaching an agreement—even if it is bad. They did a bad agreement with Canada, with NAFTA, and with the WTO, and a bad agreement with Singapore. Apparently, they have not done a bad one with Chile yet because we didn't know where they stood on Iraq. The fact is, it is time for them to stop doing bad agreements and time for them, on behalf of American workers and companies, to say we demand and insist on fair trade. That certainly will not be the case with respect to the agreements we expect in future free trade deals, with respect to labor protections and a whole range of issues in the Singapore agreement.

THE SIZE OF THE TAX CUT

Madam President, I want to talk for a moment about the front-page issue every day these days, and that is how big will be the tax cut. That misses the point. Our press almost always reports all this as a horserace. It is never much about the horse or jockey; it is about who is ahead down the stretch. Does he or doesn't he have the support to get 350, 550, or 750? What would be much more important would be to have a report that talked about: What does this really mean for our country? What are the experts really saying? What are the consequences? Where will this come from? Now, a tax cut.

Well, we have lost slightly more than 2.6 million jobs in the last nearly 2 ½ years, and that is unusual because in the last 50 years every single administration has seen a growth in jobs—some less than others; nonetheless, a growth. We have, in this circumstance, lost jobs—2.6 million in 2 ½ years.

You can make a case—and I think part of it is valid—that we had 9/11, the war on terror, the war in Iraq, the technology bubble bust, the collapse of the stock market, the bursting of the tech bubble, and we had the largest corporate scandals in the history of the country. So you can make a pretty good case that all of these things intersecting at the same time have caused a lot of havoc with this country and our economy.

But it is the easiest lifting in American politics for any politician at any time to say: Do you know what I stand for? I stand perpetually for reducing taxes and tax cuts.

If, in fact, cutting taxes always creates jobs, sign me up for $2 trillion in tax cuts. Just sign me up. Then I think the President's $700 billion proposal of permanent tax cuts is way too short. If this in fact creates jobs, let's do $4 trillion in tax cuts. But we know what is happening here. We know that 2 years ago we were told if we had very large tax cuts, and Congress voted for them, what we would be doing was giving back surpluses that would exist in our budget as long as 10 years down the line, as far as the eye could see. So the Congress supported very large permanent tax cuts. I did not, because I said at the time I thought we should do them on a temporary basis, in order to be a business conservative, and then figure out what is going to happen in the future.

What if something happens? It did. We found ourselves in a recession, a war, the bubble burst, and corporate scandals. Congress said: The heck with that; we see surpluses forever. Two years later, we have projections by all economists that we are going to have deficits forever. Even the President's budget has deficits predicted for 10 straight years. The President's budget—which was on our desks right here, and the Senate voted for it—said let's increase the Federal indebtedness from $6 trillion to $12 trillion in 10 years.

I am not making that up. It is on page 6 of the Budget Act that the Senate voted for and the President supported. It is what he wanted. Let's double the Federal debt. Now they say let's have very large tax cuts. Where do they come from? Every single dollar of the tax cut is to be borrowed. So we send our sons and daughters to war; and then we say: By the way, when you come back, you are going to pay the bill because we are not paying for that.

Just yesterday, the Wall Street Journal pointed out that the Federal Government will need to borrow $79 billion in this quarter. That is a reversal of the more than $100 billion that was estimated for this quarter. So we missed the economic results by $100 billion in this quarter. I think the Government spends too much in a range of areas. I think we ought to cut spending. I think we ought to make sure that those things that improve the lives of people in this country are the things in which we invest. I think we ought to make sure we deal with education, health care, roads, and the kinds of things that represent infrastructure that make this a great country.

But having said all that, I think to borrow $6 trillion more in 10 years in order to provide tax cuts, the bulk of which will go to the largest income earners in the country—if you do that, look at the economic data. They say if you earn $1 million a year, good, you are lucky because you are going to get an $80,000-a-year tax cut with the President's plan, on average. At this point, when we are choking on red ink and proposing to double the Federal debt from $6 trillion to $12 trillion, do we think those who earn a million dollars a year, on average, should receive an $80,000 a year tax cut? I don't think so. That ought not be the priority.

The very first priority might be to reduce the Federal debt and get our fiscal house in order; second, to invest in those things that make life worthwhile, improve our schools, do a range of things like that. In addition to that, we should, as many colleagues say, cut spending in areas where we spend too much—and there are plenty of them.

I find it bizarre that we are having a national discussion about this without any requirement for their being specific. If you want, at a time when we have very large budget deficits, to reduce the tax revenue by $550 billion or $750 billion over 10 years, then what don't you want to do? Do you want to increase defense spending? That is going to happen. Increase homeland security spending? That is going to happen. Have very large tax cuts? That is going to happen. So what don't you want to do? What is it in domestic discretionary spending? Educating our kids? Making sure grandma and grandpa have access to adequate health care? Having safe neighborhoods? What is it you don't want to do in that batch? How about building roads and bridges to make sure we have a good infrastructure? What is it you don't want to do? I think that is a question that needs to be answered.

Madam President, it is not answered by anybody. All the reporting is on the horserace—who is ahead coming around the turn? Does the President have the vote or not? Is this Senator or that Senator finally going to turn or relent? That is not the issue.

Take a look at the best economic thinkers in this country, 10 Nobel laureates, and ask them what they think of this country's economic future if we don't have some basic fiscal responsibility. I come from a small town, with 380 people or so. It has shrunk a bit since then. But most people in America's towns and cities think about all this in practical, candid terms, making sure it adds up. They say let's handle this as a business or a family.

Well, let's do that then. If you are short of revenue, do you want to cut your revenue further and increase spending? How does that add up? I didn't take higher math, but I learned that 1 plus 1 equals 2 in Kansas, in North Dakota, in New York, and all over the country—except in fiscal policy in Washington, DC, where 1 plus 1 equals 3, and apparently $12 trillion in additional debt. That is not a fiscal policy, in my judgment, that is good for my kids, your kids, or America's kids.

I am not saying one party is all right or wrong. I am saying this: There isn't any way we can reconcile this with what is happening in the country today. We have turned the largest surplus in American history into the largest deficits. Yes, you can make a case that a lot of things have happened that have intervened to make that happen that are outside of the control of the Congress and the President; yes, that is true. But if that is the case, then should we not recognize that? If 9/11 says we need more spending for homeland security, we just charge it to the future and say, well, we need to do that, but let's have tax cuts, too. If 9/11 says and Iraq means we need more

money for defense spending, we say, let's just charge that and we will have tax cuts, too. One way or another this has to be reconciled.

I am in favor of some tax cuts. I would like to see some tax cuts. I think the American people would like tax cuts. But when someone says let's have the American people keep more of their own money, the answer to that on the reverse side of the same coin is let's charge more to the American people because they are going to have to pay for it. One can argue trade deficits are going to have to be paid by a lower standard of living in this country, but our kids and grandkids are going to pay for a fiscal policy deficit. It is a selfish fiscal policy, in my judgment, and one we ought to reverse.

We ought to try to call on the best of what both parties have to offer this country, not the worst of each. In my judgment, the best both parties have to offer this country is some basic conservative values of saying let's do what is right to invest in what makes this a good country and at the same time let's pay for that which we want to consume. Let's have a fiscal policy that says to every American, this adds up. Let's say to our kids we are not going to have them shoulder the burden of what we are doing today. That is what our fiscal policy ought to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I will speak to the pending business, which is the nomination of Priscilla Owen to the circuit court of appeals. She is a highly qualified person who really needs to be recognized. We need to move through this rapidly.

The last 2 years, I was honored to be able to serve on the Judiciary Committee. We held extensive hearings on Priscilla Owen to be a circuit court judge. She went through those hearings in an extraordinary fashion. It was a learning experience. It was as if a professor was there teaching and going through with us, here is how I decided this case, here is hornbook law on this, here is how this should be decided, here is how I viewed the issue. She really has a fine-tuned legal mind. I was impressed by the legal mind she has.

I was impressed by the common sense she had with it as well. It was as if this was a highly trained legal mind well adapted to being able to judge, but also with a sense of values of the people, which is as one would expect because she was elected to the Texas Supreme Court. She has been around the public. She knows how people think.

When a lot of people look at the judiciary in the United States, they do not feel like they get a sensible approach to judging a fair amount of time. She is an extraordinary person to have both that depth of mental training and ability and a sensible touch that the people really desire and want to have in somebody on the judiciary.

What I am most distressed about is it appears as if now we are going to get our second filibuster of a circuit court judge from the Democratic Party. In the past, we have not had filibusters of judges. We have had them at a Supreme Court level but not the circuit or district court level. Now it appears as if we are going to get our second filibuster of a judge in a matter of a couple of months. This, of course, is to raise the vote standard so she does not have to get 51 votes, she has to get 60 votes to be able to go on the circuit court of appeals.

This is not advice and consent of the Senate, which is what our standard is held to. We are to give advice and consent on judges. They should be appointed by the administration and then there should be advice and consent. That should be a 51-vote margin. It should not be a 60-vote margin that now the other side is attempting to establish. This is a very distressing situation we are getting into.

How many more judges are we going to see like that who are nominated for the circuit court? Are we going to continue to put them forward and the other side will say we are going to filibuster for whatever reason? How many of these is it to be?

I recognize what the strategy is. It is to keep the circuit court reduced of judges, not to allow this President to appoint his judges, not to allow him to put his print upon the judiciary. I recognize that is what is happening on the other side of the aisle, but when they do that, one needs to recognize the long-term policy implications of so doing. Now they are saying a President cannot appoint his or her judges to the bench; that when they were elected and selected by the people of the United States, now they cannot appoint people to the court; that the other party, if they can control 51 votes, can block the President. This is not about advice and consent. It is about blocking a President from appointing his judges to the Federal bench.

We have not seen this strategy before. It was always the President puts forward his nominees, we hold hearings, and then if they can be blocked with 51 votes, they are blocked, but not filibustering of circuit court judges. This is a dangerous area.

On the other hand, we could say the other party is looking at this saying this represents a two-fer for us: We cannot only block the President from getting his judges on the bench, we can block the Senate from doing other business.

We do not normally take weeks on end to do a Federal circuit court nominee, but that is what we are ending up doing with Miguel Estrada and now with Priscilla Owen. We are spending weeks on end of Senate floor time on a circuit court judge. That is not how the system is set up.

These nominations should be taking a couple of hours, at most, for debate and voting, and then we should be moving on and debating fiscal stimulus, how do we get this economy growing, how do we create more jobs. We have a number of issues in regard to rural development. How do we get more people to move out into rural areas of Kansas. We have plenty of issues on foreign policy to debate. What about the new Iraqi leadership? What about the relationship of the United States to the U.N.? There is a whole litany of issues we could be taking floor time up with, but instead we are on circuit court judges that should be debated in an hour or two, voted up or down by advice and consent of the Senate, as it says in the Constitution, and moving forward. We are taking up valuable time instead, weeks on end, with circuit court judges that should have a clear vote up or down.

This hurts the country on two fronts. It hurts on the judiciary, on not having the people appointed to the bench that we need to have, and it hurts us by not being able to do other business we should be focused on in the Senate. That is not a useful way for us to conduct business in the Senate.

I urge the other side of the aisle to please step forward and stop the filibuster of circuit court judges. That is not the way we need to operate to be able to get the business done.

On top of that, we have circuit courts around the country that in some cases have only half of the judges that are necessary. The other half have resigned or left office and so we have enormous vacancies. Some people would say they like it that way because then two circuit court judges can pick a third one—maybe it is two liberal circuit court judges can pick a district court judge, bring them up to a three-judge panel to have a liberal-leaning panel and we can set policy and set law that way. But that is not the way the system is set to operate, even though it does operate that way. We really need to move forward in this area.

I do not normally come to the floor to harangue about what is taking place in the judiciary, but in this case this is beyond the pale. This is not what should be taking place. It is hurting us and it is hurting the country.

GROWING THE ECONOMY

I will take a minute or two to address some of the topics that came up about the economy. We need to get this economy growing and going. I will make a couple of brief observations.

At the Federal level, we have two major tools to grow the economy. We have monetary policy and we have fiscal policy. Monetary policy is set by the Fed, not by the Congress but by the Fed. The Fed can set interest rates high or low, control the supply of money. The Fed is doing the exact right thing to grow the economy today with low interest rates. That is as it should be.

On the other side of that is fiscal policy, and that is what the Congress does. We have tools at our disposal to try to grow the economy. One of the major tools is tax policy. Do we increase taxes, do we decrease taxes, in a way to stimulate the economy?

The most stimulative tool that is available to us is to lower tax rates. That grows the economy. It grew the economy when President Reagan cut taxes. It grew the economy when President Kennedy cut taxes. That is the way the economy grows.

Some people would say, look at the deficit we are in now; we cannot afford to reduce the taxes at this point in time. I would answer, we cannot afford not to reduce taxes to stimulate the economy. In the last 2 years, we have seen a reduction in Federal receipts of 9 percent, and an increase of Federal expenditures of around 12 percent. Quick math tells us we are going to be in a real problem when we have those two trend lines.

The Federal receipts have gone down 9 percent. That is not as a result of changes of tax policy. That is a result of the economy being soft and not producing the economic lift and push we need. And, frankly, the rest of the world needs a strong and robust U.S. economy as well.

How do we get the economy going again? We need to stimulate growth with tax cuts. I will give one quick fact. Last year we saw a reduction in capital gains tax receipts of about $80 billion. There has been $80 billion in loss in capital gains tax receipts. That is not the result of a tax policy shift. That is primarily the result of the stock market falling dramatically the last couple of years, the tech boom going bust, problems and fears of what has taken place around the world, 9/11, a series of things where people pulled funds out of the market; instead of having capital gains, they had capital losses.

Some say the stock market does not affect most people. Yet half of Americans have some investment or retirement tied into the stock market. What can we do there? We can do away with that double taxation of corporate dividends as a way to stimulate investment and stimulate growth in the stock market. Plus, it is just good tax policy to not tax something twice.

What about balancing the budget? I have been a part of a Congress that has balanced the budget. I came to the House of Representatives in 1994. One of our major pushes was to balance the budget, which had not been done since 1969, and then it was actually an accounting move that allowed us to balance the budget in 1969. It had not been done for 20 years prior to that, but from 1969 until we balanced it about 5 years ago, the budget had not been balanced.

One of our key pushes was to balance the budget. So I have been a part of a Congress that has actually balanced the budget. It is the Congress that balances the budget. We are the ones who write the checks. The administration, the Presidency, spends the money. They can spend less if they choose in some situations, but we are the ones who actually authorize and appropriate.

How do we balance the budget? I think we have found the formula for doing it. We grow the economy and we restrain your growth in Federal spending until the lines intersect and you get the economy growing strong, and then you restrain your growth in Federal spending until those intersect. That is how we balance the budget. We had a growing economy, but instead of spending this increase in Federal receipts, we restrained the growth of Federal spending and those intersected and we got 3 years of significantly balanced budgets, done by a Republican Congress. That is how you get it done.

What is our key now? Our key now is to get the economy growing, cut taxes to stimulate the growth, and restrain the growth of Federal spending. I put forward a bill with several people as one way of restraining Federal spending, to create a domestic program equivalent to the Base Closure Commission. We have a Base Closure Commission that has been very successful saying we have too many military bases; we need to eliminate some of those, consolidate them in fewer areas. To remove one or two at a time is an impossible task. So we have a commission that recommends 50 closures taking place and gives Congress one vote up or down whether to eliminate the bases altogether. It has been very successful in consolidating resources.

What about doing that in domestic discretionary programs where we have thousands of domestic discretionary programs? Have a commission to say these 100 were good when they started, but the reason for their creation has gone. They are effective but not yielding as much as they should. These 100 should be eliminated. The commission reports to Congress and requires Congress to vote up or down whether they agree or disagree, eliminate all 100 or keep all 100. It is a domestic Base Closure Commission equivalent type of program, so we can try to restrain some of the growth in Federal spending, consolidate it in fewer areas. Those are the sorts of things we need to do to balance the budget and get our spending under control.

We also need trade agreements to take place. I point out that Presidents of both parties have requested trade promotion authority and trade agreements. You cannot negotiate with another country and say, OK, give us your best offer and then do that; and then say, OK, we have to take it to the Congress, which may agree or disagree, and they will amend it and we will come back to you again. That sort of trade agreement does not work. The other country says: We want to wait and see your final offer. That is why the trade promotion authority is in place.

Trade has been good for this country and has expanded jobs and economic opportunities in the United States. It has been the right thing for us to do.

WAR IN IRAQ

I end with a personal comment about how the Bush administration has conducted the war in Iraq and the followon. I think one has to compliment this administration and the soldiers in the field for the way they have conducted this activity. Agree or disagree with going to Iraq, in the first place, we have liberated the people, the face of liberty of Baghdad looks the same as the face of liberty in Berlin when they see liberty. It has a beautiful face, to see liberty and see them kissing and hugging our soldiers developing liberty and finding a treasure trove of information of terroristic activities to make the world a freer place.

We have to compliment and say God bless the soldiers who have been over there, and we say thank you to them and to this administration for taking so bold a step forward for liberty in a tough region of the world, in Iraq.

I hope they continue to press for liberty in places such as North Korea against Kim Jong Il and his regime—this is the 50th year of the armistice we signed with North Korea—which has oppressed its own people. In North Korea you have a regime that exports missiles, technology around the world, that has a third of its people living on international food donations, many of them starving, walking out of the country. We think somewhere between 20,000 and 300,000 have walked from North Korea into China. We have a regime that operates a gulag system in North Korea, continues to operate a Soviet-style gulag. We have a regime there that imports millions of dollars a year in luxury cars and alcohol and tobacco. So while their own people by the millions starve, the regime that sits on top drives around in a Mercedes Benz, drinks fine wines, and smokes fine tobaccos.

When you turn the rock over in North Korea you will see the same, if not worse, type of deplorable living conditions for the people, and extraordinary situations of high-life living for the elite. I have no doubt from what we know already what has taken place in that regime. We will see a level of depravity from liberty and from the basics of human life from the North Korean people that would rival any on the planet. I hope the administration keeps the pressure on Kim Jong Il and his decrepit Stalinist regime so that the 22 million people of North Korea can one day be free.

I yield the floor and suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

NOMINATION OF EDWARD C. PRADO

Mr. LEAHY. Mr. President, I begin by thanking the Democratic leader and assistant Democratic leader for going to bat for Judge Edward Prado. They

apparently are now working on an arrangement, that I understand is close to being worked out with the Republican leadership, so this nomination can be considered without further delay. I appreciate the fact that the majority leader and the deputy majority leader, Senator MCCONNELL, are going to work with us to do that.

As I have noted on the floor before, basically before the recess, and since, we had checked on our side of the aisle and knew that nobody objected to going forward with a vote on Judge Prado. In fact, I suspect most are going to vote for him. I was not quite able to figure out why there was objection on the Republican side to going forward with his nomination. So I thank the leaders for now getting together so he will be allowed to go forward.

I also thank the Congressional Hispanic Caucus for its support for this nomination, working with the Senate to go forward.

I noted on the floor on Monday that Judge Edward Prado, being nominated to the United States Court of Appeals for the Fifth Circuit, was cleared by all of us on this side; all Democratic Senators serving on the Judiciary Committee had voted to report the nomination favorably. That is why we were concerned when it was held up on the other side.

We have worked hard to find judges who might be consensus judges, as he is. Interestingly enough, Judge Prado was originally appointed by Ronald Reagan. He is not a Democrat. He is a Republican. He considers himself a conservative Republican, but has a judicial record where he fits the test that I and many of us on both sides of the aisle certainly thought a judge should meet: When you walk into a courtroom, you should be able to look at that judge and say, Whether I am a Republican or a Democrat, rich or poor, White or Black, plaintiff or defendant, whatever, that judge is going to give me a fair hearing.

The current occupant of the chair has served as attorney general and justice of the Texas Supreme Court and he knows whereof I speak. Anyone who spends time in a court knows, looking at a judge, if they are going to get a fair shake with the judge or not. We all know there are some judges you want to avoid, other judges about whom you say, fine, I have to prove my case, but I feel I have a fair chance. I think that is the kind of judge Judge Prado will be.

When the Democrats took over the majority of the Senate in the summer of 2001, we inherited 110 judicial vacancies, primarily because during the last few years of President Clinton's term Republicans had blocked an unprecedented number of judges from going forward. But during the next 17 months, we confirmed 100 of President Bush's nominees, including some who had been rated as not qualified by the ABA, several who were divisive and controversial.

Forty new vacancies occurred during the normal course of deaths and resignations at that time. We still took the 110 vacancies we inherited and brought that down to 60, which is considerably less than what the Republicans have always referred to as being full employment.

On the Senate executive calendar, we also have the nomination of Cecilia M. Altonaga, of Florida, to be a Federal judge in Florida. She will be the first Cuban-American to be confirmed to the Federal bench—expedited at the request of Senator GRAHAM of Florida. I might say this is another case where we are ready to go forward any time he wants. The decision has not been made to go forward yet on the Republican side of the aisle. We hope to go forward soon. We have cleared that. We have cleared her and are happy to go forward.

Mr. President, we have another nomination before us—again from the State of Texas, the State represented ably by the distinguished Presiding Officer. We have had really unprecedented debate. We are asked to reconsider the nomination of Priscilla Owen to the United States Court of Appeals for the Fifth Circuit.

We have never had a case where President resubmitted a circuit court nominee that had already been rejected by the Senate Judiciary Committee for the same vacancy. Until a few weeks ago, never before had the Judiciary Committee proceeded for a second time on a nominee.

I have spoken about my concerns relating to Priscilla Owen. I have detailed some of the cases in which Judge Owen's views were sharply criticized by her colleagues on the Texas Supreme Court. I explained why I believe she should not be confirmed to the seat on the Fifth Circuit. Today I would like to talk about some more of the cases, involving a variety of legal issues, which show Priscilla Owen to be a judicial activist, willing to make law from the bench rather than follow the language and intent of the legislature.

I heard Senator CORNYN say the other day that just because you disagree with the outcome of a particular case does not give you the right to call the judge who wrote it an activist. I agree. I wish more Republicans had followed that rule when President Clinton was nominating qualified people to the Federal bench and a Republican majority was holding them up anonymously and voting against them. There are many cases before the courts of this Nation where reasonable people, reasonable lawyers and judges, could disagree on the outcome, could have a difference of opinion about interpreting a statute. There are many times when a statute is ambiguous, or a legal precedent unclear, and there is no right or wrong result. I could not agree more with the junior Senator from Texas on this fundamental point. I wish more Republicans had followed that rule when President Clinton nominated qualified people to the Federal bench and anonymous hold after anonymous hold was made on the Republican side. They were not allowed to go forward.

It is interesting when we talk about political background of judges. Vermont is allowed one seat by tradition on the Second Circuit Court of Appeals. New York and Connecticut have the rest of the seats.

I went to President Clinton when there was a vacancy and recommended a sitting Federal judge in our State. He had been a Republican Deputy Attorney General—a conservative. I disagreed with some of his decisions. I disagreed with his legal reasoning. I thought he did a careful and reasoned job. I went to President Clinton knowing that there were a number of people who might be considered for that position—a number of them leading Democrats in our State. I told the President I thought this would make a good person, and it involved the nomination which he could rest easy on and not have to worry about. Shortly before he was about to make his decision, the Federal judge ruled strongly against a position of President Clinton. And when the President asked me about that, I said he could have made the ruling a week after you sent his nomination up, but that I thought he was honest. The President admired his courage, honesty and ability, and he nominated him. And this Senate voted as I recall unanimously to put him on the Second Circuit Court of Appeals where he does very, very well.

I voted on hundreds of hundreds of Republicans nominated by Republican Presidents. But just as I voted against those nominated by Democratic Presidents, I will vote against those nominated by Republican Presidents when they show that they are going to be activist judges who are not going to follow the law but rather follow the dictates of their own philosophy.

That is why I will continue to oppose Priscilla Owen. I did do as the President asked when I was chairman. I held a hearing for her. We had a very fair hearing, according to her, and actually put her on the agenda for markup on the day the President of the United States requested that she be put on. She was put over at a Republican request, but then she was voted down by the committee.

When I look at Justice Owen's record, I am not looking at the outcome of the cases in which Justice Owen ruled, and criticizing her as an activist just because I do not agree with a ruling or even a couple of rulings. I am looking at the substance of a number of her decisions, how she approached those cases and the propriety of her legal analysis. The conservative justices on the other sides of these cases, in many, many of those cases, are themselves extremely critical of her approach, her reasoning, her judging—in short, her activism. They have called her an activist, said one of her opinions was just ''inflammatory rhetoric,'' noted in other cases that she

went beyond the language of the law, ignored legislative intent, and gutted laws passed by the people's elected representatives. Like them, I disagree with Priscilla Owen's methods and activist judging.

In my last statement, I touched on some of the criticism received from the majority in the series of parental notification cases. In addition to cases dealing with parental notification, Justice Owen's activism and extremism is noteworthy in a variety of other cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she rules against individual plaintiffs time and time again.

In one case that is perhaps the exception that proves the rule, Justice Owen wrote a majority opinion that was bitterly criticized by the dissent for its activism. In In re City of Georgetown, 53 S.W. 3d 328, Tex. 2001, Justice Owen wrote a majority opinion finding that the city did not have to give the Austin American-Statesman a report prepared by a consulting expert in connection with pending and anticipated litigation. The dissent is extremely critical of Justice Owen's opinion, citing the Texas law's strong preference for disclosure and liberal construction. Accusing her of activism, Justice Abbott, joined by Chief Justice Phillips and Justice Baker, noted that the legislature, ''expressly identified eighteen categories of information that are 'public information' and that must be disclosed upon request . . . [sec. (a)] The Legislature attempted to safeguard its policy of open records by adding subsection (b), which limits courts' encroachment on its legislatively established policy decisions.'' The dissent further protests:

> But if this Court has the power to broaden by judicial rule the categories of information that are ''confidential under other law,'' then subsection (b) is eviscerated from the statute. By determining what information falls outside subsection (a)'s scope, this Court may evade the mandates of subsection (b) and order information withheld whenever it sees fit. This not only contradicts the spirit and language of subsection (b), it guts it. Id.

Finally, the opinion concluded by asserting that Justice Owen's interpretation, ''abandons strict construction and rewrites the statute to eliminate subsection (b)'s restrictions.''

These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of her activist views.

I am also greatly concerned about Justice Owen's record of ends-oriented decision making as a Justice on the Texas Supreme Court. As one reads case after case, particularly those in which she was the sole dissenter or dissented with the extreme right wing of the court, her pattern of activism becomes clear. Her legal views in so many cases involving statutory interpretation simply cannot be reconciled with the plain meaning of the statute, the legislative intent, or the majority's interpretation, leading to the conclusion that she sets out to justify some preconceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions. This is a judge whose record reflects that she is willing and sometimes eager to make law from the bench.

Justice Owen's activism and extremism is noteworthy in a variety of cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she writes against individual plaintiffs time and time again, in seeming contradiction of the law as written.

One of the cases where this trend is evident is FM Properties v. City of Austin, 22 S.W. 3d 868, Tex. 1998. I asked Justice Owen about this 1998 environmental case at her hearing last July. In her dissent from a 6–3 ruling, in which Justice Alberto Gonzales was among the majority, Justice Owen showed her willingness to rule in favor of large private landowners against the clear public interest in maintaining a fair regulatory process and clean water. Her dissent, which the majority characterized as, ''nothing more than inflammatory rhetoric,'' was an attempt to favor big landowners.

In this case, the Texas Supreme Court found that a section of the Texas Water Code allowing certain private owners of large tracts of land to create ''water quality zones,'' and write their own water quality regulations and plans, violated the Texas Constitution because it improperly delegated legislative power to private entities. The Court found that the Water Code section gave the private landowners, ''legislative duties and powers, the exercise of which may adversely affect public interests, including the constitutionally-protected public interest in water quality.'' The Court also found that certain aspects of the Code and the factors surrounding its implementation weighed against the delegation of power, including the lack of meaningful government review, the lack of adequate representation of citizens affected by the private owners' actions, the breadth of the delegation, and the big landowners' obvious interest in maximizing their own profits and minimizing their own costs.

The majority offered a strong opinion, detailing its legal reasoning and explaining the dangers of offering too much legislative power to private entities. By contrast, in her dissent, Justice Owen argued that, ''[w]hile the Constitution certainly permits the Legislature to enact laws that preserve and conserve the State's natural resources, there is nothing in the Constitution that requires the Legislature to exercise that power in any particular manner,'' ignoring entirely the possibility of an unconstitutional delegation of power. Her view strongly favored large business interests to the clear detriment of the public interest, and against the persuasive legal arguments of a majority of the Court.

When I asked her about this case at her hearing in July, I found her answer perplexing. In a way that she did not argue in her written dissent, at her hearing Justice Owen attempted to cast the F.M. case not as, ''a fight between and City of Austin and big business, but in all honesty, . . . really a fight about . . . the State of Texas versus the City of Austin.'' In the written dissent however, she began by stating the, ''importance of this case to private property rights and the separation of powers between the judicial and legislative branches. . .'', and went on to decry the Court's decision as one that, ''will impair all manner of property rights.'' That is 22 S.W. 3d at 889. At the time she wrote her dissent, Justice Owen was certainly clear about property rights for corporations.

At her second hearing, I know that Chairman HATCH tried to recharacterize the F.M. Properties v. City of Austin case in an effort to make it sound innocuous, just a struggle between two jurisdictions over some unimportant regulations. I know how, through a choreography of leading questions and short answers, they tried to respond to my question from last July, which was never really answered, about why Justice Owen thought it was proper for the legislature to grant large corporate landowners the power to regulate themselves. Again, I am unconvinced. The majority in this case, which invalidated a state statute favoring corporations, does not describe the case or the issues as the chairman and the nominee have. A fair reading of the case shows no evidence of a struggle between governments. This is all an attempt at after-the-fact justification where there really is none to be found.

Justice Owen and Chairman HATCH's explanation of the case also lacked even the weakest effort at rebutting the criticism of her by the F.M. Properties majority. As I mentioned, the six justice majority said that Justice Owen's dissent was, ''nothing more than inflammatory rhetoric.'' They explained why her legal objections were mistaken, saying that no matter what the state legislature had the power to do on its own, it was simply unconstitutional to give the big landowners the power they were given.

Another case that concerned me is the case of GTE Southwest, Inc. v. Bruce, 990 S.W.2d 605, where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. The rest of the Court held that three employees subjected to what the majority characterized as ''constant humiliating and abusive behavior of their supervisor'' were entitled to the jury verdict in

their favor. Despite the Court's recitation of an exhaustive list of sickening behavior by the supervisor, and its clear application of Texas law to those facts, Justice Owen wrote a concurring opinion to explain her difference of opinion on the key legal issue in the case—whether the behavior in evidence met the legal standard for intentional infliction of emotional distress.

Justice Owen contended that the conduct was not, as the standard requires, ''so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. . .'' The majority opinion shows Justice Owen's concurrence advocating an inexplicable point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

At her first hearing, in answer to Senator EDWARDS' questions about this case, Justice Owen again gave an explanation not to be found in her written views. She told him that she agreed with the majority's holding, and wrote separately only to make sure that future litigants would not be confused and think that out of context, any one of the outrages suffered by the plaintiffs would not support a judgment. Looking again at her dissent, I do not see why, if that was what she truly intended, she did not say so in language plain enough to be understood, or why she thought it necessary to write and say it in the first place. It is a somewhat curious distinction to make—to advocate that in a tort case a judge should write a separate concurrence to explain which part of the plaintiff's case, standing alone, would not support a finding of liability. Neither her written concurrence, nor her answers in explanation after the fact, is satisfactory explanation of her position in this case.

In City of Garland v. Dallas Morning News, 22 S.W. 3d 351, Tex. 2000, Justice Owen dissented from a majority opinion and, again, it is difficult to justify her views other than as based on a desire to reach a particular outcome. The majority upheld a decision giving the newspaper access to a document outlining the reasons why the city's finance director was going to be fired. Justice Owen made two arguments: that because the document was considered a draft it was not subject to disclosure, and that the document was exempt from disclosure because it was part of policy making. Both of these exceptions were so large as to swallow the rule requiring disclosure. The majority rightly points out that if Justice Owen's views prevailed, almost any document could be labeled draft to shield it from public view. Moreover, to call a personnel decision a part of policy making is such an expansive interpretation it would leave little that would not be ''policy.''

Quantum Chemical v. Toennies, 47 S.W. 3d 473, Tex. 2001, is another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute. In this age discrimination suit brought under the Texas civil rights statute, the relevant parts of which were modeled on Title VII of the federal Civil Rights Act, and its amendments, the appeal to the Texas Supreme Court centered on the standard of causation necessary for a finding for the plaintiff. The plaintiff argued, and the five justices in the majority agreed, that the plain meaning of the statute must be followed, and that the plaintiff could prove an unlawful employment practice by showing that discrimination was ''a motivating factor.'' The employer corporation argued, and Justices Hecht and Owen agreed, that the plain meaning could be discarded in favor of a more tortured and unnecessary reading of the statute, and that the plaintiff must show that discrimination was ''the motivating factor,'' in order to recover damages.

The portion of Title VII on which the majority relies for its interpretation was part of Congress's 1991 fix to the United States Supreme Court's opinion in the Price Waterhouse case, which held that an employer could avoid liability if the plaintiff could not show discrimination was ''the'' motivating factor. Congress's fix, in Section 107 of the Civil Rights Act of 1991, does not specify whether the motivating factor standard applies to both sorts of discrimination cases, the so-called ''mixed motive'' cases as well as the ''pretext'' cases.

The Texas majority concluded that they must rely on the plain language of the statute as amended, which could not be any clearer that under Title VII discrimination can be shown to be ''a'' motivating factor. Justice Owen joined Justice Hecht in claiming that federal case law is clear—in favor of their view—and opted for a reading of the statute that would turn it into its polar opposite, forcing plaintiffs into just the situation legislators were trying to avoid. This example of Justice Owen's desire to change the law from the bench, instead of interpret it, fits President Bush's definition of activism to a ''T.''

Justice Owen has also demonstrated her tendency toward ends-oriented decision making quite clearly in a series of dissents and concurrences in cases involving a Texas law providing for a judicial bypass of parental notification requirements for minors seeking abortions.

The most striking example is Justice Owen's expression of disagreement with the majority's decision on key legal issues in Doe 1. She strongly disagreed with the majority's holding on what a minor would have to show in order to establish that she was, as the statute requires, ''sufficiently well informed'' to make the decision on her own. While the conservative Republican majority laid out a well-reasoned test for this element of the law, based on the plain meaning of the statute and well-cited case law, Justice Owen inserted elements found in neither authority.

Specifically, Justice Owen insisted that the majority's requirement that the minor be ''aware of the emotional and psychological aspects of undergoing an abortion'' was not sufficient and that among other requirements with no basis in the law, she, ''would require . . . [that the minor] should . . . indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion.'' That is In re Doe 1, 19 S.W.3d 249, 256, Tex. 2000.

In her written concurrence, Justice Owen indicated, through legal citation, that support for this proposition could be found in a particular page of the Supreme Court's opinion in Planned Parenthood v. Casey. However, when one looks at that portion of the Casey decision, one finds no mention of requiring a minor to acknowledge religious or moral arguments. The passage talks instead about the ability of a State to ''enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear.'' That is Casey at 872. Justice Owen's reliance on this portion of a United States Supreme Court opinion to rewrite Texas law was simply wrong.

As she did in answer to questions about a couple of other cases at her July hearing, Justice Owen tried to explain away this problem with an after the fact justification. She told Senator CANTWELL that the reference to religion was not to be found in Casey after all, but in another U.S. Supreme Court case, H.L. v. Matheson. She explained that in, ''Matheson they talk about that for some people it raises profound moral and religious concerns, and they're talking about the desirability or the State's interest in these kinds of considerations in making an informed decision.'' But again, on reading Matheson, one sees that the only mention of religion comes in a quotation meant to explain why the parents of the minor are due notification, not about the contours of what the government may require someone to prove to show she was fully well informed. Her reliance on Matheson for her proposed rewrite of the law is just as faulty as her reliance on Casey. Neither one supports her reading of the law. She simply tries a little bit of legal smoke and mirrors to make it appear as if they did. This is the sort of ends-oriented decision making that destroys the belief of a citizen in a fair legal system. And most troubling of all was her indicating to Senator FEINSTEIN that she still views her dissents in the Doe cases as the proper reading and construction of the Texas statute.

I have read her written answers to questions from Senators after her second hearing, many newly formulated, that attempt to explain away her very disturbing opinions in the Texas parental notification cases. Her record is still her record, and the record is clear.

She still does not satisfactorily explain why she infuses the words of the Texas legislature with so much more meaning than she can be sure they intended. She adequately describes the precedents of the Supreme Court of the United States, to be sure, but she simply does not justify the leaps in logic and plain meaning she attempted in those decisions.

As I have mentioned with regard to some specific cases, Justice Owen's responses at her second hearing failed to alleviate these serious concerns nor did Senator HATCH's ''testimony'' at her second hearing, where he attempted to explain away cases about which I had expressed concern.

The few explanations offered for the many other examples of the times her Republican colleagues criticized her were unavailing. The tortured reading of Justice Gonzales' remarks in the Doe case were unconvincing. He clearly said that to construe the law in the way that Justice Owen's dissent construed the law would be activism. Any other interpretation is just not credible.

Or why in Montgomery Independent School District v. Davis, the majority criticized her for her disregard for legislative language, saying that, ''the dissenting opinion misconceives the hearing examiner's role in the . . . process,'' which it said stemmed from ''its disregard of the procedural elements the Legislature established . . . to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards.'' Or why, in Collins v. Ison-Newsome, a dissent joined by Justice Owen was so roundly criticized by the Republican majority, which said the dissent agrees with one proposition but then ''argues for the exact opposite proposition . . . [defying] the Legislature's clear and express limits on our jurisdiction.''

I have said it before, but I am forced to say it again. These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of her activist views. No good explanation was offered for these critical statements last year, and no good explanation was offered two weeks ago. Politically motivated rationalizations do not negate the plain language used to describe her activism at the time.

I would like to explain again that Justice Owen has been nominated to fill a vacancy that has existed since January, 1997. In the intervening 5 years, President Clinton nominated Judge Jorge Rangel, a distinguished Hispanic attorney from Corpus Christi, to fill that vacancy. Despite his qualifications, and his rating of well qualified by the ABA, Judge Rangel never received a hearing from the committee, and his nomination was returned to the President without Senate action at the end of 1998, after a fruitless wait of 15 months.

On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill that same vacancy. This Harvard educated attorney, who received a unanimous well qualified from the ABA, did not receive a hearing on his nomination either—for more than 17 months. President Bush withdrew the nomination of Enrique Moreno to the Fifth Circuit and later sent Justice Owen's name in its place. It was not until May of last year, at a hearing chaired by Senator SCHUMER, that the Judiciary Committee heard from any of President Clinton's three unsuccessful nominees to the 5th Circuit. Last May, Mr. Moreno and Mr. Rangel testified along with a number of other Clinton nominees about their treatment by the Republican majority. Thus, Justice Owen was the third nominee to this vacancy but the first to be accorded a hearing before the committee.

In fact, when the committee held its hearing on the nomination of Judge Edith Clement to the Fifth Circuit in 2001, it was the first hearing on a Fifth Circuit nominee in seven years. By contrast, Justice Owen was the third nomination to the Fifth Circuit on which the Judiciary Committee, under my chairmanship, held a hearing in less than one year. In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, we proceeded last July with a hearing on Justice Owen and, for that matter, with hearings for Judge Charles Pickering. We proceeded with committee debate and votes on all three of President Bush's Fifth Circuit nominees despite the treatment of President Clinton's nominees by the Republican majority.

President Bush has said on several occasions that his standard for judging judicial nominees would be that they ''share a commitment to follow and apply the law, not to make law from the bench.'' Priscilla Owen's record, as I have described it today, and as we described it a few weeks ago in committee and last September, does not qualify her for a lifetime appointment to the Federal bench.

As I have demonstrated many times, I am ready to consent to the confirmation of consensus, mainstream judges, and I have on hundreds of occasions. But the President has resent the Senate a nominee who raises serious and significant concerns. I oppose this nomination.

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.

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

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

The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I come to the floor today to join my colleagues to discuss the nomination of Priscilla Owen to the Fifth Circuit Court.

Mr. President, someone watching this debate on C–SPAN today might wonder why the Senate is spending so much time on a judicial nomination. They may watch all our discussions about circuit courts and wonder, how does this affect me? Well, the truth is that it affects all of us. Our Federal courts impact the opportunities, rights, and lives of every citizen, and that is why the appointments to our courts must be made with great care.

Since the founding of our Nation, our courts have changed our history, helping us to live up to our ideals as a society by protecting our rights and defending our freedoms. Our courts affect us at the broadest level, from interpreting environmental standards of clean air and water, to guarding important safety and consumer protections.

Our courts have changed millions of lives at the individual level by knocking down barriers. The courts have helped end the segregation of our schools, worked to stop discrimination, and protected the voting rights of our citizens.

Mr. President, these decisions don't just happen. They are made by people. According to our Constitution, those people are appointed by the President and confirmed by the Senate. Today, we are at an important step in that constitutional process. I care about our judges because I was elected to ensure that the people of my State have opportunities and to protect their rights. That is why I work on issues such as health care, education, economic development, to give Washingtonians opportunities. But those opportunities would mean nothing if the basic rights and freedoms of our citizens were undermined by judicial decisions.

This debate is also about the legacy that we leave. As Senators, our legacy is not just in the bills we pass or the laws we change, it is in the people we approve to interpret those laws. Those judges serve lifetime appointments. The precedents they set or break will impact the opportunities of American citizens long after all of us are gone.

So the debate we are having today is part of a process that impacts the rights and freedoms of every American, and we have a responsibility under the Constitution to carry out our role in this critical process. Now, some in the majority may suggest this filibuster is somehow new or unique. It is neither. Every Senator is familiar with the filibuster process. It is one of the many tools available to every Senator. It has been used for decades. It has been used on judicial nominations, and even on Supreme Court nominees.

In fact, a filibuster has been used on judicial nominees by members of the current majority party. This is nothing

new. At the same time, a filibuster is not a step we take often or lightly, especially on judicial nominations, but I believe in this case it is clearly warranted.

As I look at what Americans expect from our judges, I see that this particular nominee falls far short. Not only that, but this nominee's confirmation poses such a risk that the Senate must send a signal we will not confirm judges who represent an attack on the basic rights and freedoms which the courts themselves must safeguard.

What are those qualities we look for in those who serve on the Federal bench? Qualities such as fairness, trust, experience, temperament, and the ability to represent all Americans, and safeguard their rights. It is our duty in the Senate to defend these principles. We are setting no new precedent with this debate. We are simply exercising our right as Senators to defend the principles we believe we must defend.

Why do we feel so strongly about the nomination of Priscilla Owen? Justice Owen's record clearly illustrates she fails the test of meeting the requirements that she be fair, that she engender trust, that she has the proper experience and temperament, or that she has the ability to represent all Americans, and safeguard their rights. Justice Owen has frequently ignored current Supreme Court precedent and State law in favor of imposing her own personal moral and religious beliefs from the bench.

Do not just take my word for it. Let's examine what others, including White House counsel Alberto Gonzales, have said about some of Justice Owen's decisions. Justice Owen is a vigorous dissenter, and her colleagues, including Justice Gonzales, have had a lot to say about her opinions. In one, her colleagues described her dissent as ''nothing more than inflammatory rhetoric.'' In another instance, Justice Gonzales wrote that Owen's dissenting opinion, if enacted, ''would be an unconscionable act of judicial activism.''

Those are pretty strong statements and they provide a window into what kind of judge Priscilla Owen would be on the Fifth Circuit.

It is the judgment of this Senator that Priscilla Owen cannot render impartial justice to the people who appear before her court, that she will not seek to safeguard individual rights, and that her temperament is incompatible with serving on the Fifth Circuit.

This is not an easy decision for me. Thus far, the Senate has confirmed, if my math is correct, 119 of President Bush's judicial nominees. By any standard, that is a notable record. We have tried hard to work with the administration to fill court vacancies in a fair and thoughtful manner. Unfortunately, by every measure, this nomination fails the test. If I agreed to put this judge on the Fifth Circuit Court, I would not be doing my job of protecting the citizens I am here to represent.

This is a critical debate. It is worth the time it takes because the judges we appoint will affect the lives of millions of Americans. We have a special responsibility. Let us carry out that responsibility well, because our legacy is not just in the laws we pass. It is also in the people we appoint who will interpret those laws over a lifetime. The precedents they will set or break will live on longer than any of us.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Madam President, I rise to speak on the pending business.

The PRESIDING OFFICER. The Senator may proceed.

Ms. CANTWELL. Madam President, I rise as a former member of the Senate Judiciary Committee to discuss something that is very important to all of us: How we should proceed on nominees for our Federal court system. And how we make sure we confirm nominees who will enforce the law and not nominees who might seek to bend the law or interpret it to their own desires. The American people deserve judges who hold the mainstream values of our country and our legal system. They deserve a Federal judiciary willing to interpret the laws as they are, rather than as the judges might want them to be.

The American people believe that the Senate needs to do our job. Not to be a rubberstamp on nominees, but to thoroughly evaluate judicial nominees and determine whether they will continue the tradition of the Federal judiciary by being balanced and impartial, and serving as a countercheck for the executive branch and for us, the legislative branch. That was the role the Founding Fathers gave to the Senate, and I believe that is a role the American people think we should play.

That is why I don't think it is surprising, that 74 percent of the public believes that the question of judicial views and judicial philosophy should be something we consider in the Senate confirmation process, and that we should get answers to questions about judicial philosophy from nominees.

More importantly, a majority of Americans also believe we should not vote to confirm a nominee who might otherwise be qualified if we don't think their views on these important issues reflect mainstream American viewpoint. I believe that the nominee we are debating, Justice Priscilla Owen, fails to meet this test.

As a former member of the Judiciary Committee, I attended a hearing on Priscilla Owen that lasted a full day. During that hearing, Owen's record showed a particular disregard for precedent and the plain meaning of the law.

Anyone who walks into a courtroom as a plaintiff or a defendant in this country should do so having the full confidence that there is impartiality on the part of the judge on the bench. They should have total confidence that the rule of law will be followed, and believe the issues will be judged on their merits rather than viewed through the prism of an individual judge's personal values or beliefs.

There is reason to be concerned about the record of Priscilla Owen. Time after time, even her own Republican colleagues, on a predominantly Republican Texas Supreme Court bench, criticized her for failing to follow precedent or interpreting statutes in ways that ignore the clear intent of the law. Just yesterday a key newspaper in her State, the Austin American Statesman, wrote:

> Owen is so conservative that she places herself out of the broad mainstream of jurisprudence. She seems all too willing to bend the law to fit her views.

I ask unanimous consent to have that editorial printed in the RECORD.

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

[From American-Stateman, Apr. 29, 2003]

OWEN DESERVES A NOTE BUT NOT A CONFIRMATION

The U.S. Senate is expected to resume debate soon over President Bush's nomination of Texas Supreme Court Justice Priscilla Owen to the 5th U.S. Circuit Court of Appeals, which hears federal appeals from Texas, Louisiana and Mississippi. We have argued before that she deserved a hearing, and she finally got one from the Senate Judiciary Committee. That said, however, she should not be confirmed.

There's no question that Owen is qualified for the 5th Circuit by her legal training and experience. She was a standout at the top of her Baylor University Law School class; she became a partner at a major Houston law firm, Andrews & Kurth, where she practiced commercial litigation for 17 years; and she was elected in 1994 to the Texas Supreme Court, and re-elected in 2000. She received the highest rating, ''well-qualified,'' from an American Bar Association committee that reviews judicial nominations.

But Owen is so conservative that she places herself out of the broad mainstream of jurisprudence. She seems all too willing to bend the law to fit her views, rather than the reverse.

One example was the state Supreme Court's interpretation of the then-new Parental Notification Act regarding abortions sought by minors. In early 2000, the nine justices, all Republicans, took up a series of ''Jane Doe'' cases to determine under what circumstances a girl could get a court order to avoid telling a parent that she intended to get an abortion.

Owen and Justice Nathan Hecht consistently argued for interpretations of the law that would make it virtually impossible for a girl to get such an order.

Finally, in one Jane Doe case, another justice complained that ''to construe the Parental Notification Act so narrowly as to eliminate bypasses, or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism.''

The justice who wrote that was Alberto Gonzales, who is now Bush's general counsel.

Owen also could usually be counted upon in any important case that pitted an individual or group of individuals against business interests to side with business.

Owen is being appointed to a lifetime position in the judicial branch of government, not to a post in which her duty is to carry out the will of the president. And given the narrowness of his 2000 election victory, Bush is not in a position to argue that the public has said it wants ultra-conservative judges.

If the Senate Democrats invoke their power to filibuster, Owen would be the second judge nominated by Bush to be blocked in such a way. The other is Miguel Estrada, who was nominated to the U.S. Circuit Court of Appeals for the District of Columbia, and who Democrats suspect is a radical, ideological conservative.

Democrats are not blindly opposing all of the president's judicial nominees. Many have been confirmed by the Senate, and others have won committee approval without controversy, including Edward Prado of San Antonio, a federal district judge who was nominated to the 5th Circuit.

But Owen should not be confirmed.

Ms. CANTWELL. What some of Owen's colleagues on the bench have said about her opinions I think is important. In a case dealing with a developer seeking to evade Austin's clean water laws, her dissent was called ''nothing more than inflammatory rhetoric.''

In another case, her statutory interpretation was called ''unworkable.'' In yet another case, the dissent she joined was called ''an unconscionable act of judicial activism.''

Some of our other colleagues have already mentioned that particular quote. One of the reasons we all find it somewhat unbelievable is the fact that it was made by her then-colleague on the Texas Supreme Court, now the White House General Counsel Alberto Gonzales, who is in charge of pushing her nomination.

But the criticism of Owen comes not only from her colleagues but from across the country. The San Antonio Express calls her nomination misguided. The Atlanta Journal called the Judiciary Committee's original objection to her nomination ''the right decision for the American people.'' The New York Times wrote last week that it was abundantly clear at her hearing that her ideology drives her decisions. The Kansas City Star even said there are better nominees and better ways for the executive branch to spend its time than re-fighting these battles.

There is another reason this nomination is so important. I believe this is critical to all the nominees we are considering for appointment to the Federal bench. That is, what is the judicial philosophy and commitment to upholding current law as it relates to a citizen's right to privacy. I asked Justice Owen at her hearing about her beliefs on the right to privacy. I asked her if she believed there was a constitutional right to privacy and where she found that right in the Constitution.

She declined at the time to answer that question without the relevant case information and precedents before her. When Senator FEINSTEIN followed up with a similar question, Owen again would not answer whether she believes a right to privacy does exist within the Constitution.

The question of whether a nominee believes that the right to privacy exists with regard to the ability to make decisions about one's own body is only the tip of the privacy iceberg. I believe that we are in an information age that poses new challenges in protecting the right to privacy. We are facing difficult issues including whether U.S. citizens have been treated as enemy combatants in a prison without access to counsel or trial by jury, whether businesses have access to some of your most personal information, whether the Government has established a process for eavesdropping or tracking U.S. citizens without probable cause, and whether the Government has the ability to develop new software that might track the use of your own computer and places where you might go on the Internet without your consent or knowledge. There are a variety of issues that are before us on an individual's right to privacy and how that right to privacy is going to be interpreted. A clear understanding of a nominee's willingness to follow precedent on protecting privacy is a very important criteria for me, and it should be a concern for all Members.

Of course, some of my concern and skepticism about Justice Owen's views on privacy results from the opinions she wrote in a series of cases interpreting the Texas law on parental notification. In 2000 the State of Texas passed a law requiring parental notification. But they also included a bypass system for extreme cases.

Eleven out of 12 times Owen analyzed whether a minor should be entitled to bypass the notice requirement, she voted either to deny the bypass or to create greater obstacles to the bypass.

Owen wrote in dissent that she would require a minor to demonstrate that she had considered religious issues surrounding the decision and that she had received specific counseling from someone other than a physician, her friend, or her family. Requirements, I believe, that go far beyond what the Texas law requires.

In interpreting the ''best interest'' arm of the statute, Owen held that a minor should be required to demonstrate that the abortion itself—not avoiding notification—was in the individual's best interests. In this particular case, I think she went far beyond what the statute required.

Where does that put us? Women in this country rely on the right to choose. It is an issue on which we have had 30 years of settled law and case precedent. In the Fifth Circuit, there are three States that continue to have unconstitutional laws on the books, and legislatures that are hostile to that right to choose. The Federal courts are the sole protector of women's right to privacy in these states. I do not believe that the rights of the women of the Fifth Circuit can be trusted to Justice Priscilla Owen.

Owen's rulings on privacy and not following precedent raise grave concerns. But this is not the only area where Justice Owen has been criticized. She also has been criticized in areas of consumer rights and environmental law.

The Los Angeles Times singles her out as a nominee who disdains workers' rights, civil liberties and abortion rights. And even a predominantly Republican court—one considered by legal observers and scholars to be one of the most conservative in this country—Justice Owen still seems to go further than a majority on that court. Time after time, Justice Owen has ruled in favor of business interests over working people, against women, against victims of crime and negligence, and against the environment. Over a career a judge can have many controversial cases. But, as the Austin Statesman points out, Justice Owen is widely known as a nominee that ''could usually be counted on to side in any important case that pitted an individual against business interests to side with business.''

I don't think that is the type of representation that we want to have on our courts. Her controversial rulings include an opinion that a distributor who failed to conduct a background check on a salesman was not liable for the rape of a woman by that salesman.

In a case challenging the ability of Texas cities to impose basic clean water control, she held the legislature had the power to exempt a single developer from city water pollution controls by allowing the developer to write their own water pollution plan. The majority called her dissent ''nothing more than inflammatory rhetoric.''

There are other cases dealing with Texas public information law which I think are important for all of us, for all of our citizens to have access to public information.

She wrote that a memo prepared by a city agency about an employee should not be subject to disclosure under the Texas Public Information Law because it discussed ''policy,'' an exemption that a majority of others on the board said would be ''the same as holding there is no disclosure requirement at all.''

In another similar case about public information laws, she held that a report prepared by the city of Houston and financed by taxpayers could not be disclosed under the Texas Public Information Act. Again, her colleagues criticized her decision not only as ''contradicting the spirit and language of the statute, but gutting it.''

It is possible to find cases or points to argue in the record of almost any judge, but because of the reaction of her own colleagues to her decisions. I find the constant criticism and rebukes that run through the opinions of

Owen's colleagues surprising. They consistently indicate that they think she has overstepped or misinterpreted the law to such a degree that they have used the words ''gutting'' or ''judicial activism'' or ''overreaching.''

As do many of my colleagues, I believe that we should move off this nomination and on to more important matters. We in the Northwest have an economy that has failed to recover. We in America are looking for an economic plan to move our country forward. There are many issues of national security that we must continue to debate.

I think that we could do better than renominating Priscilla Owen, and others who have already been rejected by a previous Senate Judiciary Committee. The fact that we are even debating this nominee is unprecedented. While I respect the President's right to renominate her, I find his decision to do so given the breadth of opposition and genuine questions that have been raised by her troubling.

The American public cares about us doing our job on nominees. It cares about us asking the right questions. It cares about us making sure that judicial nominees are following important laws that are already on the books. I believe the majority of Americans are becoming more and more concerned about their right to privacy and how it might be protected in the future.

With all the issues that we are facing on our judicial nominees, I say to my colleagues that it is time to move off this nominee—not to move forward on it and instead to the important business that needs to be done for this country and specifically for the Northwest.

I ask my colleagues to oppose the motion to proceed to a vote on this nomination and turn instead to the business that the people of America want us to address: our economic livelihood and how we can all work together to provide better opportunities for Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Thank you, Madam President.

I think it was a young kid who turned to ''Shoeless Joe'' Jackson when members of the Chicago White Sox were charged with corruption in baseball and said, ''Say it ain't so, Joe.''

Tell me that we are not back again in these hallowed halls visiting the issue of a nomination of a circuit court judge, trying to do what the Constitution has given us the authority to do since the birth of this magnificent country, the right to advise and consent but ultimately to choose, to advise and consent and cast your vote up or down for a judicial nomination.

I am here to talk about the nomination of Texas Supreme Court Justice Priscilla Owen to sit on the U.S. Court of Appeals for the Fifth Circuit in support of that nomination.

The American public is going to hear these facts again and again. They are going to hear about Judge Owen, who has been unanimously rated well qualified by the American Bar Association, which my colleagues on the other side have called the gold standard in the past; the way you want to measure; you don't want to measure them by political affiliation, you don't want to measure them by what an interest group thinks.

The American Bar Association, certainly not a bastion of conservative American values, unanimously has rated Justice Owen as well qualified. She comes before us with a history of serving presently as a justice on the Texas Supreme Court. She has been partner at a law firm and has handled a broad range of legal matters. She has been admitted to practice at various State and Federal trial courts.

She is a leader in her community. I understand she teaches Sunday school. She serves as the head of an altar guild. She is a great American. She is well qualified. She has an opportunity now to serve on the Federal bench. And all that is being sought is for this Senate to do its constitutional duty.

I have made some of these remarks in regard to the Estrada nomination, and we may well be getting back to that. I fear we are getting back to another filibuster, with my colleagues on the other side not allowing the Senate to do its business.

We have a lot of business to do in America. These are difficult times and challenging times. We have just seen the miracle of the American military do great things in Iraq. But there is work to be done, and our citizens at home are worried about jobs and worried about health care, worried about the future. We need to get to those issues. We can get to those issues if we simply do our business and move on.

If you do not support Priscilla Owen, if you do not think she has the qualifications, if you do not agree with her principles, vote against her, but give us a chance to have a vote. That is my concern.

What we are doing here, and what we saw first happen with the Estrada nomination—and I fear we are stepping into the same swampland—is we are undermining the Constitution of this great country. The Constitution is one of those certifiable miracles of the modern age. It has flourished and survived for 214 years. And I think providence has inspired it. When you think how delicate and finely balanced the document is, it has survived a Civil War, and several wise and unwise attempts to amend it, and many constitutional crises. That is our strength. I think our adversaries do not understand the strength of this country lies in this remarkable document and the care of our leaders to live within its boundaries.

That is why an attempt to tamper with this delicate balance of power must be met with suspicion, and repelled with conviction. I said that in regard to Miguel Estrada. I say that in regard to Priscilla Owen: An attempt to tamper with the delicate balance of the Constitution must be met with suspicion and repelled with conviction.

We have the opportunity to have endless debate in this body, but, in the end, in the history of this country, we have had circuit court nominees getting a chance to be voted on. The Estrada nomination set a terrible new trend, one I hope we overcome. Never before have we had a partisan filibuster of a circuit court nominee, and now it appears we have not one but two. Say it ain't so. Say it ain't so.

I told a story in regard to the Estrada nomination. I want to repeat that story. It is a true story. A friend of mine who worked here for many years gave it to me. He told me, many years ago, when the Senate was the Supreme Court's upstairs neighbor in this building, a significant event took place which provides us with a further warning. A young architect of the Capitol wanted to improve the sight lines in the Supreme Court Chamber on the first floor.

Calculating that one of the supporting pillars was unnecessary, he brought in a crew to remove it from that Supreme Court Chamber. Halfway through the project, the ceiling fell in on the Supreme Court Chamber, which was also the floor of the Senate above, destroying both Chambers for a while.

The lesson is when you tamper with one branch of Government, it can affect the others in ways you cannot anticipate. That is what is really going on here.

The Constitution of the United States gives this Senate the important authority to advise and consent, and we do it by a majority vote. Treaties, on the other hand, require a supermajority. But when you have a filibuster, as we have seen with Estrada, and we now, I fear, will see with Priscilla Owen—and I hope not and again say: Say it ain't so—what happens is we are changing the constitutional standard.

You have to think about some of the consequences. Some of the obvious ones. There may be some we do not see today. One of them is if this is now the standard, that you need 60 votes, we are not going to get qualified and talented people to serve on our highest courts in the land. They are not going to make it through. I dare say, Justice Scalia would probably not make it through. Ruth Bader Ginsburg, a liberal Supreme Court Justice, who graduated from the same high school I graduated from in Brooklyn, New York, James Madison High School, may not have made it through. Anybody who has been out there articulating a particular position, a perspective, would not make it through.

Here is the fallacy of the argument of my distinguished colleagues on the other side. They want fealty to their judicial philosophy. They want the candidate to say: Here is a principle in

which I believe, and you have to tell me you believe in that. But that is not what our system is supposed to be. What judges are supposed to do is not to say this is their own vision and their own view and their own philosophy, and regardless of what the constitution says, that is what they are going to apply. What the Constitution requires, what rules of court require, what we as Americans should require is that judges simply uphold the Constitution and to say they will follow established case law, that they will follow established precedence, by the way, even if they do not agree with it.

That is what we require of judges. It is not about taking your own judicial philosophy and kind of driving it forward, come heck or high water. It is about a willingness and a commitment to uphold judicial precedent. That is what Justice Owen understands. That is what she represents. That is what Miguel Estrada represents.

We have business to pursue, important business. But of all the things we do, if we take this Constitution and we disregard it, if we, in the halls of this Senate Chamber, in the year 2003 simply say we are going to cast the Constitution aside, we are going to set a new standard—not a majority but a supermajority, 60 votes—that we on one side—and this time it is my distinguished colleagues across the aisle; they are going to turn down folks because they are not pledging abeyance, not giving fealty to their philosophy; and down the road, if there is a Democrat President who puts forth candidates, if the folks on our side say, hey, the rules have been changed, the Constitution, we are no longer listening to it, it is now 60 votes, and we are not going to approve anybody who is a Democrat who has some philosophies different than our own—our country is going to be in deep trouble.

I hope I get to serve in this institution a long time. The people of the State of Minnesota have given me an opportunity to serve. They have given me at least 6 years. But I will tell you, I will try to conduct myself in a way that when a candidate comes forward, I apply the same standard, whether that candidate is being put forth by a Republican President or a Democratic President. That standard is pretty simple: Are they willing to commit themselves to follow established case law. Do they have the right kind of judicial temperament. And—again, we have the American Bar Association giving the gold standard—then we should not be having these debates right now. Again, let us be very wary of efforts to change the constitutional standards.

Let us discuss the merits of these nominees, their qualifications, judicial temperament, but then let us follow the constitutional process we have followed for two centuries and vote yes or no on our advice and consent to the President's nominee to the court of appeals.

I hope, Madam President, we give Justice Owen that right. I am going to be voting yea. My colleagues on the other side may disagree and vote nay, but let's make sure we get a vote, that we do not change the constitutional standard.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise to discuss the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals. I begin by saying, as have others, that the Senate has a constitutional obligation to advice and consent on a Federal judicial nominee. This is a responsibility I take seriously, as do my Senate colleagues from both sides of the aisle. Unlike other nominations that come before the Senate such as ambassadorships or executive nominees, Federal judicial nominations are lifetime appointments. These are not decisions that will affect our courts for 3 years or 4 years but, rather, 30 years or 40 years, making it even more important that the Senate not act as a rubberstamp.

Having said that, to review the record of where we are under this President and his judicial nominations, to date the Senate has confirmed 119 Federal justices and rejected two—not exactly a partisan example of how we are moving forward on judgeships: 119 approved; two rejected. Ironically, one of those already rejected is the person now in front of the Senate again.

As a part of the important responsibility we have, I have examined Justice Owen's record. I am concerned that this is a nominee who has repeatedly disregarded the language of the law and has instead substituted her own political and personal views. This is a nominee who has been criticized by her own Republican colleagues on the bench for being a judicial activist. She is one who has consistently overreached in her decisions to justify her extreme personal positions.

I begin by talking briefly about the Texas Supreme Court. In Texas, Supreme Court judges are elected for 6-year terms. They run as party candidates, as they do in many States, as Republicans or Democrats. This is a conservative court and currently an all-Republican court. This is important because when one reads Texas Supreme Court opinions, Justice Owen is outside of the mainstream even among those of her own party who have been recognized as serving on a conservative court.

In fact, a review of the court's opinions shows that since Justice Owen joined the court in January of 1995 through June of 2002, just prior to her July 2002 judicial committee hearing, she was the second most frequent dissenter among the justices then serving on the court. The content of these dissents also shows that she is often out of touch with the law and significantly more extreme than her Republican colleagues on the court.

For example, in the 12 cases before her involving minors seeking judicial bypass to obtain an abortion under Texas parental notification laws, Owen joined the majority in granting a bypass only once. That was a case which was decided after her nomination to the Fifth Circuit.

In re Jane Doe 1, where a bypass was granted, the Republican majority opinion sharply rebuked Owen and the other dissenter's attempts to substitute their own personal views for the law instead of interpreting the law itself. They stated:

> We recognize that judges' personal views may inspire inflammatory and irresponsible rhetoric. Nonetheless, the issue's highly charged nature does not excuse judges who impose their own personal convictions into what must be a strictly legal inquiry.

Those are harsh words.

> As judges, we cannot ignore the statute or the record before us. Whatever our personal feelings may be, we must respect the rule of law.

How many times have we heard colleagues speak about respecting the rule of law? Here was someone rebuked by her own Republican colleagues for not respecting the rule of law.

In a concurring opinion on the same case, then Justice Alberto Gonzales, the Bush administration's current White House counsel, described the dissenters, including Justice Owen, as attempting to engage in ''an unconscionable act of judicial activism.'' These are the words of the current White House counsel when he was serving with her, that she attempted to engage in ''an unconscionable act of judicial activism.'' Those are very powerful words.

This criticism is very serious. It does not come from Senators. It comes from Justice Owen's own Republican colleagues. That is significant.

In another parental notification case, In re Jane Doe 3, the minor testified that her father was an alcoholic who would take out his anger toward his children by beating the mother. Justice Owen once again substituted her own personal views for the law and would have required a higher evidentiary standard for showing the possibility of abuse under the law. Republican Justice Enoch wrote, specifically to rebuke Justice Owen and her fellow dissenters for misconstruing the definition of the sort of abuse that may occur under the bypass law—a Republican colleague on the bench—''Abuse is abuse. It is neither to be trifled with nor its severity to be second-guessed.''

Justice Owen's judicial activism extends way beyond these cases. Justice Owen has been out of step with Republican justices of the Texas Supreme Court on everything from environmental cases to consumer protection to workplace discrimination cases. In Read v. Scott Fetzer, Kristi Read was raped in her home by a door-to-door salesman hired by the Kirby vacuum distributor. If the distributor had conducted a background check or even checked the salesman's employment references, they would have learned

that women at his previous places of employment had complained about his sexually inappropriate behavior and that he had pled guilty to a charge of sexual indecency with a child and was fired as a result of that incident.

The Republican majority in this case ruled that the victim was entitled to damages from the distributor that hired the salesman. Justice Owen, however, joined a dissenting opinion saying the victim was not entitled to any damages from the distributor, arguing that since the salesman was considered an independent contractor, the distributor had no duty to perform any background checks. This is yet another example where Priscilla Owen is out of step with even her colleagues on the Texas Supreme Court, much less mainstream America.

President Bush has said he wants judges who are not judicial activists and who will interpret the law, not make the law. Justice Owen fails this test by any measure. When one examines Justice Owen's record, her pattern of judicial activism becomes clear.

During her tenure on this conservative Republican court—and I say that only to say that these were Republican colleagues on the court who were making the statements about the inappropriate judicial activism—Justice Owen has dissented in 66 cases and has been criticized by her colleagues, including White House Counsel Alberto Gonzales, on the bench for her judicial overreaching.

This is a nominee who has been divisive not only on the Texas Supreme Court but in the U.S. Senate. I have received over 2,500 letters and e-mails from my constituents in Michigan opposing Priscilla Owen's nomination. I have received letters from over 60 different organizations, including civil rights groups, advocacy groups, women's groups, environmental groups, and other citizens opposing this nomination.

In addition, Justice Owen's nomination was rejected last year by the Senate Judiciary Committee, and her reconsideration is unprecedented. Never before has a nominee been voted on and rejected by the committee or the Senate and subsequently renominated for the same seat.

Mr. President, I urge my colleagues to say yes to a balanced Federal judiciary that will interpret and not make the law, and to say no to the Owen nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I want to share some comments about Priscilla Owen. I could not disagree with my distinguished colleague more. Priscilla Owen, I believe, is one of the great justices in America. She has served on the Texas Supreme Court with distinction. She has received support from all the Texas Supreme Court judges. They like and admire her. She has an extraordinary record—a record of public service and private litigation.

Her background and study capabilities have been reviewed by the American Bar Association—the gold standard, the Democrats tell us, for whether or not a person should be confirmed. They have—15 lawyers—reviewed her record. I think it is normally 15. They are lawyers in the community and others who review the record. They interviewed litigants who come before Judge Owen. They interviewed her law partners in the firm where she worked as a private attorney. They interviewed opposing lawyers in cases she was on, judges in the community who know her, leaders of the bar association and presidents of the bar association. They evaluate whether or not a judge is a fair and objective judge. After a complete evaluation of this excellent jurist's career, they have unanimously voted that she is ''well qualified,'' which is the highest rating they can give.

So to come in here and say she is an ''extremist'' who will not follow the law and abuses the law is simply not correct. To just say that she dissents on cases is not fair. Great judges who love the law and care about the law tend to dissent more. It is easy just to sign on to majority opinions. Judges who really care and are really concerned tend to review opinions and offer either concurring opinions or objections. Oftentimes, that is a great compliment—that the jurist is concerned about the law and wants to do it right.

Prior to her election in 1994 to the Supreme Court of Texas, she was with the Houston law firm of Andrews and Kurth, where she practiced commercial litigation for 17 years. In private practice, she handled a broad range of civil matters at both the trial and appellate levels. She was admitted to practice before various State and Federal courts, as well as U.S. courts of appeals—Federal courts—for the Fourth, Fifth, Eighth, and Eleventh Circuits. She is nominated to be a member of what I call the old Fifth Circuit. Alabama and Georgia used to be in the Fifth and they split.

Priscilla Owen is a member of the American Law Institute, American Judicature Society, American Bar Association, and a Fellow of the American and Houston Bar Foundations. She was elected to the Supreme Court of Texas in 2000, garnering 84 percent of the vote, having been endorsed by every major newspaper in Texas. A pretty good record. Is this the record of some sort of extremist? No, it is not.

She served as a liaison to the Supreme Court of Texas's Court-Annexed Mediation Task Force, and that is a good thing. We need to have more mediation and conciliation and less litigation, frankly. I am glad to see she is concerned with that. She has been on statewide committees on providing legal services to the poor and pro bono legal services. She was part of a committee that successfully encouraged the Texas Legislature to enact legislation that has resulted in millions of dollars a year in additional funds for providers of legal services to the poor.

Priscilla Owen also served as a member of the board of the A.A. White Dispute Resolution Institute. Additionally, Judge Owen was instrumental in organizing a group known as Family Law 2000—an interesting group. It seeks to find ways to educate parents about the effects a dissolution of a marriage can have on children, and to lessen the adversarial nature of legal proceedings while a marriage is being dissolved. This is a lady who cares about children, who cares about families, and wants to do the right thing for them.

Among her community activities, Justice Owen served on the Board of Texas Hearing and Service Dogs for the Disabled. She is a member of the St. Barnabas Episcopal Mission in Austin, TX, where she teaches Sunday school and serves as head of the altar guild. I guess some might think that maybe she is too religious. We are hearing complaints about that today. I, frankly, think that being a member of the Episcopal mission, serving on the altar guild, and being a Sunday school teacher is an honorable thing to be recognized and is a positive contribution to the community. I suggest it demonstrates certain values.

She has a tremendous academic record. She earned her bachelor's degree cum laude from Baylor University, where she also graduated from law school, in 1977, cum laude with honors. She was a member of the Baylor Law Review, for graduating seniors or juniors to participating in the school's law review, is the highest honor a good law student can receive. It goes beyond grades, but grades are an important part of it. She was honored as the Baylor Young Lawyer of the Year and received the Baylor University Outstanding Young Alumna award.

If anybody has any doubts about her abilities—and you cannot always tell from grades—she made the highest score in the State of Texas on the bar exam. I am telling you, they have people from Harvard, Yale, the University of Texas, and all of those schools taking this exam. She made the highest score on the Texas bar exam. I suggest to you there were some talented people taking that exam. She made the highest possible score. She has the intellectual capabilities that everybody who knows her says she has.

So what does this boil down to? It boils down to a complaint about her interpretation of a poorly written—because I was at the committee hearing—Texas statute dealing with parental notification. The Supreme Court of the United States and 80 percent of the American people believe that if a young minor, a child, is contemplating an abortion, she ought not to be able to go to the abortion doctor and have that done without at least notifying her parents.

Parents love children. I know there are some parents who are abusive and there are difficult circumstances, but most parents are not that way. Most parents love their children. Most parents would be helpful to a child who has difficulties and most parents would be able to discuss that with them in a rational way.

The Texas law was attempting to provide that. It was not a bad law, but it was not written with sufficient clarity that a group of judges could get together and always agree on exactly what it meant. Anybody here knows if someone practices law that those circumstances happen. So this is basically what the complaint about her is, over this one subject.

A parental notification law says a parent of a young minor girl seeking an abortion should be notified if the teenager is going to have the abortion. Notification does not mean a parent has to agree to the abortion, or to even say it is okay. That would be a consent requirement. Parental notification laws do not require consent. Notification is simply telling a parent a child is about to undergo a major medical procedure.

School teachers will not allow a child to take an aspirin without calling the parent, and yet the pro-abortionists think it is perfectly all right for a 13, 14 or 15-year-old, who has gotten themselves in trouble, gotten themselves pregnant, that they should not even tell their parents and go off with some older man perhaps and conduct this procedure. That is the sad reality of it.

So even if a parent were to object to this abortion, the teenager could still go forward with it. It would not stand in the way of them going to an abortion clinic.

Eighty percent of Americans believe that it is appropriate that parents should get notification. Let me explain how these laws work in Texas. If a teenage girl becomes pregnant and does not want to follow the notification law to give her parents an FYI, she is allowed to petition the court for a waiver. In other words, she can go to the court and say, judge, I do not want to have to tell my parents I am pregnant and I am contemplating an abortion. Tell me I do not have to do so. Give me authority not to do so.

She might want the waiver for several reasons. She might be afraid to tell her parents because she is afraid they would become angry or because there might be violence.

A teenage girl is given an opportunity to explain to a trial judge what her problem with notification is and to demonstrate to the judge she is mature enough to make a decision on her own. That is what the Texas law provides. A trial court hears that and he observes the teenager. The trial judge sees the teenager personally and is able to enter into a discussion and colloquy with her. After discussing the steps she has taken to become informed, such as talking to a counselor or considering alternatives to an abortion, the judge makes a decision on whether or not the waiver should be granted and whether the girl should be allowed to have an abortion without the knowledge of a parent.

Because some of my colleagues seem to be so determined about their support of abortion on demand, I assume they consider this as a right of privacy or something, they insist that no one, for any reason, can even be advised that a minor child would have an abortion. They are not happy with these laws and object to these laws. The National Abortion Rights League and that type of group have opposed these laws, but these laws have been supported by the American people consistently and they have passed.

But I guess they would want the judge to grant a waiver in every single case. Well, I do not think anyone would say the court should grant a waiver in every case. Every case is different. So each case should be evaluated and be ruled on on the merits. It is the court's duty to examine the facts in each waiver case to determine if the waiver is suitable. That is what a judge does.

If the teenager goes before the trial court and the trial court grants her waiver and says you do not have to notify your parents, she can get an abortion without notifying either one of her parents. If the trial court denies that waiver after a hearing and says she should tell the parents, the teenager can either notify one of the parents or can appeal to the court of civil appeals.

At the court of civil appeals level, a minimum of at least three judges review the record of the trial judge to determine whether or not the judge made an error and whether or not the teenager should be able to have an abortion without notifying either parent. The judges look again at the reason behind the waiver request, the maturity of the teenager and her decision-making process. After a complete review of the trial judge's decision, the appeals court either grants the waiver and allows the abortion to go forward without notification or affirms the trial court's denial.

If the court of appeals denies the waiver, the girl either notifies one of her parents or can appeal to the state supreme court, such as the Texas Supreme Court where Justice Owen sits.

So by the time this case reaches the supreme court where Justice Owen sits, at least four judges will have either seen the teenager or reviewed the record carefully and ruled a notification should be made to at least one parent before an abortion takes place. So that is how the system works. By the time the case reaches the Texas Supreme Court, two other lower courts will have already said the girl should provide the parents the courtesy of telling them their daughter is about to undergo such a major operation.

So this is what the issue is all about. This is what the opponents are unhappy about, and they talk about it aggressively.

Justice Owen has never made an initial decision to deny a waiver. Her position on the Texas Supreme Court does not permit that. Her position only allows her to review denials of waivers already made by lower courts. In upholding the lower court's denial of a waiver, Justice Owen is only agreeing with the trial judge, the judge who had the opportunity to visualize and see the teenager and to observe her, and also the judges on the court of appeals, the intermediate level court. Justice Owen simply did what appellate judges do. Appellate judges allow the trial court to be the trier of fact and in most instances only review their decisions on abuse of discretion grounds.

So to break it down, Justice Owen merely ruled in a few parental notification cases that a trial judge and at least three judges on the court of civil appeals did not abuse their discretion by having a teenage girl notify her parents she intended to have an abortion. That is, I submit, far from being some sort of judicial activist, rogue judge who does not adhere to the law.

An FYI to a parent before a major surgery, that is what this filibuster is all about. Some of my colleagues are really strongly committed to an almost absolutist position on abortion. They oppose limiting partial-birth abortion. They oppose any limitation whatever.

Now we are at the point of seeing this sterling nominee, so well qualified, subjected to a filibuster because she did her best to evaluate and interpret the Texas law. In each case, her decision was in conjunction with and to affirm the decision of a trial judge and a three-judge civil appeals panel below her.

When my colleagues talk about being out of the mainstream, I suggest they should look at themselves. This accusation against Justice Owen is the only thing that is out of the mainstream. We are not talking about requiring parental consent for abortions. We are only talking about notice. If a parent objects, a doctor is still required to perform the abortion and allowed to perform the abortion if the child wants. In Justice Owen's State of Texas, the law does not allow a teenager to get an aspirin in school without parental consent. If a teenager wants to get a tattoo, the law requires parental consent. If a teenage girl wants to get her ear pierced, parental consent is required. So if a girl wants to take an aspirin in school, get a tattoo or have her ear pierced, her parents not only have to have notification, they have to consent. They have to sign off on it. That is not the case with abortion. In my view, giving a parent notice about an abortion for a teenage girl is nowhere outside the mainstream of American policy or American law.

Justice Owen is one of the finest nominees this Senate has ever had the opportunity to consider. For her nomination to be filibustered is an atrocity

of the confirmation process and to the tradition of this Senate. I strongly support her confirmation. I believe if logic and reason prevail, we will confirm her instead of filibustering this nomination.

This nominee is sterling. She has the highest possible rating of her peers. She has performed as one of Texas's finest litigators and has won election to the Supreme Court of Texas with 80 percent of the vote, having the support of every major newspaper in her State. I find it difficult to see how we now are not even allowing her to have a vote in this body.

They say she was rejected once. I was on the committee. That was when the Democrats were in the majority. They voted a straight party line in committee after I thought she testified brilliantly in examination. That never happened in the 8 years President Clinton was President.

Never did we vote down a nominee in committee on a party-line vote. They say, well, only two of them have been blocked here. In 8 years, there were 377 confirmations of President Clinton's judges. One was voted down. None were voted down in committee. She was voted down on a party-line vote in the Senate Judiciary Committee, but she had not been rejected by the full committee.

If they think she is going to be rejected again, why don't they let us have a vote? Let's vote on it. I suggest this nominee is going to win a majority of the votes in this Senate.

The Constitution makes clear that the Senate has an advice and consent power. It notes, with regard to treaties, that the Senate shall advise and consent provided two-thirds agree. Then with regard to the confirmation of all other offices, it just says the Senate shall advise and consent.

Since the founding of this country, we have understood that to mean the Senate will have a majority vote on the confirmation. There is no other logical thing it could mean. So now we have ratcheted up the game.

I recall distinctly a little over 2 years ago when my Democrat colleagues went to a private retreat. A number of law professors, Lawrence Tribe, Cass Sunstein, and Marsha Greenberg went there, professors all who advised them to change the ground rules on the judicial nominations. It is written in the New York Times. Since then, there has been a systematic change in the ground rules of judicial confirmations. When they had the majority, they attempted to kill nominees in committee on a party-line vote, which had never been done before. And now, amazingly, they are going to the filibuster.

The American people need to understand something important. In the history of this country, there has never been a filibuster of a circuit or district judge. Never. It has always been an up-or-down vote.

I remember when some did not like some of President Clinton's judges and they said we should filibuster; Chairman HATCH said, No, we do not filibuster judges.

When holds went on too long—the way you defeat a hold is to file a motion for cloture—and a cloture vote was moved for by Republican leader TRENT LOTT to bring up Democratic Bill Clinton's judges. I voted for cloture on each one of them. Sometimes I voted against the judge, but I voted for cloture to bring the vote up because I did not want to participate in a filibuster.

We have a big deal here. Why someone would seek out this magnificent nominee, this person who is not only qualified for the Fifth Circuit Court of Appeals but qualified to sit on the U.S. Supreme Court, and filibuster their nomination, is beyond me. It is just beyond me.

I conclude by saying I spent over 15 years of my professional career trying cases in Federal court as a U.S. attorney and assistant U.S. attorney. I appeared before courts of appeal. I wrote briefs to courts of appeal. I appeared before Federal judges. I think I have looked at her record carefully. I have heard the explanations she has made in committee. I think they are imminently sound and reasonable. I think President Bush could not have found a finer nominee. I have every confidence that she would be a superior judge on the court of appeals, and I am absolutely confident, were she given an up-or-down vote, she would be confirmed.

We need to take seriously our responsibilities here. Let's have an up-or-down vote. Let's confirm this fine nominee. She will serve us and America well.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, for the past 2 days, we have been working on an agreement looking for an orderly, systematic process by which we could consider some of the pending judicial nominations. It had been our hope we could reach an agreement to consider these nominations this week and early next week. Unfortunately, after a lot of discussions—and we worked on both sides of the aisle in good faith—but after a lot of discussions, it does not appear we will be able to reach the consent agreement.

On our side, we have been prepared to consider and vote on all of the circuit court nominations that are on the calendar now. I believe my Democratic colleagues, at this point, are prepared to vote on just one of these judges. Therefore, unless we can reach a consent agreement tomorrow, following the cloture vote in the morning on the pending Owen nomination, it will be my intention to proceed to the Prado nomination. And following disposition of the Prado nomination, it would be my expectation to proceed to the Cook nomination. I hope both of these nominations, which have received, by the way, bipartisan support, will be considered and confirmed this week.

I think at this point I will go ahead and put forth the unanimous consent request. And then we will have some comment and discussion about where we are.

Mr. President, I ask unanimous consent that on Thursday, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session and the consideration of calendar No. 105, the nomination of Edward Prado, of Texas, for the Fifth Circuit; further, that there be 3 hours for debate, equally divided between the chairman and ranking member or their designees; I further ask consent that following the use or yielding back of time, the Senate vote, without intervening action, on the confirmation of calendar No. 105; I further ask consent that following the vote, the President be immediately notified of the Senate's action.

I further ask unanimous consent that on Monday, May 5, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of calendar No. 34, the nomination of Deborah Cook, of Ohio, to be a U.S. circuit judge for the Sixth Circuit; provided further, that there be 4 hours for debate, equally divided between the chairman and ranking member or their designees; further, I ask consent that following the use or yielding back of that time, the Senate proceed to a vote on the confirmation of the nomination, again, with no intervening action or debate.

Finally, I ask unanimous consent that when the Judiciary Committee reports the Roberts nomination, it be in order for the majority leader to proceed to its consideration, and it be considered under a 2-hour time limitation, and that following that time, the Senate proceed to a vote on the confirmation, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, reserving the right to object, I have, along with Senator DASCHLE, worked very hard on this request the majority leader has read into the RECORD. Senator MCCONNELL and the majority leader have also worked very hard. Over the years I have been involved in other matters where we have had very complicated, substantive issues we have been able to work out. I am very disappointed we

cannot work this out because this really does not compare to some of the difficult issues we have been able to resolve previously. But we have not been able to resolve this.

I am really disappointed for a number of reasons. It involves individual Senators who have also devoted a lot of time on this issue, both Democrats and Republicans. But if there were ever an effort in good faith by the two sides, this has been it.

I hope my objection, which I will enter in just a few moments, will not be the end of this. I hope we can, with a night's rest, work something out. For the last two nights we have come within a whisker of an agreement on these three judges. But in the Senate sometimes a whisker stops us, and it has done that.

So I reluctantly object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I say to my friend from Nevada, I share his frustration. These are three nominations that are going to be approved, one of them probably unanimously. The assistant Democratic leader and I have wrestled around with this now for the last 2 days, and we find ourselves still not in a position to lock in a vote on Cook and Roberts.

So tomorrow is another day, and we will try again. But it is sort of an indication of where the Senate stands these days, that even in a situation where you have three judges we know are going to be confirmed, we have not been able to reach an agreement after 2 days' work to conclude the inevitable, which is confirmation of these three judges.

Hopefully tomorrow will bring better results.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I am very hopeful we will be able to make progress. Again, the three Senators who are speaking now, with Senator DASCHLE, have been working very hard with our colleagues to try to reach an agreement. But we have been unsuccessful. We will keep moving ahead, and I am optimistic these three nominees will be confirmed shortly.

I do want to add, really for the benefit of my colleagues, that progress is being made. As my colleagues know, one of the nominees, Roberts, went back to committee, and the understanding was that with him going back to committee, we would have votes, up-or-down votes, on both Roberts and Cook. That is the background. We have been working on that for actually several weeks, and that process is underway. So we look forward to having that become a reality.

That first step, with Roberts going back to committee, was taken. And now the expectation is, and the general agreement is, we are moving in the direction that we will, at some point in time—we have not been able to lock in the time—have votes on both Roberts and Cook.

Mr. REID. Mr. President, if the majority leader will yield, I know the hour is late. I don't want to talk longer than necessary. I just want the record to be spread with the fact that we have a couple of Senators who have a different understanding as to what the majority leader and the minority leader and Senator MCCONNELL and I thought had been agreed to. Senator MCCONNELL was not on the floor; just the three of us thought it had been agreed to. There is an honest dispute as to a fact or two. This is just me speaking personally, not for my colleagues. I really think we should be able to work our way through this. It should not be as difficult as it is.

The Democratic leader and I acknowledge that the majority leader intervened right before the recess to get Roberts back for a hearing. We know that wasn't easy for him to do. We acknowledge that. We appreciate that. And we hope we can resolve this procedural quagmire. There certainly has been no bad faith by the leadership on the Republican side or the Democratic side.

Mr. FRIST. Mr. President, let me say, once again, that we will have a cloture vote on Owen tomorrow. And if cloture fails, we will go to Prado and, once Prado is completed, go to the Cook nomination. That will be the general plan.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

NOMINATION OF PRISCILLA OWEN

Mr. KYL. Mr. President, I rise in morning business for a moment to speak about the nomination of Priscilla Owen of Texas to the Federal bench.

This is really an extraordinary nomination. It is very troubling to me that it appears most of our colleagues on the other side of the aisle are willing to keep Justice Owen from getting a vote. In the past, even with very controversial votes on Justices to the Supreme Court—and I have, for example, Justice Clarence Thomas in mind, and there was significant opposition to the confirming of Justice Thomas, primarily by Members of the other side of the aisle—the leaders of the Democratic Party understood that tradition called for a vote—probably knowing they would lose the vote. They, nevertheless, refused to support any kind of filibuster and they voted against Justice Thomas's confirmation. But he was confirmed 52–48.

I always respected the things they said at or about the time of that confirmation—that they would not ever support a filibuster, regardless of their particular feelings about the nominee. I thought that took courage, and I respected it, coming, as it did, from some of the key leaders of the Democratic side of the Senate. It confirmed to me that the tradition of the Senate relationship of comity we have with the President in dealing with his nominees, and the importance of our responsibilities with respect to confirming Justices of the Supreme Court and members of the Federal bench generally, is such that partisanship and tactical advantage could be laid to the side for the good of the country and these nominations could be voted on.

Now, there have been votes—sometimes—where the nominee lost. Most of the time, when votes are allowed to happen, the nominees prevail. But the new situation we have in this body, starting out with the President's nomination of Miguel Estrada—and now sadly, it seems, with the nomination of Priscilla Owen—we are going to require that unless 60 Members of the Senate agree to allow a vote, we don't get a vote. A filibuster, in other words, becomes the benchmark, the standard for confirmation of judges.

It has never been that way. There has only been one successful filibuster, and that was a very strange situation. There has never been a partisan filibuster in this body until now. It is especially remarkable because, in the case of Justice Owen, for example, one cannot claim, as has been claimed with regard to Miguel Estrada, that her record is unknown or unclear, or that there is more information that needs to be gleaned. She appeared not once but twice before the Judiciary Committee. The reason I wanted to take the floor briefly today is to say to my friends I don't think I have ever seen a nominee who handled herself or himself better than Justice Owen did at those hearings. She was forthcoming, brilliant in her exposition of the law, measured, and she clearly has the temperament to be a good judge.

She has been serving as a justice of the State Supreme Court of Texas. She has the support of another former justice of that court, Judge Gonzales, who obviously is now acting as the President's counsel, and the support of Democrats and Republicans alike.

The American Bar Association, as with Miguel Estrada, has recommended her for confirmation. She stayed at the hearing for as long as Members wanted her to stay. She answered all of the questions. So the same argument cannot be made that has been made about Miguel Estrada.

In fact, one of my colleagues on the other side of the aisle made it clear, in discussing the nomination of Miguel Estrada, that the only thing standing in the way of a vote—they would not necessarily commit to voting for him but at least allowing a vote on him—was producing this information which they say they want from the Justice

Department about his prior employment. But for that, that vote could occur, seeming to suggest that the same thing would be the case with any other nominee—that as long as the information was forthcoming and they knew about the individual, that therefore they could vote.

In fact, the last line, after this colleague talked to others in the Democratic Party, states: Look, if we can just get this information, do you think we can vote? And the answer was: Affirmative, to a person, because, frankly, then we would know for whom we were voting.

There was no commitment to vote for Miguel Estrada but at least they would allow the vote to go forward because they would then know ''for whom we are voting.''

Well, we do know who we are voting for in the case of Justice Owen. Her record is out there for everyone to see. There has never been a suggestion by anybody that she needs to produce more in the way of a record. It is there to be evaluated.

I suspect the reason Members on the other side of the aisle will not allow her to come to a vote is because they fear she will be more conservative as a justice than they would like to see. Let's be honest about it.

I voted for numerous circuit court nominees of President Clinton knowing they were far more liberal than I am. On my own circuit, the Ninth Circuit Court of Appeals, I voted for several who I knew were more liberal, and their voting record subsequently has borne that. They were confirmed. I voted for them. I felt President Clinton was the President; he was elected by all of the people. He had the right to nominate his own people, and if they were otherwise qualified, then I ought to vote for them. That has always been the tradition, that has always been the standard, by which we have judged these candidates for circuit court. So it is very troubling now to have a new standard imposed on us.

I come this morning to note that we are soon going to go back to the nomination of Priscilla Owen. I implore my colleagues to think about what they are doing by creating the 60-vote standard. There is no way that can be the standard only for Republican Presidents and not Democratic Presidents. It is either going to be the standard or it is not. If it becomes the standard for all Presidents, then I believe it is only a very short period of time before the confirmation process is going to grind to a halt because there will always be political differences.

By and large, that is what divides the Democrat and Republican Parties. We view life a little bit differently. We are all great Americans. We all support the troops and all want the judiciary to succeed, but we have some philosophical differences. That is fine, but they should not be the basis for not confirming judges or, more importantly, for requiring 60 votes to confirm because it is a very rare Senate in which one party has more than 60 votes in controlling the Senate. So it is basically going to grind the confirmation process to a halt.

That is a breach of our comity to the judicial branch; it is a breach of our obligations to the American people, to ensure justice is done. We know that justice delayed is justice denied. We have already heard from the Supreme Court Chief Justice about the emergencies that exist because we cannot fill these vacancies.

We have a crisis. We have to find a way to resolve this crisis. I suggest that the simplest way to do this, that is fair to everybody, is the way we have always done it: Express yourself, allow the vote to occur, vote your conscience and then move on. But do not hold up the votes simply because you have a philosophical disagreement with the President who nominates these candidates.

I urge my colleagues to think carefully because in the case of Priscilla Owen, as the bar association found, as the Judiciary Committee concluded in its most recent action by passing her out on the Executive Calendar, she is a fine justice. She would make a fine member of the Federal bench. There is no legitimate reason to oppose her.

I urge my colleagues to think about this as we focus on her qualifications, on the relationship between the Senate and the House, and on the obligation we have to the courts and to the American people. This is serious and we ought to be acting in a serious way. I urge my colleagues to support the nomination of Justice Priscilla Owen.

TRIBUTE TO EMILIE WANDERER

Mr. REID. Mr. President, I would like to pay tribute to Emilie Wanderer, of Henderson, NV, on the occasion of her 101st birthday, which she celebrated earlier this month.

Emilie Wanderer is the oldest member of the Nevada bar, but her significance goes well beyond her longevity. She both contributed to, and exemplifies, the progress our society has made in terms of quality. She broke down barriers for herself and for others. During a time when many women were discouraged from pursuing higher education and many were excluded from professional opportunities, Emilie Wanderer embarked on a legal career in addition to raising her children.

Her noteworthy accomplishments include becoming the first woman to practice law in Las Vegas, being the first woman to run for district judge in Nevada, and joining with her son John Wanderer in the first mother-son legal practice in the State. She has been an inspiration and a role model for Nevadans, especially for women pursuing careers in fields traditionally dominated by men.

Through her legal work and through her life, she has made our State a better, kinder, fairer, and more just place.

Emilie Wanderer is considered a legend in the southern Nevada civil rights community. Several decades ago, racism and segregation plagued Las Vegas like so many places throughout America. Earlier this year when we celebrated African American History Month we rightfully recalled the role that Black leaders played in the civil rights movement, but I think it is important also to recognize that some whites—not only famous and prominent people but also those who never received much attention or credit—were committed to the pursuit of justice and fairness.

Emilie Wanderer is one such person who helped bring about progress in race relations in Nevada. Early in her career, she served as legal counsel for the Nevada chapter of the National Association for the Advancement of Colored People, and she held NAACP meetings within her own home, even at the risk of harassment, threats and intimidation. She believed it was the right thing to do, and she had the courage of her convictions.

Emilie Wanderer's commitment to, and contributions to, promoting social justice and securing equal rights for all the people of Nevada deserve to be recognized and praised. On behalf of our State, I thank her and send my best wishes.

COMMEMORATING THE 35TH ANNIVERSARY OF THE DEATH OF MARTIN LUTHER KING, JR.

Mr. DURBIN. Mr. President, 35 years ago on April 4, 1968, Martin Luther King, Jr.'s life was tragically cut short by an assassin's bullet. Dr. King was just 39 years old. In 1963, Dr. King delivered a funeral eulogy for the children who were killed by a firebomb at the 16th Street Baptist Church in Birmingham, Alabama. Dr. King said: ''Your children did not live long, but they lived well. The quantity of their lives was disturbingly small, but the quality of their lives was magnificently big.'' Dr. King's own words could be said about himself.

Only three Americans have ever had a Federal holiday named for them by Congress. Two were presidents George Washington helped create our Nation and Abraham Lincoln helped preserve it. The third, Martin Luther King, Jr., never held an elected office but he redeemed the moral purpose of the United States. He reminded us that since we are all created equal, all of us are equally entitled to be treated with dignity, fairness, and humanity.

Last month I had an opportunity to visit the State of Alabama for the first time. I went there with Democratic and Republican Members of Congress, on a delegation led by Republican John Lewis from Atlanta, GA. We paid a visit to some of the most important spots in American civil rights history. Dr. King's fingerprints are on these and countless other watershed events in American civil rights history.

We went to Montgomery and stood on the street corner where Rosa Parks boarded the bus in 1955 and refused to give up her seat to a white rider, as was required by city law. After Rosa Parks was arrested, Dr. King led a bus boycott in Montgomery, where he had just moved for his first pastorate.

We went to Birmingham and visited the 16th Street Baptist Church. Before the tragic bombing in 1963, the church had been used for civil rights rallies and desegregation protests, and Dr. King had spoken there and throughout Birmingham on many occasions. He wrote his famous ''Letter from a Birmingham Jail'' 40 years ago after being arrested for leading a protest in April 1963. We went to Selma and stood at the spot on the Edmund Pettus Bridge where, in 1965, a young John Lewis was beaten unconscious by Alabama State troopers, at the time the 52-mile voting rights march from Selma to Montgomery was turned back. In response, Dr. King led a second march, and these brave actions led to Congressional passage of the Voting Rights Act of 1965. Dr. King is the pre-eminent civil rights figure in our Nation's history, but he would not have been as successful had it not been for a handful of courageous federal judges who despite death threats to themselves and family members used the judiciary to help dismantle the legacy of Jim Crow. For example, Alabama Judge Frank Johnson was part of a three-judge panel that struck down Montgomery's bus-segregation law, holding that separate but equal facilities were violations of the due process and equal protection clauses of the Fourteenth Amendment. And after Governor George Wallace banned the Selma-to-Montgomery march, Judge Johnson issued the order that allowed Dr. King and Rep. Lewis to conduct the march, calling the right to march ''commensurate with the enormity of the wrongs that are being protested.'' Dr. King called Judge Johnson a jurist who had ''given true meaning to the word 'justice.'''

Dr. King was keenly aware of the importance of the federal judiciary to ensure equality and justice in our society. In a 1958 speech at Beth Emet synagogue in Evanston, Illinois, Dr. King said: ''As we look to Washington, so often it seems that the judicial branch of the Government is fighting the battle alone. The executive and legislative branches of the Government have been all too slow and stagnant and silent, and even apathetic, at points. The hour has come now for the federal government to use its power, its constitutional power, to enforce the law of the land.''

Regrettably, President George W. Bush has been appointing Federal judges who have tried to limit the ability of the federal government to use its constitutional power to enforce the law of the land. Many of his judicial nominees are conservative ideologues who believe that the Federal Government lacks the constitutional power to provide meaningful remedies and access to the courts for victims of discrimination. In the name of States rights, these nominees have urged federal courts to strip Congress of its powers and citizens of their remedies. I question whether the President is appointing men and women to the federal judiciary who will make courageous decisions and, in the words of Dr. King, give true meaning to the word justice.

Despite this unfortunate trend, I think Dr. King would have remained optimistic. In a 1965 speech of Dr. King's entitled ''A Long, Long Way to Go''—published for the first time this month in a new book called ''Ripples of Hope: Great American Civil Rights Speeches''—Dr. King said:

> There are dark moments in this struggle, but I want to tell you that I've seen it over and over again, that so often the darkest hour is that hour that just appears before the dawn of a new fulfillment.

Dr. King's optimism in the face of dark moments is one of his enduring legacies. On this 35th anniversary of his death, I pay tribute to his optimism, courage, and heroism that transformed our Nation.

LETTER FROM A CONNECTICUT SAILOR

Mr. LIEBERMAN. Mr. President, we are all so proud of the American men and women in uniform who risked and gave their lives to liberate the Iraqi people. They performed bravely and brilliantly, proving once again that there has never been a fighting force in the history of the world as well trained, well equipped, and well motivated as the United States of America's.

Of course, their work is not done. Far from it: serious danger remains. Winning the peace will take a sustained commitment. But we can already look back with so much gratitude at the sacrifices the men and women of our Army, Navy, Air Force, Marines, and Coast Guard have made for our security and the security of the world.

In my service in the Senate and on the Senate Armed Services Committee, I have heard countless stories of the heroism of those who protect us. But just when you think nothing can deepen your conviction about the extraordinary character of these men and women, something does. Two proud parents from Bristol, CT, passed on to me a letter written on February 15, 2003, by their daughter, Barbara. She is an Operations Specialist Second Class in the U.S. Navy she was Third Class when she wrote it—serving aboard the U.S.S. *Pearl Harbor*, which was then on deployment to the Middle East. The letter was sent to a newspaper in reaction to some coverage that Barbara had read about war protests here at home. In it, Barbara explains, more eloquently than I ever could, what drives those who risk their lives for our freedom, and she reminds us of the unbreakable bonds between those serving half a world away and our communities here at home.

I ask unanimous consent to print the letter in the RECORD.

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

DEAR EDITOR,

I currently serve as an Operations Specialist 3rd class in the United States Navy, and there are a few things I would like to clear up for you and for everyone. I serve my country for many reasons, some of which include: pride, love and responsibility. Let me explain

I am proud to be an American. It may sound cliché, but it's true. I am proud to be a part of the greatest and strongest nation in the world, and I am proud to serve her. It is my duty and my privilege to serve in the United States Military, and I am thankful for the chance to do so. I am by no means an exemplary sailor; by anyone's standards I'm mediocre at best. However, I do what I can. I was raised to be thankful for the freedoms that we, as Americans, take for granted on a daily basis: the freedom of speech, the freedom of religion, the freedom to bear arms and many more. Many countries around the world laugh at our government for allowing us these 'privileges' that we take for granted. After all, they ask, how can you maintain authority when dissent is allowed? But we say, how can you not? And that is what makes our country great.

I am not a warmonger, nor a dissenter. I do not carry guns or cry 'fire' in a crowded theater. I am simply someone who realizes that these freedoms that we cherish are not free of cost. I am aware that the cost these freedoms is human lives. A familiar saying, often attributed to Voltaire, captures the spirit of the American military perfectly: ''I [may] disapprove of what you say, but I will defend to the death your right to say it.''

Every day we hear reports of people speaking out against the U.S. military, saying that we spend too much, waste too much, and are an archaic set of muscles our government flexes to tell the world that we are still pertinent. I disagree wholeheartedly for one reason: If I were not here spending too much, wasting too much, and flexing my protective muscles, then they would not be able to say that. If they lived in a country like Iraq, they and their families could be put to death for saying that. Think about that before you say that we should do nothing. Think also that the man who runs that country, Saddam Hussein, is building long-range weapons and weapons of mass destruction, intending to aim them at us.

I love my country, and I love my family and friends. I would rather die than see either of them hurt. I would rather put my life on the line so that they don't have to. That is why I am here on a ship, ready to go to into danger. I'm not saying I'm not scared; I'm terrified. However, I'm more scared of inaction. More scared that if I don't do this, then this man will reach out his hand from his palace and try to hurt the ones I love. I will not allow that to happen. I am on my way, right now, to stand ready to remove this man from power before he can hurt the people I hold dear. Right now, the man I love is over there getting ready to stand against those who wish to hurt the people we love. I pray every day that this does not come to war. I do not want to fight, and I do not want my love to be in harm's way. However, we have already made our decisions. We have realized that inaction now will lead to greater bloodshed farther down the road, and we will

do anything to protect the lives of our fellow countrymen. This is our mission.

I believe every American has a responsibility to America. I don't mean that everyone should join the military. The military life is a hard one, and not a path easily trod. Once my four years are completed, I will more than likely rejoin the ranks of civilians that I work so hard to protect now. However, I have fulfilled at least a part of what I owe America. Everyone has a part to play, be it military, politics, being an activist, or even just helping an elderly neighbor rake their lawn. Each American has a responsibility to every other person in our country. Each of us has a responsibility to every other person in this world. Ani DiFranco wrote '' the world owes me nothing, but we owe each other the world '' I believe this to be one of the most true statements I've ever heard. We, as a species, could not survive without each other, even though it seems at times that we are hell-bent on destroying ourselves.

I want every person in America to know this: I stand for you. I will take your place in line when the final bell tolls, and I will do it gladly, for I believe that your life is worth it. You are worth every hardship, every effort, and every last breath in my body. I love you. Even if I do not know you, have never seen your face, have never heard your voice, I love you. I do this today and every day for you. So please, do not wave off my gift to you. Don't say you don't want it, just accept that I love you, and will defend you, even if it means my life.

May your life be blessed,

BARBARA MARIE O'REILLY,
0S3 USN.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred October 9, 2001 in Los Angeles, CA. While a Sikh in traditional clothing was out on an evening walk close to his home, four men attacked, beat, and punched him. The attackers yelled ''terrorist'' as they beat 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 is 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.

VOTE EXPLANATION

Mr. LIEBERMAN. Mr. President, I unfortunately had to miss the vote yesterday on the nomination of Jeffrey Sutton to serve on the U.S. Court of Appeals for the Sixth Circuit, but I would like to explain why, had I been here, I would have voted against the nomination.

I take very seriously the Senate's constitutional duty to review Presidential nominees, especially those to the Federal bench. Once confirmed by the Senate, judges have lifetime tenure, meaning that there is no real opportunity to correct poor choices for judicial positions. Given the nature of a judge's job—they hold power not only over the liberty, but in many cases, the lives of those before them—Members of the Senate must be convinced that the nominee is right for the job before offering our consent to their nominations.

This does not mean that we should confirm only those whose views comport precisely or even largely with their own; indeed, the President must be given broad leeway to nominate those who he believes are right for the job, which is why I have supported most of this President's nominees, to the bench or otherwise, regardless of whether I would consider them the best candidates for the job. But the Senate has a constitutional obligation to review, and, when necessary, serve as a check on the President's choices, and when a nominee's views and positions lie far from the mainstream or are so at odds with what I consider to be needed for the job, I must respectfully withhold my consent from their nomination, especially when the stakes are as high as they are for the bench.

After reviewing Mr. Sutton's record, I have concluded that I cannot support his nomination. Although his professional credentials are impressive and I have little doubt that he is a good lawyer, I believe that his legal views lie far out of the mainstream and that his presence on the Federal bench could do serious harm to the values about which our Nation cares deeply, particularly when it comes to our national desire to fight discrimination and protect individual rights. Mr. Sutton has devoted a significant part of his legal career to advancing an extreme vision of federalism that restricts both the power of Congress to pass civil rights laws and the ability of individuals who have been harmed by discriminatory acts of State governments to seek redress. He has used that vision of federalism to convince activist judges to restrict congressional enactments. He has argued against the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Violence Against Women Act. These were laws with strong, mainstream support, and the records justifying them were strong. I have deep concern that when future civil rights and similar laws come before him, he will argue against them on federalism grounds as well. I cannot in good conscience support putting him in a position where he will be able to further restrict these good laws.

VA FINDS FLU SHOTS PROTECT ELDERLY

Mr. GRAHAM of Florida. Mr. President, throughout its history, the Department of Veterans Affairs, VA, has made great strides in medical research. At a time when VA's medical and prosthetic research program is being starved of vital funding, as ranking member of the Committee on Veterans' Affairs, I would like to draw attention to a significant discovery the program recently has made.

As highlighted in an April 22, 2003, article in The Washington Post, researchers at the Minneapolis VA Medical Center found that not only do seniors who get vaccinated against the flu gain protection from the disease, but they also reduce their risk of hospitalization from pneumonia, cardiac disease and stroke. The VA study, published in the April 3, 2003, issue of The New England Journal of Medicine, also found that during a given flu season, vaccinated elderly patients were half as likely to die as their unvaccinated peers.

Since its inception, the VA research program has made landmark contributions to the well-being of veterans and the Nation as a whole. Past VA research projects have resulted in the first successful kidney transplant performed in the U.S., as well as the development of the cardiac pacemaker, a vaccine for hepatitis, and the CAT and MRI scans. This new discovery is yet another example of the crucial research work done by the VA, and of why we must keep the research program sufficiently funded.

I ask unanimous consent that the article from The Washington Post highlighting the VA research study on the benefits of the flu vaccine be printed in the RECORD.

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

[From the Washington Post, Apr. 22, 2003]

FLU SHOTS SAVE LIVES

(By Jennifer Huget and Associated Press)

Seniors who get vaccinated against the flu not only protect themselves from that deadly disease but also reduce their risk of hospitalization for pneumonia, cardiac disease and stroke. Plus, a study in the April 3 issue of the New England Journal of Medicine shows, vaccinated elderly patients were half as likely to die as their unvaccinated peers during a given flu season.

The study, conducted by the Department of Veterans Affairs at the Minneapolis VA Medical Center, tracked 286,000 men and women age 65 and over through two flu seasons. Although the vaccinated folks were on average older and in worse overall health than the unvaccinated, they were about a third less likely to have pneumonia and about a fifth less likely to be hospitalized for cardiac care of suffer a stroke during the flu season.

Influenza kills about 36,000 people of all ages each year, according to the Centers for Disease Control and Prevention (CDC); about 90 percent of those deaths are among the elderly. Yet the CDC says that only 63 percent of those over age 65 got flu shots in 2001. Flu shots confer benefits for one flu season only. Since this year's flu season is now winding down, experts suggest that seniors start seeking new shots in October.

IDEA FULL FUNDING

Mr. ROBERTS. Mr. President, today I am proud to cosponsor the Hagel

IDEA bill, S. 939, which will finally make Congress pay its promised share of special education funding. I have long been a supporter of fully funding IDEA and I am pleased today to support this important piece of legislation.

Nearly 30 years ago, Congress made a promise to our schools to share the cost of special education. The promise was simple—the Federal Government pays 40 percent of the excess cost of educating a special needs child. Sadly, we have yet to fulfill that promise and I believe it is well beyond time that Congress relieves our State and local governments of the financial burden they have been forced to shoulder. This bill will fully fund IDEA in 8 years by increasing funding by $2 billion annually for 7 years and $1.8 billion in 2011. This funding will have a tremendous impact in my home State of Kansas. The Kansas Department of Education estimates that this legislation will provide the State an increase of $19 million in overall funding for IDEA each year. Kansas schools may then spend these newly freed-up dollars in areas where they need it the most, such as professional development, title I programs, or technology.

In the State of Kansas, special education costs have skyrocketed to over $530 million for 2002. Unfortunately, the Federal Government only picks up about 16 percent of that figure, leaving 84 percent of the funding to State and local governments. In dollar amounts, the State of Kansas pays over $251 million in special education costs, while local schools must fork out an additional $200 million to cover the costs of special education. This is unacceptable. IDEA is the ''granddaddy'' of all unfunded mandates and I can assure my colleagues that funding IDEA at the promised level of 40 percent would not only relieve schools in my home State of Kansas, but would also relieve schools in each and every State in our great Nation. I stress to my colleagues that there is no better time than now to help our local schools by fully funding IDEA.

I would like to share with my colleagues the current budget situation in Kansas. Like many other States, Kansas is facing ominous cuts in the State budget, and schools across the State are worried about shortfalls in their own budgets. Rural schools all over Kansas are considering consolidation to alleviate budget woes. Schools in western Kansas are cutting the school week to 4 days in order to save money. Schools in eastern Kansas are cutting academic programs in order to cut costs. If Congress would pay its promised share of special education funding, then our schools would be able to use those freed-up dollars for other educational needs. We are talking about real dollars for real people. Fully funding IDEA is not just something that Congress should do, it is something we promised to do.

I would like to thank my colleagues for the commitment to education funding. I do believe that Congress is on the right path to fully funding IDEA, and I am pleased that education funding has been a top priority over the last few years. Since 2000, Federal special education funding has increased by approximately 58 percent and title I funding has increased by nearly 45 percent.

I am proud of this support for education funding, and I urge my colleagues to continue on the course to fully funding IDEA. It is our duty to once and for all meet the promise we made nearly 30 years ago.

MORATORIUM ON EXECUTIONS IN ILLINOIS

Mr. FEINGOLD. Mr. President, I want to take a moment to comment on Governor Rod Blagojevich's recent decision to continue the moratorium on executions in Illinois initiated by former Governor George Ryan. The leadership we have now seen from two successive Illinois Governors—one Republican and one Democrat—sends the right message for the Nation. This is not a partisan issue. All Americans who value fairness and justice can agree that executions should not take place—in Illinois or elsewhere in the Nation—under a flawed death penalty system, a system that risks executing the innocent.

Three years ago, Governor Ryan, a death penalty supporter, made national headlines when he was the first Governor in the Nation to place a moratorium on executions. He did so after considering irrefutable evidence that the system in Illinois risks executing the innocent. Since the death penalty was reinstated in Illinois in 1977, Illinois had executed 12 people. But, during this same time, another 13 death row inmates were found to be innocent and to have been wrongfully sentenced to death.

Governor Ryan did not stop there. He created an independent, blue ribbon commission, including former U.S. Attorney Thomas Sullivan, one of our former colleagues, Senator Paul Simon, and lawyer and novelist Scott Turow. He instructed the commission, composed of death penalty proponents and opponents, to review the State's death penalty system and to advise him on how to reduce the risk of executing the innocent and to ensure fairness in the system.

After an exhaustive 2-year study, the commission issued a comprehensive report and set forth 85 recommendations for reform of the Illinois death penalty system. These recommendations address difficult issues like inadequate defense counsel, executions of the mentally retarded, coerced confessions, and the problem of wrongful convictions based solely on the testimony of a jailhouse snitch or a single eyewitness. The commission's work is the first and, so far, only comprehensive review of a death penalty system undertaken by a State or Federal Government in the modern death penalty era.

Earlier this year, the Illinois legislature responded with a bill that included some of the recommendations of the commission. Governor Blagojevich, however, rightly reviewed the legislation and determined that the bill did not go far enough. And last week, he concluded that executions should not resume.

But, the series of mistakes that led to a moratorium are not unique to Illinois. Death penalty systems across the country are fraught with errors and the risk that an innocent person may be condemned to die. There have been over 800 executions in the United States in the modern death penalty era. During that same period, 107 people who were sentenced to death were later exonerated. That means that for approximately every eight persons executed, an innocent person has been wrongly condemned to die.

Evidence that race plays a role in who is sentenced to death continues to mount. A recent report on race and the death penalty released last week by Amnesty International tells us that while African Americans comprise 12 percent of the U.S. population, they are more than 40 percent of the current death row population and one in three of those executed since 1977. The U.S. could soon carry out the 300th execution of an African American inmate since executions resumed in 1977. The report also highlighted that 80 percent of people executed in the modern death penalty era in the U.S. were executed for murders involving white victims, even though blacks and whites are murder victims in almost equal numbers in our society.

We should all be startled by this statistic. There is something particularly insidious, particularly un-American about racial discrimination in the application of the death penalty. A system that treats people differently in administering the ultimate punishment based on their race or the race of the victim is immoral.

In the face of these and other startling pieces of evidence that the death penalty is broken, our Nation is not, as it should be, ceasing or slowing the use of capital punishment. Instead, executions are being carried out at an alarming pace. Already this year, 28 people have been executed, and over the last 6 years, the average annual number of executions is well above that of previous years in the modern death penalty era. In 1999 alone, 99 people were executed in America.

It is my hope that we do not break any records this year. With an eight-to-one executed-to-exonerated ratio, however, we are clearly in a race—a race against time. Because with 107 death row inmates exonerated to date, I do not think any American can be sure that an innocent person has not been executed in this country, and we most certainly cannot guarantee that it will never happen. We must suspend executions and study the flaws in the

death penalty system. I have introduced the National Death Penalty Moratorium Act, which would place a moratorium on Federal executions and call on the States to do the same, while an independent, blue ribbon commission conducts a thorough study of the flaws in the system.

As public concern about the accuracy and fairness of the use of the death penalty deepens, I commend Governor Blagojevich for taking this opportunity to continue Illinois' commitment to justice and fairness.

Governor Blagojevich did the right thing last week when he decided to continue the death penalty moratorium in Illinois. We in the Senate have a unique opportunity to look to the State of Illinois as a model for the Nation in ensuring fairness in the Federal death penalty system. I urge my colleagues to co-sponsor the National Death Penalty Moratorium Act.

The time for a moratorium is now.

INTERPRETATION OF TITLE IX OF THE SARBANES-OXLEY ACT OF 2002, H.R. 3763

Mr. BIDEN. Mr. President, on April 11, 2003, I submitted for inclusion in the official RECORD of the Senate a section-by-section discussion and analysis of title IX of the Sarbanes-Oxley Act of 2002, P.L. 107–204. At the end of that statement, the full text of a letter to me from the United States Department of Justice, dated December 26, 2002, should have appeared. In that letter, Assistant Attorney General Daniel J. Bryant confirms my view that the Department may use existing criminal provisions to prosecute corporate executives who fail to file a certification attesting to the accuracy of a company's financial reports, pursuant to Section 906 of the Sarbanes-Oxley Act. Unfortunately, the letter was inadvertently excluded from the RECORD, so I now resubmit it and ask unanimous consent that its text be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, December 26, 2002.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: This is in response to your letter of October 16, 2002 to the Attorney General and the Chairman of the Securities and Exchange Commission regarding enforcement of section 906 of the Sarbanes-Oxley Act of 2002 (''the Act''). The Department thanks you for your leadership in corporate governance reform and, in particular, commends your efforts as primary author of section 906 of the Act (18 U.S.C. §1350), which requires corporate executives to make certain certifications with respect to their financial statements.

The Department is fully committed to using the tools Congress provided in the Act in our continuing efforts to uncover and punish corporate fraud. As the President noted when he signed the Act, ''this law gives my administration new tools for enforcement. We will use them to the fullest.'' In keeping with the President's statement, Attorney General Ashcroft has directed all United States Attorneys and FBI Special-Agents-in-Charge to review the Act and to take all appropriate steps to implement its provisions fully and expeditiously.

The Department continues to consult with the Commission staff regarding certain legal and technical issues associated with implementing section 906. In particular, questions have arisen regarding the form, location, method of filing and scope of the certification required under section 906. We want to assure you that the Department will continue to work closely with the Commission and we are confident that these questions will be resolved to your satisfaction and with the full input of all affected parties in the near future.

The Department does believe that it is in a position to respond to one question you raised in your letter. You have inquired whether covered individuals who willfully fail to file the certifications required by 18 U.S.C. §1350(a) are subject to the penalties provided in 15 U.S.C. §78ff. While the facts and circumstances determine which tools our prosecutors utilize in each individual case, we believe that section 78ff's criminal penalties are applicable when an individual willfully fails to file the required certification under section 906.

Section 1350(a) of the Act mandates that each periodic report containing financial statements filed by an issuer with the Securities and Exchange Commission pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 shall be accompanied by the required written certification. In addition, Section 3(d) of the Act states that: ''a violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchangee Act of 1934 (15 U.S.C. §§78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations.''

The criminal provisions of the Securities Exchange Act of 1934 (15 U.S.C. §78ff) state that ''any person who willfully violates any provision of this chapter (other than section 78dd–1), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter . . . shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.'' Therefore, as you have suggested, the Department may utilize section 78ff's criminal penalties to prosecute executives who violate the Sarbanes-Oxley Act by willfully failing to file section 906's required certifications.

The Department believes that it is critically important to work with the Commission to resolve the remaining issues you have raised in a timely and thoughtful manner, and we are committed to moving forward expeditiously to achieve consensus on those issues. We also will continue, where appropriate, to formulate guidance for our prosecutors and investigators who must enforce the new law and to provide clarity for the corporate community which must comply with it.

We appreciate your attention to these issues, and look forward to continuing to work with you and others in Congress on the implementation of the Sarbanes-Oxley Act.

Sincerely,

DANIEL J. BRYANT,
Assistant Attorney General.

HONORING OUR ARMED FORCES

Mr. LIEBERMAN. Mr. President, I rise to pay tribute to the second fallen son of Connecticut in the war against Saddam Hussein's regime in Iraq: Marine CPL Kemaphoom ''Ahn'' Chanawongse, 1st Battalion, 2nd Marine Regiment, 2nd Marine Expeditionary Brigade, United States Marine Corps, who was killed in an ambush outside of Nasiriyah, Iraq, on March 23rd, 2003. This brave young man was just 22 when he lost his life.

Corporal Chanawongse had been listed as missing in action for 3 weeks: three weeks of what I can only imagine was, for his family, a time of unimaginable uncertainty and trepidation. We can only hope that the news of their son's death has given the Corporal's family some sense of closure, and an opportunity to come to terms with his passing with God's help and the help of their friends.

Corporal Chanawongse was not the first to fall for his country in Iraq, and sadly, it is safe to say that his death will not be the last. Nonetheless it is important for us to honor each of the fallen in their own right: to say, ''these few gave their lives so that many could live without fear.'' There is no greater measure of compassion than the sacrifice that Corporal Chanawongse and his fallen brothers- and sisters-in-arms made. In the stories of the fallen soldiers we will learn more about the stuff that this country is made of and the values on which it is built. It is our duty as Americans, and as citizens of the world who believe in freedom, to always remember their names, their faces, and their stories.

This young man and his family came to the United States when he was 8 years old, and they settled in the wonderful town of Waterford, CT. Ahn graduated from Waterford High School in 1999 and joined the Marines shortly thereafter. It is a story similar to the stories of countless other young men and women who choose to serve their country for the chance to be a part of something greater than themselves; for a chance to build a noble life for themselves and the children they might someday have; for a chance to join a select brotherhood and sisterhood that has, throughout history, responded to our country's call and the call of others in danger and distress around the world.

I extend my deepest condolences to Corporal Chanawongse's mother, Tan Patchem, his stepfather, Paul Patchem, and his older brother, Awe. I tell you plainly that I am humbled by your family's sacrifice, and I am honored to pay tribute to your son in this Chamber today.

Paul, Tan, and Awe, our prayers are with you in this difficult time.

TRIBUTE TO THE LATE SENATOR SPARK MATSUNAGA

Mr. INOUYE. Mr. President, 13 years ago this month, our late colleague, the Honorable Spark Matsunaga of Hawaii, died while serving in office, abruptly cutting short a distinguished 28-year

career in the United States Senate and the House of Representatives.

His legacy should not be forgotten, particularly since in recent months, the war has dominated discussions in our Chamber and throughout the world. Sixty years ago, circumstances compelled Senator Matsunaga to become a warrior, and he acted with bravery and valor that resulted in our country awarding him the Bronze Star and two Purple Hearts. Even as a war hero, however, Senator Matsunaga knew the importance of peace and believed that the peaceful resolution of disputes should always be our primary goal.

''After serving as a soldier, he went into public service to find a way to end war,'' his son, former Hawaii State Senator Matt Matsunaga, once said.

Like other prominent Americans such as Woodrow Wilson, Jennings Randolph, and Everett Dirksen, Senator Matsunaga envisioned a ''Department of Peace'' that ideally would be on equal footing with the Department of Defense. In 1979, he was successful in having a provision added to an education appropriations bill that called for the establishment of the Commission on Proposals for the National Academy of Peace and Conflict Resolution.

Senator Matsunaga chaired the newly created nonpartisan panel, which became known as the Matsunaga Commission. After numerous public hearings and meetings with scholars, government, and military officials, and representatives from religious and ethnic organizations, the Commission recommended the creation of a national peace academy. Subsequently, Senator Matsunaga spearheaded a bipartisan drive that led to the passage of a bill that was signed into law by President Reagan establishing the United States Institute of Peace in Washington, D.C.

The Institute's mission is to ''support the development, transmission, and use of knowledge to promote peace and curb violent international conflict.''

Following Senator Matsunaga's death in 1990, the University of Hawaii paid tribute to him by establishing the Matsunaga Institute for Peace, where scholars could study and advise on ways to settle regional and international disputes without turning to violence.

Senator Matsunaga's belief in peace began early. In 1930, as a student at the University of Hawaii, he wrote a short essay, titled ''Let Us Teach Our Children to Want Peace'':

> Wants are the drives of all human action. If we want peace we must educate people to want peace. We must replace attitudes favorable to war with attitudes opposed to war. Parents should protect the child from experiences with materials of warfare. Teachers should let the generals fall into the background and bring into the foreground leaders in social reform as heroes. We must help our young men to see that there are other types of bravery than that which is displayed on the battlefield. If in our teaching we emphasize the life and work of out great contributors instead of our great destroyers, people will come to realize that moral courage is bravery of the highest type, and America will be called the Champion of Peace.

Senator Matsunaga lived by those words throughout his life. I ask my colleagues to join me in paying tribute to the late Senator Matsunaga.

THE DISTINGUISHED CAREER OF JAY CUTLER

Mr. KENNEDY. Mr. President, I welcome this opportunity to pay tribute to the distinguished career of Jay Cutler, who is retiring this year as the Director of Government Relations and Special Counsel for the American Psychiatric Association, where he has served for 25 years. During that quarter century he has been a powerful advocate for America's psychiatrists, for the patients they serve, and for the broader cause of mental health. He is well known to virtually every Senator as an outstanding advocate and a fine human being.

I first came to know Jay many years ago, when he served on what was then known as the Senate Human Resources Committee and is today our Health, Education, Labor and Pensions Committee. Jay was Senator Jacob Javits' top staff person on the committee. I worked closely with him on a wide range of issues, especially on health care.

Jay's career has had a remarkable breadth and depth. There is no cause in which he has been more deeply involved than better treatment for persons suffering from mental illness and substance abuse. Over the course of his career, there has been a remarkable shift in the perception of mental illness and substance abuse by policy makers and the public. The Nation has made a remarkable transition from the long held and destructive view that mental illness and substance abuse are character flaws, and has achieved a new understanding, that they are diseases which can and should receive the best treatment that medical science can provide. In many ways, Jay's tireless dedication to the cause of mental illness reform and substance abuse treatment has been at the core of this profound shift in public awareness and understanding of these disorders.

Among many other accomplishments during Jay's years in the Senate tenure, he had played the central staff role in the drafting, introduction and passage of the landmark Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91–616, that established the National Institute on Alcohol Abuse and Alcoholism. He worked side by side with Senator Javits and Senator Harold Hughes to change the perception of national policymakers towards alcoholism and the effects of alcohol abuse.

As a Senate aide and later as APA's Director of Government Relations, Jay had a direct impact on virtually every major bill on health policy and mental illness and substance abuse treatment legislation over more than 30 years. Even a selective list of the policies and laws that bear Jay's imprint includes: the landmark Employee Retirement Income Security Act; expansion of the community mental health centers program; public oversight to protect patients in mental health treatment against abuse; reauthorization and reorganization of the Alcohol, Drug Abuse, and Mental Health Administration; the exemption of psychiatric hospitals and units from the Medicare prospective payment methodology, ensuring their fiscal viability for nearly 20 years; the expansion of Medicare's limited coverage of outpatient treatment for mental illness, first by lifting the $250 annual dollar limit to $500, then to $1,200, and ultimately repealing the discriminatory dollar limit altogether; enactment of the landmark 1996 Federal Mental Health Parity Act; increased funding for veterans', children's, and Indian mental health services; medical records privacy legislation, especially assuring the confidentiality of medical records for psychiatric and substance abuse treatment.

The historic decision by President Clinton to issue an Executive Order requiring non-discriminatory coverage of treatment for mental illness, including alcohol and substance abuse disorders, in the Federal Employees' Health Benefits Program; the APA's successful efforts to enact ''parity'' laws in some 30 States; the bipartisan national campaign to double the NIH research budget, including the budgets on mental illness and substance abuse disorders.

For more than 30 years, Jay has dedicated his professional career to the eradication of any stigma against persons with mental illness, including those struggling with alcohol and substance abuse disorders. He has greatly assisted in educating the public and key national policymakers on these vital issues. he has also been at the forefront of efforts to eliminate discrimination against persons with mental illness. He has a record that few can match as an advocate for education, research, and treatment of all mental disorders.

Jay's personal qualities have not only contributed immeasurably to his success but have made him countless friends in the Senate, the House, administrations of both parties, and the health policy community. All his interactions are marked by an extraordinary degree of candor and openness and by the incisive intellect and political skill that has made him a valuable counselor to so many of us.

Jay has always fought hard and effectively for the interests of the physicians represented by the American Psychiatric Association. Jay's wisest counsel to the APA was to place the public policy needs of its patients first. To his enduring credit, throughout

Jay's service as Director of Government Relations, APA could be relied upon to fight just as hard for its patients as its members.

No tribute to Jay can fail to mention Jay's beloved wife and lifelong partner, Randy. When the APA hired Jay Cutler, it got Randy as part of the deal. Her generosity of spirit, keen intellect, and strong commitment have meant the world to Jay, to his colleagues at the APA, and to the nation.

Throughout his remarkable career, Jay Cutler—with Randy Cutler beside him—has worked to improve the lives of millions of Americans who, for no fault of their own, have struggled to overcome mental illness. Much of the distance that we have come in recognizing their needs and meeting them over the years of Jay's outstanding services and dedication is the result of Jay's ability.

On the occasion of Jay's retirement, I comment his brilliant service to Congress, to the American Psychiatric Association, and to the millions of Americans with mental illness. I wish Jay and Randy great happiness and success as they begin this new chapter in their lives.

ADDITIONAL STATEMENTS

EL DÍA DE LOS NIÑOS

• Mr. BINGAMAN. Mr. President, I rise today to recognize the celebration of El día de los niños, a day for parents, families, and communities to celebrate, value, and uplift all children in the United States. As cochair of the Senate Democratic Hispanic Task Force, I believe it is important that we set aside a time to commemorate the essential role of children in the future of every nation. On this day, April 30, cities throughout the United States are promoting the well-being of children by hosting a variety of special events, including parades, book festivals, and health fairs. In my own State, for example, the New Mexico State University Library, in conjunction with the Southern New Mexico Engaging Latino Communities for Education Collaborative, ENLACE, is hosting an exhibit of bilingual, Spanish-English, children's books. This activity serves to help communities celebrate and promote the importance of reading in many languages.

As we continue to discuss the well-being of our children, I invite my colleagues to join with me in taking time on this day, El día de los niños, to rededicate ourselves to working together and acting on behalf of our children throughout the year.•

PREPARING FOR NATIONAL COMPETITION ON CONSTITUTIONAL KNOWLEDGE

• Mr. CARPER. Mr. President, this May, more than 1,200 students from across the United States will visit Washington, D.C. to compete in the national finals of the We the People... The Citizen and the Constitution program. It is the most extensive educational program in the country developed specifically to educate young people about the Constitution and the Bill of Rights.

I am proud to announce that a class from Smyrna High School will represent the State of Delaware in this national event. These students, with the leadership of their teacher Marc Deisem, have worked diligently to reach the national finals. Through their experience, they have gained a deep knowledge and understanding of the fundamental principles and values of our constitutional democracy.

This 3-day national competition is modeled after hearings in the United States Congress. The hearings consist of oral presentations by high school students before a panel of adult judges on constitutional topics. The students' testimony is followed by a period of questioning by the judges who probe their depth of understanding and ability to apply their knowledge.

Administered by the Center for Civic Education, the We the People... program has provided curricular materials at upper elementary, middle and high school levels for more than 26.5 million students nationwide. The program affords students a working knowledge of our Constitution, Bill of Rights, and the principles of democratic government.

It is inspiring to see these young people advocate the principles of our Government. These principles identify us as a people and bind us together as a Nation. It is important for our next generation to understand the values and principles that serve as the foundation in our ongoing effort to preserve and realize the promise of democracy.

These students from Smyrna High School are currently conducting research and preparing for their upcoming participation in the national competition in Washington, DC. I wish these young ''constitutional experts'' the best of luck at the We the People... national finals. They represent the future of our State and Nation, and they give us cause for great hope as we look to the future.•

RECOGNIZING ONCOLOGY NURSING MONTH—MAY 2003

• Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to oncology nurses. May is the ninth annual Oncology Nursing Month. The celebration kicks off on Thursday, May 1, 2003, on Oncology Nursing Day, during the opening ceremonies of the Oncology Nursing Society's 28th Annual Congress in Denver, CO, and continues until May 31, 2003.

Oncology Nursing Month recognizes oncology nurses, educates the public about oncology nursing, provides an opportunity for special educational events for oncology nurses, and celebrates the accomplishments of oncology nurses.

The Oncology Nursing Society, ONS, is the largest professional oncology group in the United States composed of more than 30,000 nurses and other health professionals. It exists to promote excellence in oncology nursing and the provision of quality care to those individuals affected by cancer.

As part of its mission, the society honors and maintains nursing's historical and essential commitment to advocacy for the public good. ONS was founded in 1975, and held its first Annual Congress in 1976. Since the society was established, 218 local chapters have been formed to provide a network for education and peer support at the community level.

In my State of California, there are more than 2,515 oncology nurses and health professionals who care for individuals with cancer and their families. In addition, California has 18 local Oncology Nursing Society chapters including the areas of Pacific Grove, Fresno, Brentwood, Lompoc, Simi Valley, Palm Springs, Greater Los Angeles, Redding, Sacramento, Colton, Chico, Lodi, Orange County, San Diego, San Francisco, Santa Clara, Sonoma County, and Lakewood.

Over the last 10 years, the setting where treatment for cancer is provided has changed dramatically. An estimated 80 percent of all Americans receive cancer care in community settings including cancer centers, physicians' offices, and hospital outpatient departments. Treatment regimens are as complex, if not more so, than regimens given in the inpatient setting a few short years ago.

Oncology nurses are on the frontlines of the provision of quality cancer care for individuals with cancer. Nurses are involved in the care of a cancer patient from the beginning through the end of treatment. Oncology nurses are the frontline providers of care by administering chemotherapy, managing patient therapies and sideeffects, working with insurance companies to ensure that patients receive the appropriate treatment, and providing counseling to patients and family members, in addition to many other daily acts on behalf of cancer patients.

With an increasing number of people with cancer needing high quality health care, and an inadequate supply of nurses, our Nation could well be facing a cancer care crisis of serious proportion, with limited access to quality cancer care.

I was proud to support the passage of the ''Nurse Reinvestment Act'' in the 107th Congress. This important piece of legislation expanded and implemented programs at the Health Resources Services Administration, HRSA, to address the multiple problems contributing to the nationwide nursing shortage, including the decline in nursing student enrollments, shortage of faculty, and dissatisfaction with nurse workplace environments.

I commend the Oncology Nursing Society for all of its hard work to prevent and reduce suffering from cancer and to improve the lives of those 1.3 million Americans who will be diagnosed with cancer in 2003.●

MESSAGE FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 and two treaties which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 3 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 274. An act to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge.

The message also announced that the House has passed the following bill, without amendment:

S. 162. An act to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 149. Concurrent resolution expressing the support for the celebration of Patriots' Day and honoring the Nation's first patriots.

H. Con. Res. 156. Concurrent resolution extending congratulations to the United States Capitol Police on the occasion of its 175th anniversary and expressing gratitude to the men and women of the United States Capitol Police and their families for their devotion to duty and service in safeguarding the freedoms of the American people.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 274. An act to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge; to the Committee on Environment and Public Works.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 149. Concurrent resolution expressing support for the celebration of Patriots' Day and honoring the Nation's first patriots; to the Committee on the Judiciary.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 14. A bill to enhance the energy security of the United States, and for other purposes.

The following joint resolution was read the first time:

H.J. Res. 51. Joint resolution increasing the statutory limit on the public debt.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1982. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Weighted Average Interest Rate Update Notice (Notice 2003–23)'' received on April 22, 2003; to the Committee on Finance.

EC–1983. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Special Estimated Tax Payments (Rev. Rul. 2003–34)'' received on April 22, 2003; to the Committee on Finance.

EC–1984. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Abusive Offshore Deferred Compensation Arrangements (Notice 2003–22)'' received on April 22, 2003; to the Committee on Finance.

EC–1985. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—February 2003 (Rev. Rul. 2003–42)'' received on April 22, 2003; to the Committee on Finance.

EC–1986. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—May 2003 (Rev. Rul. 2003–45)'' received on April 22, 2003; to the Committee on Finance.

EC–1987. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Action on Decision: Coordinated Issue: Contingent Liabilities (AOD 2003–17)'' received on April 22, 2003; to the Committee on Finance.

EC–1988. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Notice of Significant Reduction in the Rate of Future Benefit Accrual (1545–BA08)'' received on April 22, 2003; to the Committee on Finance.

EC–1989. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Overrecovered Fuel Costs (Rev. Rul. 2003–39)'' received on April 22, 2003; to the Committee on Finance.

EC–1990. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Regarding the Active Trade or Business Requirement under Section 355(b) (Rev. Rul. 2003–38)'' received on April 22, 2003; to the Committee on Finance.

EC–1991. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modification of Accounting Period Change Term and Condition (Rev. Proc. 2003–34)'' received on April 22, 2003; to the Committee on Finance.

EC–1992. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 9100 relief for 338 elections (Rev. Proc. 2003–33)'' received on April 22, 2003; to the Committee on Finance.

EC–1993. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tax Return Preparers—Electronic Filing (1545–BC12)'' received on April 28, 2003; to the Committee on Finance.

EC–1994. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Depreciation of Tires (Rev. Proc. 2002–27)'' received on April 22, 2003; to the Committee on Finance.

EC–1995. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Aircraft Engines CT7 Series Turboprop Engines; Docket No. 99–NE–48 (2120–AA64) (2003–0168)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1996. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300B2 and B4 Series Airplanes; and A300 B4–600, B4–600R, and F4–600R Series Airplanes; docket no. 2001–NM–378 (2120–AA64) (2003–0169)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1997. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Model Hawker 800XP and 800 Airplanes; docket no. 2001–NM–18 (2120–AA64) (2003–0170)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1998. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model SAAB SF340A Series Airplanes; Docket no. 2000–NM–420 (2120–AA64) (2003–0171)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1999. 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 E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO; CORRECTION (2120–AA66) (2003–0072)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2000. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Emmetsburg, IA; Docket no. 03–ACE–18 (2120–AA66) (2003–0073)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2001. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Circleville, OH; CORRECTION; Docket no. 02–AGL–08 (2120–AA66) (2003–0074)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2002. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hampton, IA; Docket no. 03–ACE–20 (2120–AA66) (2003–0075)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2003. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Fairont, NE; Docket no. 03–ACE–1 (2120–AA66) (2003–0078)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2004. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kookuk, IA; Docket no. 03–ACE–22 (2120–AA66) (2003–0077)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2005. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hazen, ND; Docket no. 00–AGL–25 (2120–AA66) (2003–0076)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2006. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757–200, 757–200CB, and 757–200PF Series Airplanes; Docket no. 2002–NM–315 (2120–AA64) (2003–0167)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2007. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Designation of Class A, B, C, D, and E, Airspace Areas; Air Traffic Service Routes for Comments; Docket no. FAA–2003–14698 (2120–AH77)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2008. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Part 145 Review: Repair Stations; Correction; Docket No. FAA–1999–5836 (2120–AC38) (2003–0002)'' received on April 22, 2003 ; to the Committee on Commerce, Science, and Transportation.

EC–2009. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Flightcrew Compartment Access and Door Designs; Docket no. FAA–2001–10770; SFAR 92–5 (2120–AH97)'' received on April 22, 2003 ; to the Committee on Commerce, Science, and Transportation.

EC–2010. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Protection Against Certain Flights Within the Territory and Airspace of Iraq; Docket no. FAA–2003–14766; SFAR 77; technical amendment (2120–ZZ41)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2011. 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 (19); Amdt. No. 3052 (2120–AA65) (2003–0020)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2012. 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 (48); Amdt. No. 3051 (2120–AA65) (2003–0019)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2013. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Correction; Herington, KS; Docket no. 03–ACE–10 (2120–AA66) (2003–0070)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2014. 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; Rome, NY; Delay of Effective Date; Docket no. 02–AEA–13 (2120–AA66) ((2003–0071)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2015. 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 E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO; docket no. 02–ACE–14 (2120–AA66) (2003–0069)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2016. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; and Modification of Class E Airspace; Dubuque, IA; Docket no. 03–ACE–16 (2120–AA66) (2003–0068)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2017. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Class E Airspace; Brookfield, MO; Docket no. 03–ACE–3 (2120–AA66) (2003–0067)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2018. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Collision Avoidance Systems; Docket no. FAA–2001–10910 (2120–AG90)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2019. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Wiscasset, ME, Maine Yankee Reactor Pressure Vessel Removal (CGD01–03–019)'' received on April 22, 2003; to the Committee on Commerce, Science , and Transportation.

EC–2020. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regatta and Marine Parade Regulations; SLR; Miami Beach Super Boat Race, Miami Beach, Florida (CGD07–03–041)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2021. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Mississippi River, Iowa and Illinois (CGD08–02–020) (1625–AA09) (2003–0007)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2022. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regatta and Marine Parade Regulations; SLR; (Including 3 regulations) [CGD05–02–0511] [CGD05–02–056] [CGD05–02–069] (1625–AA08) (2003–0002)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2023. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Protection of Tank Ships, Puget Sound, WA (CGD13–02–018) (1625–AA00) (2003–0009)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2024. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Waters Adjacent to San Diego County, CA [COTP San Diego 03–014] (1625–AA00) (2003–0008)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2025. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Coronado Bay, San Diego, California [COTP San Diego 03–013] (1625–AA00) (2003–0007)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2026. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: Olympic View Resource Area EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA (CGD13–02–016) (1625–AA11) (2003–0002)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2027. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: (Including 2 Regulations) [CGD08–03014] [CGD09–03–209] (1625–AA11) (2000–0003)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2028. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; (Including 3 Regulations) [CGD01–03–031] [CGD05–03–037] (1625–

AA09) (2003–0009)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2029. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Anchorage Areas/Anchorage Grounds Regulations/Security Zones; Oahu, Maui, Hawaii, and Kauai, HI (CGD14–03–001)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2030. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Passenger Vessels, Portland, Maine, Captain of the Port Zone (CGD01–03–001) (1625–AA00) (2003–0011)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2031. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: (Including 3 Regulations) [COTP San Juan 03–047] [COPT Southeast Alaska 03–001] [CGD01–03–028] (1625–AA00) (2003–0011)'' received on April 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2032. A communication from the Attorney/Advisor, Department of Transportation, transmitting, pursuant to law, the report of a nomination for the position of Administrator, Federal Motor Carrier Safety Administration, Department of Transportation; to the Committee on Commerce, Science, and Transportation.

EC–2033. A communication from the Legal Advisor, International Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Parts 2, 73, 74, 80, 90, and 97 of the Commission's Rules to Implement Decisions from World Radiocommunication Conferences Concerning Frequency Brands Below 28000 kHz (ET Doc. 02–16, FCC Number 03–39)'' received on April 22, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2034. A communication from the General Counsel, Office of the General Counsel, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled ''Requirement for Low–Speed Electric Bicycles (FR Doc. 03–3423, 68 FR 7072)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2035. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the 41st Annual Report of the activities of the Federal Maritime Commission for fiscal year 2002, which ended September 30, 2002'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–2036. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report relative to the certification that Moldova is committed to the courses of action described in section 1203 (d) of the Cooperative Threat Reduction Act of 1993, received on April 25, 2003; to the Committee on Armed Services.

EC–2037. A communication from the Assistant Secretary of Defense, Reserve Affiars, transmitting, pursuant to law, the Department of Defense STARBASE Program Management Report, received on April 22, 2003; to the Committee on Armed Services.

EC–2038. A communication from the Assistant Secretary of Defense, Health Affairs, transmitting, pursuant to law, the report relative to providing benefits to Veterans, received on April 16, 2003; to the Committee on Armed Services.

EC–2039. A communication from the Assistant Secretary of Defense, International Security Policy, transmitting, pursuant to law, the report entitled ''Cooperative Threat Reduction to Congress Fiscal Year 2004'' received on April 22, 2003; to the Committee on Armed Services.

EC–2040. A communication from the Assistant Secretary of Defense, Health Affairs, transmitting, pursuant to law, the report relative to the Veterans Affairs Department furnishing health care to members of Armed Forces of active duty during and immediately following a national disaster as declared by the President of the United States, received on April 22, 2003; to the Committee on Armed Services.

EC–2041. A communication from the Secretary of Labor, transmitting, pursuant to law, the report entitled ''Department of Labor's 2002 Finding on the Worst Forms of Child Labor'' received on April 24, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2042. A communication from the Director, National Science Foundation, transmitting, pursuant to law, the report entitled ''FY 2002 Management and Performance Highlights'' received on April 22, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2043. A communication from the General Counsel, Department of the Treasury, transmitting, pursuant to law, the report of proposed legislation relative to providing permanent, indefinite appropriation to allow the Department of the Treasury's Financial Management Service to reimburse financial institutions directly, received on April 28, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–2044. A communication from the Chairman, Federal Trade Commission, transmitting, pursuant to law, the Twenty-Fifth Annual Report to Congress Pursuant to Section 815 of the Fair Debt Collection Practices Act; to the Committee on Banking, Housing, and Urban Affairs.

EC–2045. A communication from the Assistant General Counsel, Banking and Finance, Departmental Offices, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''31 CFR Part 50—Terrorism Risk Insurance Program (1505–AA98)'' received on April 16, 2003; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Con. Res. 26. A concurrent resolution condemning the punishment of execution by stoning as a gross violation of human rights, and for other purposes.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

Treaty Doc. 108–4 Protocols to North Atlantic Treaty of 1949 on Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia (Exec. Rept. No. 108–6)

Resolution of ratification as recommended by the Committee on Foreign Relations:

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

Section 1. SENATE ADVICE AND CONSENT SUBJECT TO DECLARATIONS AND CONDITIONS.

The Senate advises and consents to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia (as defined in section 4(6)), which were opened for signature at Brussels on March 26, 2003, and signed on behalf of the United States of America and other parties to the North Atlantic Treaty, subject to the declarations of section 2 and the conditions of section 3.

Sec. 2. DECLARATIONS.

The advice and consent of the Senate to ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia is subject to the following declarations:

(1) Reaffirmation that United States Membership in NATO Remains a Vital National Security Interest of the United States. The Senate declares that

(A) for more than 50 years the North Atlantic Treaty Organization (NATO) has served as the preeminent organization to defend the countries in the North Atlantic area against all external threats;

(B) through common action, the established democracies of North America and Europe that were joined in NATO persevered and prevailed in the task of ensuring the survival of democratic government in Europe and North America throughout the Cold War;

(C) NATO enhances the security of the United States by embedding European states in a process of cooperative security planning, by preventing the destabilizing re-nationalization of European military policies, and by ensuring an ongoing and direct leadership role for the United States in European security affairs;

(D) the responsibility and financial burden of defending the democracies of Europe and North America can be more equitably shared through an alliance in which specific obligations and force goals are met by its members;

(E) the security and prosperity of the United States is enhanced by NATO's collective defense against aggression that may threaten the security of NATO members;

(F) with the advice and consent of the United States Senate, Hungary, Poland, and the Czech Republic became members of NATO on March 12, 1999;

(G) on May 17, 2002, the Senate adopted the Freedom Consolidation Act of 2001 (S. 1572 of the 107th Congress), and President George W. Bush signed that bill into law on June 10, 2002, which ''reaffirms support for continued enlargement of the North Atlantic Treaty Organization (NATO) Alliance; designated Slovakia for participation in the Partnership for Peace and eligible to receive certain security assistance under the NATO Participation Act of 1994; [and[authorizes specified amounts of security assistance for [fiscal year] 2002 for Estonia, Latvia, Lithuania, Slovakia, Slovenia, Bulgaria and Romania''; and

(H) United States membership in NATO remains a vital national security interest of the United States.

(2) Strategic Rationale for NATO Enlargement. The Senate finds that

(A) notwithstanding the collapse of communism in most of Europe and the dissolution of the Soviet Union, the United States and its NATO allies face threats to their stability and territorial integrity;

(B) an attack against Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, or

Slovenia, or their destabilization arising from external subversion, would threaten the stability of Europe and jeopardize vital United States national security interests;

(C) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, having established democratic governments and having demonstrated a willingness to meet all requirements of membership, including those necessary to contribute to the defense of all NATO members, are in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area; and

(D) extending NATO membership to Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, will strengthen NATO, enhance security and stability in Central Europe, deter potential aggressors, and advance the interests of the United States and its NATO allies.

(3) Full Membership for New NATO Members. The Senate understands that Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, in becoming NATO members, will have all the rights, obligations, responsibilities, and protections that are afforded to all other NATO members.

(4) The Importance of European Integration.

(A) Sense of the Senate. It is the sense of the Senate that

(i) the central purpose of NATO is to provide for the collective defense of its members;

(ii) the Organization for Security and Cooperation in Europe is an institution for the promotion of democracy, the rule of law, crisis prevention, and post-conflict rehabilitation and, as such, is an essential forum for the discussion and resolution of political disputes among European members, Canada, and the United States; and

(iii) the European Union is an essential organization of the economic, political, and social integration of all qualified European countries into an undivided Europe.

(B) Policy of the United States. The policy of the United States is

(i) to utilize fully the institutions of the Organization for Security and Cooperation in Europe to reach political solutions for disputes in Europe; and

(ii) to encourage actively the efforts of the European Union to continue to expand its membership, which will help to strengthen the democracies of Central and Eastern Europe.

(5) Future Consideration of Candidates for Membership in NATO.

(A) Senate Findings. The Senate finds that

(i) Article 10 of the North Atlantic Treaty provides that NATO members by unanimous agreement may invite the accession to the North Atlantic Treaty of any other European state in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area;

(ii) in its Prague Summit Declaration of November 21, 2002, NATO stated that the Alliance

(I)(aa) will keep its door open ''to European democracies willing and able to assume the responsibilities and obligations of membership, in accordance with Article 10 of the Washington Treaty'';

(bb) will keep under review through the Membership Action Plan (MAP) the progress of those democracies, including Albania, Croatia, and the Former Yugoslav Republic of Macedonia, that seek NATO membership, and continue to use the MAP as the vehicle to measure progress in future round of NATO enlargement;

(cc) will consider the MAP as a means for those nations that seek NATO membership to develop military capabilities to enable such nations to undertake operations ranging from peacekeeping to high-intensity conflict, and help aspirant countries achieve political reform that includes strengthened democratic structures and progress in curbing corruption;

(dd) concurs that Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have successfully used the MAP to address issues important to NATO membership; and

(ee) maintains that the nations invited to join NATO at the Prague Summit ''will not be the last'';

(II)(aa) in response to the terrorist attacks on September 11, 2001, and its subsequent decision to invoke Article 5 of the Washington Treaty, will implement the approved ''comprehensive package of measures, based on NATO's Strategic Concept, to strengthen our ability to meet the challenges to the security of our forces, populations and territory, from wherever they may come''; and

(bb) recognizes that the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have successfully used the MAP to address important issues and have showed solidarity with the United States after terrorist attacks on September 11, 2001;

(III) will create ''. . . a NATO Response Force (NRF) consisting of a technologically advanced, flexible, deployable, interoperable, and sustainable force including land, sea, and air elements ready to move quickly to wherever needed, as decided by the Council'';

(IV) will streamline its ''military command arrangements'' for '' a leaner, more efficient, effective, and deployable command structure, with a view to meeting the operational requirements for the full range of Alliance missions'';

(V) will ''approve the Prague Capabilities Commitment (PCC) as part of the continuing Alliance effort to improve and develop new military capabilities for modern warfare in a high threat environment''; and

(VI) will ''examine options for addressing the increasing missile threat to Alliance territory, forces and populations centres'' and tackle the threat of weapons of mass destruction (WMD) by enhancing the role of the WMD Centre within the International Staff;

(iii) as stated in the Prague Summit Declaration, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have ''demonstrated their commitment to the basic principles and values set out in the Washington Treaty, the ability to contribute to the Alliance's full range of missions including collective defence, and a firm commitment to contribute to stability and security, especially in regions of crisis and conflict'';

(iv) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have been acting as de facto NATO allies through their contributions and participation in peacekeepig operations in the Balkins, Operation Enduring Freedom, and the International Security Assistance Force (ISAF);

(v) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, together with Albania, Croatia and the Former Yugoslav Republic of Macedonia, issued joint statements on November 21, 2002, and February 5, 2003, expressing their support for the international community's efforts to disarm Iraq; and

(vi) the United States will not support the accession to the North Atlantic Treaty of, or the invitation to begin accession talks with, any European state (other than Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia), unless

(I) the President consults with the Senate consistent with Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties); and

(II) the prospective NATO member can fulfill the obligations and responsibilities of membership, and the inclusion of such state in NATO would serve the overall political and strategic interests of NATO and the United States.

(B) Requirement for Consensus and Ratification. The Senate declares that no action or agreement other than a consensus decision by the full membership of NATO, approved by the national procedures of each NATO member, including, in the case of the United States, the requirements of Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties), will constitute a commitment to collective defense and consultations pursuant to Article 4 and 5 of the North Atlantic Treaty.

(6) Partnership for Peace. The Senate declares that

(A)(i) the Partnership for Peace between NATO members and the Partnership for Peace countries is an important and enduring complement to NATO in maintaining and enhancing regional security; and

(ii) the Partnership for Peace has greatly enhanced security and ability throughout the Euro-Atlantic area, with Partnership for Peace countries, especially countries that seek NATO membership, and has encouraged them to strengthen political dialogue with NATO allies and to undertake all efforts to work with NATO allies, as appropriate, in the planning, conduct, and oversight of those activities and projects in which they participate and to which they contribute, including combating terrorism;

(B) the Partnership for Peace serves a critical role in promoting common objectives of NATO members and the Partnership for Peace countries, including

(i) increasing the transparency of national defense planning and budgeting processes;

(ii) ensuring democratic control of defense forces;

(iii) maintaining the capability and readiness of Partnership for Peace countries to contribute to operations of the United Nations and the Organization for Security and Cooperation in Europe;

(iv) developing cooperative military relations with NATO;

(v) enhancing the interoperability between forces of the Partnership for Peace countries and forces of NATO members; and

(vi) facilitating cooperation of NATO members with countries from Central Asia, the Caucasus and eastern and southeastern Europe.

(7) The NATO-Russia Council. The Senate declares that

(A) it is in the interest of the United States for NATO to continue to develop a new and constructive relationship with the Russian Federation as the Russian Federation pursues democratization, market reforms, and peaceful relations with its neighbors; and

(B) the NATO-Russia Council, established by the Heads of State and Government of NATO and the Russian Federation on May 28, 2002, will

(i) provide an important forum for strengthening peace and security in the Euro-Atlantic area, and where appropriate for consensus building, consultations, joint decisions, and joint actions;

(ii) permit the members of NATO and Russia to work as equal partners in areas of common interest;

(iii) participate in joint decisions and joint actions only after NATO members have consulted, in advance, among themselves about

what degree any issue should be subject to the NATO-Russia Council;

(iv) not provide the Russian Federation with a voice or veto in NATO's decisions or freedom of action through the North Atlantic Council, the Defense Planning Committee, or the Nuclear Planning Committee; and

(v) not provide the Russian Federation with a veto over NATO policy.

(8) Compensation for victims of the Holocaust and of Communism. The Senate finds that

(A) individuals and communal entities whose property was seized during the Holocaust or the communist period should receive appropriate compensations;

(B) Bulgaria, Estonia, Lativia, Lithuania, Romania, Slovakia, and Slovenia have put in place publicly declared mechanism for compensation for property confiscated during the Holocaust and the communist era, including the passage of statutes, and for the opening of archives and public reckoning with the past;

(C) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have each adjudicated and resolved numerous specific claims for compensation for property confiscated during the Holocaust or the communist era over the past several years;

(D) Bulgaria, Estsonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have each established active historical commissions or other bodies to study and report on their governments and society's role in the Holocaust or the communist era; and

(E) the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have made clear their openness to active dialogue with other governments, including the United States Government, and with nongovernmental organizations, on coming to grips with the past.

(9) Treaty Interpretation. The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997, relating to condition (1) of the resolution of ratification of the Intermediate-Range Nuclear Forces (INF) Treaty approved by the Senate on May 27, 1988.

Sec. 3. Conditions.

The advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia is subject to the following conditions, which shall be binding upon the President:

(1) Costs, Benefits, Burden-sharing, and Military Implications of the Enlargement of NATO

(A) Presidential Certification. Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that

(i) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO will not have the effect of increasing the overall percentage share of the United States in the common budgets of NATO; and

(ii) the inclusion of Bulgaria, Estonia, Lathuania, Romania, Slovakia, and Slovenia in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area.

(B) Annual Reports. Not later than April 1 of each year during the 3-year period following the date of entry into force of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, the President shall submit to the appropriate congressional committees a report, which may be submitted in an unclassified and classified form, and which shall contain the following information:

(i) The amount contributed to the common budgets of NATO by each NATO by each NATO member during the preceding calendar year.

(ii) The proportional share assigned to, and paid by, each NATO member under NATO's cost-sharing arrangements.

(iii) The national defense budget of each NATO member, the steps taken by each NATO member to meet NATO force goals, and the adequacy of the national defense budget of each NATO member in meeting common defense and security obligations.

(C) Reports on Future Enlargement of NATO.

(i) Reports Prior to Commencement of Accession Talks. Prior to any decision by the North Atlantic Council to invite any country (other than Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia) to begin accession talks with NATO, the President shall submit to the appropriate congressional committees a detailed report regarding each country being actively considered for NATO membership, including

(I) an evaluation of how that country will further the principles of the North Atlantic Treaty and contribute to the security of the North Atlantic area;

(II) an evaluation of the eligibility of that country for membership based on the principles and criteria identified by NATO and the United States, including the military readiness of that country;

(III) an explanation of how an invitation to that country would affect the national security interests of the United States;

(IV) a United States Government analysis of the common-funded military requirements and costs associated with integrating that country into NATO, and an analysis of the shares of those costs to be borne by NATO members, including the United States; and

(V) a preliminary analysis of the implications for the United States defense budget and other United States budgets of integrating that country into NATO.

(ii) Updated Reports Prior to Signing Protocol of Accession. Prior to the signing of any protocol to the North Atlantic Treaty on the accession of any country, the President shall submit to the appropriate congressional committees a report, in classified and unclassified forms

(I) updating the information contained in the report required under clause (i) with respect to that country; and

(II) including an analysis of that country's ability to meet the full range of the financial burdens of NATO membership, and the likely impact upon the military effectiveness of NATO of the country invited for accession talks, if the country were to be admitted to NATO.

(D) Review and Reports by the General Accounting Office. The Comptroller General of the United States shall conduct a review and assessment of the evaluations and analyses contained in all reports submitted under subparagraph (C) and, not later than 90 days after the date of submission of any report under subparagraphs (C)(ii), shall submit a report to the appropriate congressional committees setting forth the assessment resulting from that review.

(2) Reports on Intelligence Matters.

(A) Progress Report, Not later than January 1, 2004, the President shall submit a report to the congressional intelligence committees on the progress of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in satisfying the security sector and security vetting requirements for membership in NATO.

(B) Reports Regarding Protection of Intelligence Sources and Methods. Not later than January 1, 2004, and again not later than the date that is 90 days after the date of accession to the North Atlantic Treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, the Director of Central Intelligence shall submit a detailed report to the congressional intelligence committees

(i) identifying the latest procedures and requirements established by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia for the protection of intelligence sources and methods; and

(ii) including an assessment of how the overall procedures and requirements of such countries for the protection of intelligence sources and methods compare with the procedures and requirements of other NATO members for the protection of intelligence sources and methods.

(C) Definitions. In this paragraph:

(i) Congressional Intelligence Committees. The term ''congressional intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(ii) Date of Accession to the North Atlantic Treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. The term ''date of accession to the North Atlantic Treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia'' means the latest of the following dates:

(I) The date on which Bulgaria accedes to the North Atlantic Treaty.

(II) The date on which Estonia accedes to the North Atlantic Treaty.

(III) The date on which Latvia accedes to the North Atlantic Treaty.

(IV) The date on which Lithuania accedes to the North Atlantic Treaty.

(V) The date on which Romania accedes to the North Atlantic Treaty.

(VI) The date on which Slovakia accedes to the North Atlantic Treaty.

(VII) The date on which Slovenia accedes to the North Atlantic Treaty.

(3) Requirement of Full Cooperation with United States Efforts to Obtain the Fullest Possible Accounting of Captured and Missing United States Personnel From Past Military Conflicts or Cold War Incidents. Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that each of the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia are fully cooperating with United States efforts to obtain the fullest possible accounting of captured or missing United States personnel from past military conflicts or Cold War incidents, to include

(A) facilitating full access to relevant archival material; and

(B) identifying individuals who may possess knowledge relative to captured or missing United States personnel, and encouraging such individuals to speak with United States Government officials.

Sec. 4. DEFINITIONS.

In this resolution:

(1) Appropriate Congressional Committees. The term ''appropriate congressional committees'' means the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Committee on International Relations, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

(2) NATO. The term ''NATO'' means the North Atlantic Treaty Organization.

(3) NATO Members. The term ''NATO members'' means all countries that are parties to the North Atlantic Treaty.

(4) North Atlantic Area. The term ''North Atlantic area'' means the area covered by Article 6 of the North Atlantic Treaty, as applied by the North Atlantic Council.

(5) North Atlantic Treaty. The term ''North Atlantic Treaty'' means the North Atlantic Treaty, signed at Washington on April 4, 1949 (63 Stat. 2241; TIAS 1964), as amended.

(6) Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. The term ''Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia'' refers to the following protocols transmitted by the President to the Senate on April 10, 2003 (Treaty Document No. 108–4):

(A) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Bulgaria, signed at Brussels on March 26, 2003.

(B) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Estonia, signed at Brussels on March 26, 2003.

(C) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Latvia, signed at Brussels on March 26, 2003.

(D) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Lithuania, signed at Brussels on March 26, 2003.

(E) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Romania, signed at Brussels on March 26, 2003.

(F) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Slovakia, signed at Brussels on March 26, 2003.

(G) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Slovenia, signed at Brussels on March 26, 2003.

(7) United States Instrument of Ratification. The term ''United States instrument of ratification'' means the instrument of ratification of the United States of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

(8) Washington Treaty. The term ''Washington Treaty'' means the North Atlantic Treaty, signed at Washington on April 4, 1949 (63 Stat. 2241; TIAS 1964), as amended.

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. DOMENICI:

S. 14. A bill to enhance the energy security of the United States, and for other purposes; read the first time.

By Mr. ENZI (for himself, Mr. DORGAN, Mr. BAUCUS, Mr. DAYTON, Mr. BINGAMAN, Mr. CHAFEE, Mr. CRAIG, Mr. JOHNSON, and Mrs. MURRAY):

S. 950. A bill to allow travel between the United States and Cuba; to the Committee on Foreign Relations.

By Mr. WARNER (for himself, Mr. DAYTON, and Ms. COLLINS):

S. 951. A bill to amend the Internal Revenue Code of 1986 to allow medicare beneficiaries a refundable credit against income tax for the purchase of outpatient prescription drugs; to the Committee on Finance.

By Mr. CORZINE:

S. 952. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves; to the Committee on Finance.

By Ms. LANDRIEU:

S. 953. A bill to amend chapter 53 of title 5, United States Code, to provide special pay for board certified Federal Employees who are employed in health science positions, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SHELBY (for himself, Mr. MILLER, Mr. LOTT, Ms. LANDRIEU, Mr. SESSIONS, Mr. COCHRAN, and Mr. CHAMBLISS):

S. 954. A bill to amend the Federal Power Act to provide for the protection of electric utility customers and enhance the stability of wholesale electric markets through the clarification of State regulatory jurisdiction; to the Committee on Energy and Natural Resources.

By Mr. ALLEN:

S. 955. A bill to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself, Mr. JEFFORDS, Mr. DAYTON, and Mr. LEAHY):

S. 956. A bill to amend the Elementary and Secondary Education Act of 1965 to permit States and local educational agencies to decide the frequency of using high quality assessments to measure and increase student academic achievement, to permit States and local educational agencies to obtain a waiver of certain testing requirements, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER:

S. 957. A bill to amend title 49, United States Code, to improve the training requirements for and require the certification of cabin crew members, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KOHL (for himself, Mr. REID, Mr. NELSON of Florida, Mr. ROCKEFELLER, Mrs. LINCOLN, Ms. LANDRIEU, Mr. BINGAMAN, Mr. MILLER, and Mr. BREAUX):

S. 958. A bill to amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs; to the Committee on Finance.

By Mr. INHOFE (for himself, Mr. KYL, Mr. BURNS, Mr. THOMAS, and Mr. GRASSLEY):

S. 959. A bill to limit the age restrictions imposed by the Administrator of the Federal Aviation Administration for the issuance or renewal of certain airman certificates, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. AKAKA:

S. 960. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii and to amend the Hawaii Water Resources Act of 2000 to modify the water resources study; to the Committee on Energy and Natural Resources.

By Ms. MURKOWSKI:

S. 961. A bill to expand the scope of the HUBZone program to include difficult development areas; to the Committee on Small Business and Entrepreneurship.

By Mrs. LINCOLN (for herself, Mr. ROCKEFELLER, Mr. BINGAMAN, and Mr. BREAUX):

S. 962. A bill to amend the Internal Revenue Code of 1986 to accelerate the increase in the child tax credit and to expand refundability of such credit, and for other purposes; to the Committee on Finance.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 963. A bill to require the Commandant of the Coast Guard to convey the United States Coast Guard Cutter BRAMBLE, upon its decommissioning, to the Port Huron Museum of Arts and History, Port Huron, Michigan, for use for education and historical display, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LOTT (for himself and Mr. ROCKEFELLER):

S. 964. A bill to reauthorize the essential air service program under chapter 471 of title 49, United States Code, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. Res. 126. A resolution commending the University of Minnesota Golden Gophers for winning the 2002–2003 National Collegiate Athletic Association Division I National Collegiate Men's Ice Hockey Championship; considered and agreed to.

By Mr. COLEMAN:

S. Res. 127. A resolution expressing the sense of the Senate that the Secretary of Agriculture should reduce the interest rate on loans to processors of sugar beets and sugarcane by 1 percent to a rate equal to the cost of borrowing to conform to the intent of Congress; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 128. A resolution to commend Sally Goffinet on thirty-one years of service to the United States Senate; considered and agreed to.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. Res. 129. A resolution recognizing and commending the members of the Navy and Marine Corps who served in the U.S.S. Abraham Lincoln and welcoming them home from their recent mission abroad; to the Committee on Armed Services.

By Mrs. CLINTON (for herself and Mr. HAGEL):

S. Con. Res. 40. A concurrent resolution designating August 7, 2003, as ''National Purple Heart Recognition Day''; to the Committee on the Judiciary.

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

S. Con. Res. 41. A concurrent resolution directing Congress to enact legislation by October 2005 that provides access to comprehensive health care for all Americans; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 56

At the request of Mr. JOHNSON, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 56, a bill to restore health care coverage to retired members of the uniformed services.

S. 138

At the request of Mr. ROCKEFELLER, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 138, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. 196

At the request of Mr. ALLEN, the names of the Senator from Washington (Ms. CANTWELL), the Senator from Delaware (Mr. CARPER) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 196, a bill to establish a digital and wireless network technology program, and for other purposes.

S. 196

At the request of Mrs. LINCOLN, her name was added as a cosponsor of S. 196, supra.

S. 243

At the request of Mr. ALLEN, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 243, a bill concerning participation of Taiwan in the World Health Organization.

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 269

At the request of Mr. INHOFE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 269, a bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

S. 300

At the request of Mr. KERRY, the name of the Senator from Montana (Mr. BURNS) was withdrawn as a cosponsor of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 300

At the request of Mr. KERRY, the names of the Senator from Mississippi (Mr. LOTT), the Senator from California (Mrs. FEINSTEIN), the Senator from Missouri (Mr. BOND) , the Senator from Utah (Mr. HATCH) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 300, supra.

S. 310

At the request of Mr. THOMAS, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 310, a bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the medicare program, and for other purposes.

S. 363

At the request of Ms. MIKULSKI, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 363, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 374

At the request of Mr. BAUCUS, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 374, a bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer.

S. 395

At the request of Mr. GRASSLEY, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 395, a bill to amend the Internal Revenue Code of 1986 to provide a 3-year extension of the credit for producing electricity from wind.

S. 448

At the request of Mr. DODD, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 448, a bill to leave no child behind.

S. 459

At the request of Mr. LEAHY, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 459, 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. 460

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 460, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program.

S. 466

At the request of Mr. DASCHLE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 466, a bill to provide financial assistance to State and local governments to assist them in preventing and responding to acts of terrorism in order to better protect homeland security.

S. 470

At the request of Mr. SARBANES, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 470, a bill to extend the authority for the construction of a memorial to Martin Luther King, Jr.

S. 517

At the request of Mrs. MURRAY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S . 517, a bill to amend title 38, United States Code, to provide improved benefits for veterans who are former prisoners of war.

S. 544

At the request of Mr. KENNEDY, his name was added as a cosponsor of S. 544, a bill to establish a SAFER Firefighter Grant Program.

S. 560

At the request of Mr. CRAIG, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S . 560, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 569

At the request of Mr. ENSIGN, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 596

At the request of Mr. ENSIGN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 596, a bill to amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

S. 597

At the request of Mr. GRASSLEY, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 597 , a bill to amend the Internal Revenue Code of 1986 to provide energy tax incentives.

S. 626

At the request of Mr. SANTORUM, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 626, a bill to reduce the amount of paperwork for special education teachers, to make mediation mandatory for all legal disputes related to individualized education programs, and for other purposes.

S. 641

At the request of Mrs. LINCOLN, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. 641, a bill to amend title 10, United States Code, to support the Federal Excess Personal Property program of the Forest Service by making it a priority of the Department of Defense to transfer to the Forest Service excess personal property of the Department of Defense that is suitable to be loaned to rural fire departments.

S. 654

At the request of Ms. SNOWE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 654, a bill to amend title XVIII of the Social Security Act to enhance the access of medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve

the Medicare+Choice program, and for other purposes.

S. 665

At the request of Mr. GRASSLEY, the names of the Senator from Oregon (Mr. SMITH), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 665, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fisherman, and for other purposes.

S. 686

At the request of Mr. DEWINE, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 686, a bill to provide assistance for poison prevention and to stabilize the funding of regional poison control centers.

S. 756

At the request of Mr. THOMAS, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 756, a bill to amend the Internal Revenue Code of 1986 to modify the qualified small issue bond provisions.

S. 764

At the request of Mr. LEAHY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 764, a bill to extend the authorization of the Bulletproof Vest Partnership Grant Program.

S. 774

At the request of Ms. SNOWE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 774, a bill to amend the Internal Revenue Code of 1986 to allow the use of completed contract method of accounting in the case of certain long-term naval vessel construction contracts.

S. 796

At the request of Ms. COLLINS, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 796, a bill to provide for the appointment of a Director of State and Local Government Coordination within the Department of Homeland Security and to transfer the Office for Domestic Preparedness to the Office of the Secretary of Homeland Security.

S. 822

At the request of Mr. KERRY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 822, a bill to create a 3-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans.

S. 827

At the request of Mr. SARBANES, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 827, a bill to amend the Federal Water Pollution Control Act to provide assistance for nutrient removal technologies to States in the Chesapeake Bay watershed.

S. 829

At the request of Mr. SARBANES, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 829, a bill to reauthorize and improve the Chesapeake Bay Environmental Restoration and Protection Program.

S. 838

At the request of Ms. COLLINS, the names of the Senator from Ohio (Mr. VOINOVICH), the Senator from Vermont (Mr. LEAHY), the Senator from Hawaii (Mr. AKAKA) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 838, a bill to waive the limitation on the use of funds appropriated for the Homeland Security Grant Program.

S. 847

At the request of Mr. SMITH, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 862

At the request of Mr. ROCKEFELLER, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 862, a bill to promote the adoption of children with special needs.

S. 888

At the request of Mr. GREGG, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Carolina (Mr. GRAHAM), the Senator from Rhode Island (Mr. CHAFEE), the Senator from California (Mrs. FEINSTEIN) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 888, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 890

At the request of Mrs. MURRAY, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 890, a bill to amend the Individuals with Disabilities Education Act to provide grants to State educational agencies to establish high cost funds from which local educational agencies are paid a percentage of the costs of providing a free appropriate public education to high need children and other high costs associated with educating children with disabilities, and for other purposes.

S. 896

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 896, a bill to establish a public education and awareness program relating to emergency contraception.

S. 908

At the request of Ms. COLLINS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 908, a bill to establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

S. 939

At the request of Mr. HAGEL, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 939, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part, to provide an exception to the local maintenance of effort requirements, and for other purposes.

S. CON. RES. 14

At the request of Mr. SMITH, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia.

S. CON. RES. 26

At the request of Ms. LANDRIEU, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Con. Res. 26, a concurrent resolution condemning the punishment of execution by stoning as a gross violation of human rights, and for other purposes.

S. RES. 75

At the request of Mr. CAMPBELL, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Res. 75, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

S. RES. 75

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Res. 75, supra.

S. RES. 125

At the request of Mr. GREGG, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. Res. 125, a resolution designating April 28, 2003, through May 2, 2003, as ''National Charter Schools Week'', and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 14. A bill to enhance the energy security of the United States, and for other purposes; read the first time.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 14

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

SECTION 1. SHORT TITLE.

This Act may be cited as ''The Energy Policy Act of 2003''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short Title.
Sec. 2. Table of Contents.

TITLE I—OIL AND GAS

Subtitle A—Production Incentives

Sec. 101. Permanent Authority to Operate the Strategic Petroleum Reserve and Other Energy Programs.

Sec. 102. Study on Inventory of Petroleum and Natural Gas Storage.
Sec. 103. Program on Oil and Gas Royalties in Kind.
Sec. 104. Marginal Property Production Incentives.
Sec. 105. Comprehensive Inventory of OCS Oil and Natural Gas Resources.
Sec. 106. Royalty Relief for Deep Water Production.
Sec. 107. Alaska Offshore Royalty Suspension.
Sec. 108. Orphaned, Abandoned, or Idled Wells on Federal Lands.
Sec. 109. Incentives for Natural Gas Production from Deep Wells in the Shallow Waters of the Gulf of Mexico.
Sec. 110. Alternate Energy-Related Uses on the Outer Continental Shelf.
Sec. 111. Coastal Impact Assistance.
Sec. 112. National Energy Resource Database.
Sec. 113. Oil and Gas Lease Acreage Limitation.
Sec. 114. Assessment of Dependence of State of Hawaii on Oil.

Subtitle B—Access to Federal Lands

Sec. 121. Office of Federal Energy Permit Coordination.
Sec. 122. Pilot Project to Improve Federal Permit Coordination.
Sec. 123. Federal Onshore Leasing Programs for Oil and Gas.
Sec. 124. Estimates of Oil and Gas Resources Underlying Onshore Federal Lands.
Sec. 125. Split-Estate Federal Oil & Gas Leasing and Development Practices.
Sec. 126. Coordination of Federal Agencies to Establish Priority Energy Transmission Rights-of-way.

Subtitle C—Alaska Natural Gas Pipeline

Sec. 131. Short Title.
Sec. 132. Definitions.
Sec. 133. Issuance of Certificate of Public Convenience and Necessity.
Sec. 134. Environmental Reviews.
Sec. 135. Pipeline Expansion.
Sec. 136. Federal Coordinator.
Sec. 137. Judicial Review.
Sec. 138. State Jurisdiction over In-State Delivery of Natural Gas.
Sec. 139. Study of Alternative Means of Construction.
Sec. 140. Clarification of ANGTA Status and Authorities.
Sec. 141. Sense of Congress.
Sec. 142. Participation of Small Business Concerns.
Sec. 143. Alaska Pipeline Construction Training Program.
Sec. 144. Loan Guarantee.
Sec. 145. Sense of Congress on Natural Gas Demand.

TITLE II—COAL

Subtitle A—Clean Coal Power Initiative

Sec. 201. Authorization of Appropriations.
Sec. 202. Project Criteria.
Sec. 203. Reports.
Sec. 204. Clean Coal Centers of Excellence.

Subtitle B—Federal Coal Leases

Sec. 211. Repeal of the 160-Acre Limitation for Coal Leases.
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SEC. 101. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE AND OTHER ENERGY PROGRAMS.

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) by striking section 166 (42 U.S.C. 6246) and inserting—

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.'';

(2) by striking section 186 (42 U.S.C. 6250(e)); and

(3) by striking part E (42 U.S.C. 6251); relating to the expiration of title I of the Act).

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy Policy and Conservation Act (42 U.S.C. 6271 et seq.) is amended—

(1) by striking section 256(h) (42 U.S.C. 6276(h)) and inserting—

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part, to remain available until expended.'';

(2) by inserting before section 273 (42 U.S.C. 6283) the following:

''PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS'';

(3) by striking section 273(e) (42 U.S.C. 6283(e)); relating to the expiration of summer fill and fuel budgeting programs); and

(4) by striking part D (42 U.S.C. 6285); relating to the expiration of title II of the Act).

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by amending the items relating to part D of title I to read as follows:

''PART D—NORTHEAST HOME HEATING OIL RESERVE

''Sec. 181. Establishment.
''Sec. 182. Authority.
''Sec. 183. Conditions for release; plan.
''Sec. 184. Northeast Home Heating Oil Reserve Account.
''Sec. 185. Exemptions.'';

(2) by amending the items relating to part C of title II to read as follows:

''PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

''Sec. 273. Summer fill and fuel budgeting programs.''; and

(3) by striking the items relating to part D of title II.

(d) NORTHEAST HOME HEATING OIL.—Section 183(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6250(b)(1)) is amended by striking all after ''increases'' through to ''mid-October through March'' and inserting ''by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average)''.

SEC. 102. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.

(a) DEFINITION.—For purposes of this section ''petroleum'' means crude oil, motor gasoline, jet fuel, distillates and propane.

(b) STUDY.—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet U.S. demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

(d) REPORT TO CONGRESS.—Not later than one year from enactment of this Act, the Secretary of Energy shall submit a report to Congress on the results of the study, including findings and any recommendations for preventing future supply shortages.

SEC. 103. PROGRAM ON OIL AND GAS ROYALTIES IN KIND.

(a) APPLICABILITY OF SECTION.—Notwithstanding any other provision of law, the provisions of this section shall apply to all royalties-in-kind accepted by the Secretary (referred to in this section as ''Secretary'') under any Federal oil or gas lease or permit under section 36 of the Mineral Leasing Act (30 U.S.C. 192), section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353), or any other mineral leasing law beginning on the date of the enactment of this Act through September 30, 2013.

(b) TERMS AND CONDITIONS.—All royalty accruing to the United States under any Federal oil or gas lease or permit under the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) shall, on the demand of the Secretary, be paid in oil or gas. If the Secretary makes such a demand, the following provisions apply to such payment:

(1) Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies the lessee's royalty obligation for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

(2) Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

(3) The Secretary may—

(A) sell or otherwise dispose of any royalty production taken in kind (other than oil or gas transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)) for not less than the market price; and

(B) transport or process (or both) any royalty production taken in kind.

(4) The Secretary may, notwithstanding section 3302 of title 31, United States Code, retain and use a portion of the revenues from the sale of oil and gas royalties taken in kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use royalty production, to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

(5) The Secretary may not use revenues from the sale of oil and gas royalties taken in kind to pay for personnel, travel, or other administrative costs of the Federal Government.

(6) Notwithstanding the provisions of paragraph 5, the Secretary may use a portion of the revenues from the sale of oil royalties taken in kind, without fiscal year limitation, to pay transportation costs, salaries, and other administrative costs directly related to filling the Strategic Petroleum Reserve.

(c) REIMBURSEMENT OF COST.—If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary shall—

(1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or

(2) allow the lessee to deduct such transportation or processing costs in reporting and paying royalties in value for other Federal oil and gas leases.

(d) BENEFIT TO THE UNITED STATES REQUIRED.—The Secretary may receive oil or gas royalties in kind only if the Secretary determines that receiving such royalties provides benefits to the United States greater than or equal to those likely to have been received had royalties been taken in value.

(e) REPORT TO CONGRESS.—

(1) No later than September 30, 2005, the Secretary shall provide a report to Congress that addresses—

(A) actions taken to develop businesses processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal oil and gas revenue; and

(B) future royalty-in-kind businesses operation plans and objectives.

(2) For each of the fiscal years 2004 through 2013 in which the United States takes oil or gas royalties in kind from production in any State or from the Outer Continental Shelf, excluding royalties taken in kind and sold to refineries under subsections (h), the Secretary shall provide a report to Congress describing—

(A) the methodology or methodologies used by the Secretary to determine compliance with subsection (d), including performance standard for comparing amounts received by the United States derived from such royalties in kind to amount likely to have been received had royalties been taken in value;

(B) an explanation of the evaluation that led the Secretary to take royalties in kind from a lease or group of leases, including the expected revenue effect of taking royalties in kind;

(C) actual amounts received by the United States derived from taking royalties in kind and cost and savings incurred by the United States associated with taking royalties in kind, including but not limited to administrative savings and any new or increased administrative costs; and

(D) an evaluation of other relevant public benefits or detriments associated with taking royalties in kind.

(f) DEDUCTION OF EXPENSES.—

(1) Before making payments under section 35 of the Mineral Leasing Act (30 U.S.C. 191) or section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) of revenues derived from the sale of royalty production taken in kind from a lease, the Secretary of the Interior shall deduct amounts paid or deducted under subsections (b)(4) and (c), and shall deposit such amounts to miscellaneous receipts.

(2) If the Secretary allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

(g) CONSULTATION WITH STATES.—The Secretary shall consult—

(1) with a State before conducting a royalty in-kind program under this section within the State, and may delegate management of any portion of the Federal royalty in-kind program to such State except as otherwise prohibited by Federal law; and

(2) annually with any State from which Federal oil or gas royalty is being taken in kind to ensure to the maximum extent practicable that the royalty in-kind program provides revenues to the State greater than or equal to those likely to have been received had royalties been taken in value.

(h) PROVISIONS FOR SMALL REFINERIES.—

(1) If the Secretary determines that sufficient supplies of crude oil are not available in the open market to refineries not having their own source of supply for crude oil, the Secretary may grant preference to such refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in such refineries at private sale at not less than the market price.

(2) In disposing of oil under this subsection, the Secretary may prorate such oil among such refineries in the area in which the oil is produced.

(i) DISPOSITION TO FEDERAL AGENCIES.—

(1) Any royalty oil or gas taken by the Secretary in kind from onshore oil and gas leases may be sold at not less than market price to any department or agency of the United States.

(2) Any royalty oil or gas taken in kind from Federal oil and gas leases on the outer Continental Shelf may be disposed of only under section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(j) PREFERENCE FOR FEDERAL LOW-INCOME ENERGY ASSISTANCE PROGRAMS.—In disposing

of royalty oil or gas taken in kind under this section, the Secretary may grant a preference to any person, including any State or Federal agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

SEC. 104. MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) MARGINAL PROPERTY DEFINED.—Until such time as the Secretary of the Interior issues rules under subsection (e) that prescribe a different definition, for purposes of this section, the term ''marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 million British thermal units of gas per well per day calculated based on the average over the three most recent production months, including only those wells that produce more than half the days in the three most recent production months.

(b) CONDITIONS FOR REDUCTION OF ROYALTY RATE.—Until such time as the Secretary of the Interior promulgates rules under subsection (e) that prescribe different thresholds or standards, the Secretary shall reduce the royalty rate on—

(1) oil production from marginal properties as prescribed in subsection (c) when the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) when the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units for 90 consecutive trading days.

(c) REDUCED ROYALTY RATE.—

(1) When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) The reduced royalty rate under this subsection shall be effective on the first day of the production month following the date on which the applicable price standard prescribed in subsection (b) is met.

(d) TERMINATION OF REDUCED ROYALTY RATE.—A royalty rate prescribed in subsection (d)(1)(A) shall terminate—

(1) on oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel for 90 consecutive trading days, or

(B) the property no longer qualifies as a marginal property under subsection (a); and

(2) on gas production from a marginal property, on the first day of the production month following the date on which

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2.00 per million British thermal units for 90 consecutive trading days, or

(B) the property no longer qualifies as a marginal property under subsection (a).

(e) RULES PRESCRIBING DIFFERENT RELIEF.—

(1) The Secretary of the Interior, after consultation with the Secretary of Energy, may by rule prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) The Secretary of the Interior, after consultation with the Secretary of Energy, and within 1 year after the date of enactment of this Act, shall, by rule—

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) In promulgating rules under this subsection, the Secretary of the Interior may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and their effects on production economics;

(E) other royalty relief programs; and

(F) other relevant matters.

(f) SAVINGS PROVISION.—Nothing in this section shall prevent a lessee from receiving royalty relief or a royalty reduction pursuant to any other law or regulation that provides more relief than the amounts provided by this section.

SEC. 105. COMPREHENSIVE INVENTORY OF OCS OIL AND NATURAL GAS RESOURCES.

(a) IN GENERAL.—The Secretary of the Interior shall conduct an inventory and analysis of oil and natural gas resources beneath all of the waters of the United States Outer Continental Shelf (''OCS''). The inventory and analysis shall—

(1) use available data on oil and gas resources in areas offshore of Mexico and Canada that will provide information on trends of oil and gas accumulation in areas of the OCS;

(2) use any available technology, except drilling, but including 3–D seismic technology to obtain accurate resources estimates;

(3) analyze how resource estimates in OCS areas have changed over time in regards to gathering geological and geophysical data, initial exploration, or full field development, including areas such as the deepwater and subsalt areas in the Gulf of Mexico;

(4) estimate the effect that understated oil and gas resource inventories have on domestic energy investments; and

(5) identify and explain how legislative, regulatory, and administrative programs or processes restrict or impede the development of identified resources and the extent that they affect domestic supply, such as moratoria, lease terms and conditions, operational stipulations and requirements, approval delays by the federal government and coastal states, and local zoning restrictions for onshore processing facilities and pipeline landings.

(b) REPORTS.—The Secretary of Interior shall submit a report to the Congress on the inventory of estimates and the analysis of restrictions or impediments, together with any recommendations, within six months of the date of enactment of the section. The report shall be publically available and updated at least every five years.

SEC. 106. ROYALTY RELIEF FOR DEEP WATER PRODUCTION.

(a) IN GENERAL.—For all tracts located in water depths of greater than 400 meters in the Western and Central Planning Area of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, any oil or gas lease sale under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) occurring within 5 years after the date of the enactment of this Act shall use the bidding system authorized in section 8(a)(1)(H) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that the suspension of royalties shall be set at a volume of not less than—

(1) 5 million barrels of oil equivalent for each lease in water depths of 400 to 800 meters;

(2) 9 million barrels of oil equivalent for each lease in water depths of 800 to 1,600 meters; and

(3) 12 million barrels of oil equivalent for each lease in water depths greater than 1,600 meters.

SEC. 107. ALASKA OFFSHORE ROYALTY SUSPENSION.

Section 8(a)(3)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337), is amended with the following: add ''and in the Planning Areas offshore Alaska'' after ''West longitude'' and before ''the Secretary''.

SEC. 108. ORPHANED, ABANDONED OR IDLED WELLS ON FEDERAL LANDS.

(a) IN GENERAL.—The Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall establish a program within 1 year after the date of enactment of this Act to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on lands administered by the land management agencies within the Department of the Interior and Agriculture. The program shall—

(1) include a means of ranking orphaned, abandoned, or idled wells sites for priority in remediation, reclamation and closure, based on public health and safety, potential environmental harm, and other land use priorities;

(2) provide for identification and recovery of the costs of remediation, reclamation and closure from persons or other entities currently providing a bond or other financial assurance required under State or Federal law for an oil or gas well that is orphaned, abandoned or idled; and

(3) provide for recovery from the persons or entities identified under paragraph (2), or their sureties or guarantors, of the costs of remediation, reclamation, and closure of such wells.

(b) COOPERATION AND CONSULTATIONS.—In carrying out this program, the Secretary of the Interior shall work cooperatively with the Secretary of Agriculture and the States within which the Federal lands are located and consult with the Secretary of Energy and the Interstate Oil and Gas Compact Commission.

(c) PLAN.—Within 1 year after the date of enactment of the section, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall prepare a plan for carrying out the program established under subsection (a) and transmit copies of the plan to the Congress.

(d) TECHNICAL ASSISTANCE PROGRAM FOR NON-FEDERAL LANDS.—

(1) The Secretary of Energy shall establish a program to provide technical assistance to the various oil and gas producing States to facilitate State efforts over a 10–year period to ensure a practical and economical remedy for environmental problems caused by orphaned or abandoned oil and gas exploration or production well sites on State or private lands.

(2) The Secretary shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore orphaned abandoned oil or gas wells on State and private lands.

(3) The program shall include—

(A) mechanisms to facilitate identification, if possible, of the persons or other entities currently providing a bond or other form of financial assurance required under State or Federal law for an oil or gas well that is orphaned or abandoned;

(B) criteria for ranking orphaned or abandoned well sites based on factors such as public health and safety, potential environmental harm, and other land use priorities; and

(C) information and training programs on best practices for remediation of different types of sites.

(e) DEFINITION.—For purposes of this section, a well is idled if it has been non-operational for 7 years and there is no anticipated beneficial use of the well.

(f) AUTHORIZATION.—To carry out this section there is authorized to be appropriated to the Secretary of the Interior $25,000,000 for each of the fiscal years 2004 through 2008. Of the amounts authorized, $5,000,000 is authorized for activities under subsection (d).

SEC. 109. INCENTIVES FOR NATURAL GAS PRODUCTION FROM DEEP WELLS IN THE SHALLOW WATERS OF THE GULF OF MEXICO.

(a) ROYALTY INCENTIVE REGULATIONS.—Not later than 90 days after enactment, the Secretary of the Interior shall promulgate final regulations providing royalty incentives for natural gas produced from deep wells, as defined by the Secretary, on oil and gas leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and issued prior to January 1, 2001, in shallow waters of the Gulf of Mexico, wholly west of 87 degrees, 30 minutes West longitude that are less than 200 meters deep.

(b) ROYALTY INCENTIVE REGULATIONS FOR ULTRA DEEP GAS WELLS.—

(1) No later than 90 days after the date of enactment of this Act, in addition to any other regulations that may provide royalty incentives for natural gas produced from deep wells on oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the Secretary of the Interior shall promulgate new regulations granting royalty relief suspension volumes of not less than 35 billion cubic feet with respect to the production of natural gas from 'ultra deep wells' on leases issued prior to January 1, 2001, in shallow waters less than 200 meters deep located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes West longitude. For purposes of this subsection, the term 'ultra deep wells' means wells drilled with a perforated interval, the top of which is at least 20,000 feet true vertical depth below the datum at mean sea level.

(2) The Secretary shall not grant the royalty incentives outlined in this subsection if the average annual NYMEX natural gas price exceeds for one full calendar year the threshold price of $5 per million Btu, adjusted from the year 2000 for inflation.

(3) This subsection shall have no force or effect after the end of the 5–year period beginning on the date of the enactment of this Act.

SEC. 110. ALTERNATE ENERGY-RELATED USES ON THE OUTER CONTINENTAL SHELF.

(a) AMENDMENT TO OUTER CONTINENTAL SHELF LANDS ACT.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following new subsection:

''(p) EASEMENTS OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES.—

''(1) The Secretary may grant an easement or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law when such activities—

''(A) support exploration, development, or production of oil or natural gas, except that such easements or rights-of-way shall not be granted in areas where oil and gas preleasing, leasing and related activities are prohibited by a Congressional moratorium or a withdrawal pursuant to section 12 of this Act;

''(B) support transportation of oil or natural gas;

''(C) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

''(D) use facilities currently or previously used for activities authorized under this Act.

''(2) The Secretary shall promulgate regulations to ensure that activities authorized under this subsection are conducted in a manner that provides for safety, protection of the environment, conservation of the natural resources of the outer Continental Shelf, appropriate coordination with other Federal agencies, and a fair return to the Federal government for any easement or right-of-way granted under this subsection. Such regulations shall establish procedures for—

''(A) public notice and comment on proposals to be permitted pursuant to this subsection;

''(B) consultation and review by State and local governments that may be impacted by activities to be permitted pursuant to this subsection;

''(C) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 305 or section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454, 1455); and

''(D) consultation with the Secretary of Defense and other appropriate agencies prior to the issuance of an easement or right-of-way under this subsection concerning issues related to national security and navigational obstruction.

''(3) The Secretary shall require the holder of an easement or right-of-way granted under this subsection to furnish a surety bond or other form of security, as prescribed by the Secretary, and to comply with such other requirements as the Secretary may deem necessary to protect the interests of the United States.

''(4) This subsection shall not apply to any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.

''(5) Nothing in this subsection shall be construed to amend or repeal, expressly by implication, the applicability of any other law, including but not limited to, the Coastal Zone Management Act (16 U.S.C. 1455 et seq.) or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

(b) CONFORMING AMENDMENT.—The text of the heading for section 8 of the Outer Continental Shelf Lands Act is amended to read as follows: ''LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.''.

SEC. 111. COASTAL IMPACT ASSISTANCE.

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end:

''SEC. 32 COASTAL IMPACT ASSISTANCE FAIRNESS PROGRAM.

''(a) DEFINITIONS.—When used in this section:

''(1) The term 'coastal political subdivision' means a county, parish, or any equivalent subdivision of a Producing Coastal State in all or part of which subdivision lies within the coastal zone (as defined in section 304(1) of the Coastal Zone Management Act (16 U.S.C. 1453(1))) and within a distance of 200 miles from the geographic center of any leased tract.

''(2) The term 'coastal population' means the population of all political subdivisions, as determined by the most recent official data of the Census Bureau, contained in whole or in part within the designated coastal boundary of a State as defined in a State's coastal zone management program under the Coastal Zone Management Act (16 U.S.C. 1451 et seq.).

''(3) The term 'Coastal State' has the same meaning as provided by subsection 304(4) of the Coastal Zone Management Act (16 U.S.C. 1453(4)).

''(4) The term 'coastline' has the same meaning as the term 'coast line' as defined in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

''(5) The term 'distance' means the minimum great circle distance, measured in statute miles.

''(6) The term 'leased tract' means a tract maintained under section 6 or leased under section 8 for the purpose of drilling for, developing, and producing oil and natural gas resources.

''(7) The term 'Producing Coastal State' means a Coastal State with a coastal seaward boundary within 200 miles from the geographic center of a leased tract other than a leased tract within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2002 unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2002.

''(8) The term 'qualified Outer Continental Shelf revenues' means all amounts received by the United States from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g) of this Act, or lying within such zone but to which section 8(g) does not apply, the geographic center of which lies within a distance of 200 miles from any part of the coastline of any Producing Coastal State, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related late payment interest. Such term shall only apply to leases issued after January 1, 2003 and revenues from existing leases that occurs after January 1, 2003. Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2002, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2002.

''(9) The term 'Secretary' means the Secretary of Interior.''

''(b) AUTHORIZATION.—For fiscal years 2004 through 2009, an amount equal to not more than 12.5 percent of qualified Outer Continental Shelf revenues is authorized to be appropriated for the purposes of this section.

''(c) IMPACT ASSISTANCE PAYMENTS TO STATES AND POLITICAL SUBDIVISIONS.—The Secretary shall make payments from the amounts available under this section to Producing Coastal States with an approved Coastal Impact Assistance Plan, and to coastal political subdivisions as follows:

''(1) Of the amounts appropriated, the allocation for each Producing Coastal State shall be calculated based on the ratio of qualified Outer Continental Shelf revenues generated off the coastline of the Producing Coastal State to the qualified Outer Continental Shelf revenues generated off the coastlines of all Producing Coastal States for each fiscal year. Where there is more than one Producing Coastal State within 200 miles of a leased tract, the amount of each Producing Coastal State's allocation for such leased tract shall be inversely proportional to the distance between the nearest point on the coastline of such State and the geographic center of each leased tract or portion of the leased tract (to the nearest whole mile) that is within 200 miles of that coastline, as determined by the Secretary.

''(2) Thirty-five percent of each Producing Coastal State's allocable share as determined under paragraph (1) shall be paid

directly to the coastal political subdivisions by the Secretary based on the following formula:

''(A) Twenty-five percent shall be allocated based on the ratio of such coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions in the Producing Coastal State.

''(B) Twenty-five percent shall be allocated based on the ratio of such coastal political subdivision's coastline miles to the coastline miles of a coastal political subdivision in the Producing Coastal State except that for those coastal political subdivisions in the State of Louisiana without a coastline, the coastline for purposes of this element of the formula shall be the average length of the coastline of the remaining coastal subdivisions in the state.

''(C) Fifty percent shall be allocated based on the relative distance of such coastal political subdivision from any leased tract used to calculate the Producing Coastal State's allocation using ratios that are inversely proportional to the distance between the point in the coastal political subdivision closest to the geographic center of each leased tract or portion, as determined by the Secretary, except that in the State of Alaska, the funds for this element of the formula shall be divided equally among the two closest coastal political subdivisions. For purposes of the calculations under this subparagraph, a leased tract or portion of a leased tract shall be excluded if the leased tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2002, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2002.

''(3) Any amount allocated to a Producing Coastal State or coastal political subdivision but not disbursed because of a failure to have an approved Coastal Impact Assistance Plan under this section shall be allocated equally by the Secretary among all other Producing Coastal States in a manner consistent with this subsection except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the disapproval of a plan submitted under this section. The Secretary may waive the provisions of this paragraph and hold a Producing Coastal State's allocable share in escrow if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Coastal Impact Assistance Plan.

''(4) For purposes of this subsection, calculations of payments for fiscal years 2004 through 2006 shall be made using qualified Outer Continental Shelf revenues received in fiscal year 2003, and calculations of payments for fiscal years 2007 through 2009 shall be made using qualified Outer Continental Shelf revenues received in fiscal year 2006.

''(d) COASTAL IMPACT ASSISTANCE PLAN.—

''(1) The Governor of each Producing Coastal State shall prepare, and submit to the Secretary, a Coastal Impact Assistance Plan. The Governor shall solicit local input and shall provide for public participation in the development of the plan. The plan shall be submitted to the Secretary by July 1, 2004. Amounts received by Producing Coastal States and coastal political subdivisions may be used only for the purposes specified in the Producing Coastal State's Coastal Impact Assistance Plan.

''(2) The Secretary shall approve a plan under paragraph (1) prior to disbursement of amounts under this section. The Secretary shall approve the plan if the Secretary determines that the plan is consistent with the uses set forth in subsection (f) of this section and if the plan contains—

''(A) the name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section;

''(B) a program for the implementation of the plan which describes how the amounts provided under this section will be used;

''(C) a contact for each political subdivision and description of how coastal political subdivisions will use amounts provided under this section, including a certification by the Governor that such uses are consistent with the requirements of this section;

''(D) certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan; and

''(E) measures for taking into account other relevant Federal resources and programs.

''(3) The Secretary shall approve or disapprove each plan or amendment within 90 days of its submission.

''(4) Any amendment to the plan shall be prepared in accordance with the requirements of this subsection and shall be submitted to the Secretary for approval or disapproval.

''(e) AUTHORIZED USES.—Producing Coastal States and coastal political subdivisions shall use amounts provided under this section, including any such amounts deposited in a State or coastal political subdivision administered trust fund dedicated to uses consistent with this subsection, in compliance with Federal and State law and only for one or more of the following purposes—

''(1) projects and activities for the conservation, protection or restoration of coastal areas including wetlands;

''(2) mitigating damage to fish, wildlife or natural resources;

''(3) planning assistance and administrative costs of complying with the provisions of this section;

''(4) implementation of Federally approved marine, coastal, or comprehensive conservation management plans; and

''(5) mitigating impacts of Outer Continental Shelf activities through funding onshore infrastructure and public service needs.

(f) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that any expenditure made by a Producing Coastal State or coastal political subdivision is not consistent with the uses authorized in subsection (e) of this section, the Secretary shall not disburse any further amounts under this section to that Producing Coastal State or coastal political subdivision until the amounts used for the inconsistent expenditure have been repaid or obligated for authorized uses.

SEC. 112. NATIONAL ENERGY RESOURCE DATABASE.

(a) SHORT TITLE.—This section may be cited as the ''National Energy Data Preservation Program Act of 2003''.

(b) PROGRAM.—The Secretary of the Interior (in this section, referred to as ''Secretary'') shall carry out a National Energy Data Preservation Program in accordance with this section—

(1) to archive geologic, geophysical, and engineering data and samples related to energy resources including oil, gas, coal, and geothermal resources;

(2) to provide a national catalog of such archival material; and

(3) to provide technical assistance related to the archival material.

(c) ENERGY DATA ARCHIVE SYSTEM.—

(1) The Secretary shall establish, as a component of the Program, an energy data archive system, which shall provide for the storage, preservation, and archiving of subsurface, and in limited cases surface, geological, geophysical and engineering data and samples. The Secretary, in consultation with the Association of American State Geologists and interested members of the public, shall develop guidelines relating to the energy data archive system, including the types of data and samples to be preserved.

(2) The system shall be comprised of State agencies and agencies within the Department of the Interior that maintain geological and geophysical data and samples regarding energy resources and that are designated by the Secretary in accordance with this subsection. The Program shall provide for the storage of data and samples through data repositories operated by such agencies.

(3) The Secretary may not designate a State agency as a component of the energy data archive system unless it is the agency that acts as the geological survey in the State.

(4) The energy data archive system shall provide for the archiving of relevant subsurface data and samples obtained during energy exploration and production operations on Federal lands—

(A) in the most appropriate repository designated under paragraph (2), with preference being given to archiving data in the State in which the data was collected; and

(B) consistent with all applicable law and requirements relating to confidentiality and proprietary data.

(5)(A) Subject to the availability of appropriations, the Secretary shall provide financial assistance to a State agency that is designated under paragraph (2) for providing facilities to archive energy material.

(B) The Secretary, in consultation with the Association of American State Geologists and interested members of the public, shall establish procedures for providing assistance under this paragraph. The procedures shall be designed to ensure that such assistance primarily supports the expansion of data and material archives and the collection and preservation of new data and samples.

(d) NATIONAL CATALOG.—

(1) As soon as practicable after the date of the enactment of this section, the Secretary shall develop and maintain, as a component of the Program, a national catalog that identifies

(A) energy data and samples available in the energy data archive system established under subsection (c);

(B) the repository for particular material in such system; and

(C) the means of accessing the material.

(2) The Secretary shall make the national catalog accessible to the public on the site of the Survey on the World Wide Web, consistent with all applicable requirements related to confidentiality and proprietary data.

(3) The Secretary may carry out the requirements of this subsection by contract or agreement with appropriate persons.

(e) TECHNICAL ASSISTANCE.—

(1) Subject to the availability of appropriations, as a component of the Program, the Secretary shall provide financial assistance to any State agency designated under subsection (c)(2) to provide technical assistance to enhance understanding, interpretation, and use of materials archived in the energy data archive system established under subsection (c).

(2) The Secretary, in consultation with the Association of American State Geologists and interested members of the public, shall develop a process, which shall involve the participation of representatives of relevant Federal and State agencies, for the approval of financial assistance to State agencies under this subsection.

(f) COSTS.—

(1) The Federal share of the cost of an activity carried out with assistance under subsections (c) or (e) shall be no more than 50 percent of the total cost of that activity.

(2) The Secretary—

(A) may accept private contributions of property and services for technical assistance and archive activities conducted under this section; and

(B) may apply the value of such contributions to the non-Federal share of the costs of such technical assistance and archive activities.

(g) REPORTS.—

(1) Within one year after the date of the enactment of this Act, the Secretary shall submit an initial report to the Congress setting forth a plan for the implementation of the Program.

(2) Not later than 90 days after the end of the first fiscal year beginning after the submission of the report under paragraph (1) and after the end of each fiscal year thereafter, the Secretary shall submit a report to the Congress describing the status of the Program and evaluating progress achieved during the preceding fiscal year in developing and carrying out the Program.

(3) The Secretary shall consult with the Association of American State Geologists and interested members of the public in preparing the reports required by this subsection.

(h) DEFINITIONS.—As used in this section, the term:

(1) ''Association of American State Geologists'' means the organization of the chief executives of the State geological surveys.

(2) ''Secretary'' means the Secretary of the Interior acting through the Director of the United States Geological Survey.

(3) ''Program'' means the National Energy Data Preservation Program carried out under this section.

(4) ''Survey'' means the United States Geological Survey.

(i) MAINTENANCE OF STATE EFFORT.—It is the intent of the Congress that the States not use this section as an opportunity to reduce State resources applied to the activities that are the subject of the Program.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $30,000,000 for each of fiscal years 2003 through 2007 for carrying out this section.

SEC. 113. OIL AND GAS LEASE ACREAGE LIMITATION.

Section 27(d)(1) of the Mineral Leasing Act (30 U.S.C. 184(d)(1)) is amended by inserting after ''acreage held in special tar sands area'' the following: ''as well as acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement, or for which royalty, including compensatory royalty or royalty-in-kind, was paid in the preceding calendar year,''.

SEC. 114. ASSESSMENT OF DEPENDENCE OF STATE OF HAWAII ON OIL.

(a) ASSESSMENT. The Secretary of Energy shall assess the economic implication of the dependence of the State of Hawaii on oil as the principal source of energy for the State, including—

(1) the short- and long-term prospects for crude oil supply disruption and price volatility and potential impacts on the economy of Hawaii;

(2) the economic relationship between oil-fired generation of electricity from residual fuel and refined petroleum products consumed for ground, marine, and air transportation;

(3) the technical and economic feasibility of increasing the contribution of renewable energy resources for generation of electricity, on an island-by-island basis, including—

(A) siting and facility configuration;

(B) environmental, operational, and safety considerations;

(C) the availability of technology;

(D) effects on the utility system including reliability;

(E) infrastructure and transport requirements;

(F) community support; and

(G) other factors affecting the economic impact of such an increase and any effect on the economic relationship described in paragraph (2);

(4) the technical and economic feasibility of using liquefied natural gas to displace residual fuel oil for electric generation, including neighbor island opportunities, and the effect of such displacement on the economic relationship described in paragraph (2) including—

(A) the availability of supply;

(B) siting and facility configuration for onshore and offshore liquefied natural gas receiving terminals;

(C) the factors described in subparagraphs (B) through (F) of paragraph (3); and

(D) other economic factors;

(5) the technical and economic feasibility of using renewable energy sources (including hydrogen) for ground, marine, and air transportation energy applications to displace the use of refined petroleum products, on an island-by-island basis, and the economic impact of such displacement on the relationship described in (2); and

(6) an island-by-island approach to—

(A) the development of hydrogen from renewable resources; and

(B) the application of hydrogen to the energy needs of Hawaii.

(b) CONTRACTING AUTHORITY.—The Secretary of Energy may carry out the assessment under subsection (a) directly or, in whole or in part, through one or more contracts with qualified public or private entities.

(c) REPORT.—Not later than 300 days after the date of enactment of this Act, the Secretary of Energy shall prepare, in consultation with agencies of the State of Hawaii and other stakeholders, as appropriate, and submit to Congress, as report detailing the findings, conclusions, and recommendations resulting from the assessment.

(d) APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Subtitle B—Access to Federal Lands

SEC. 121. OFFICE OF FEDERAL ENERGY PERMIT COORDINATION.

(a) ESTABLISHMENT.—The President shall establish the Office of Federal Energy Permit Coordination (in this section, referred to as ''Office'') within the Executive Office of the President in the same manner and mission as the White House Energy Projects Task Force established by Executive Order 13212.

(b) STAFFING.—The Office shall be staffed by functional experts from relevant federal agencies and departments on a nonreimbursable basis to carry out the mission of this office.

(c) REPORTING.—The Office shall provide an annual report to Congress, detailing the activities put in place to coordinate and expedite Federal decisions on energy projects. The report shall list accomplishments in improving the federal decision making process and shall include any additional recommendations or systemic changes needed to establish a more effective and efficient federal permitting process.

SEC. 122. PILOT PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION.

(a) CREATION OF PILOT PROJECT.—The Secretary of the Interior (in this section, referred to as ''Secretary'') shall establish a Federal Permit Streamlining Pilot Project. The Secretary shall enter into a Memorandum of Understanding with the Secretary of Agriculture, Administrator of the Environmental Protection Agency, and the Chief of the Corps of Engineers within 90 days after enactment of this Act. The Secretary may also request that the Governors of Wyoming, Montana, Colorado, and New Mexico be signatories to the Memorandum of Understanding.

(b) DESIGNATION OF QUALIFIED STAFF.—Once the Pilot Project has been established by the Secretary, all Federal signatory parties shall assign an employee on a nonreimbursable basis to each of the field offices identified in section (c), who has expertise in the regulatory issues pertaining to their office, including, as applicable, particular expertise in Endangered Species Act section 7 consultations and the preparation of Biological Opinions, Clean Water Act 404 permits, Clean Air Act regulatory matters, planning under the National Forest Management Act, and the preparation of analyses under the National Environmental Policy Act. Assigned staff shall report to the Bureau of Land Management (BLM) Field Managers in the offices to which they are assigned, and shall be responsible for all issues related to the jurisdiction of their home office or agency, and participate as part of the team of employees working on proposed energy projects, planning, and environmental analyses.

(c) FIELD OFFICES.—The following BLM Field Offices shall serve as the Federal Permit Streamlining Pilot Project offices:

(1) Rawlins, Wyoming;

(2) Buffalo, Wyoming;

(3) Miles City, Montana;

(4) Farmington, New Mexico;

(5) Carlsbad, New Mexico; and

(6) Glenwood Springs, Colorado.

(d) REPORTS.—The Secretary shall submit a report to the Congress 3 years following the date of enactment of this section, outlining the results of the Pilot Project to date and including a recommendation to the President as to whether the Pilot Project should be implemented nationwide.

(e) ADDITIONAL PERSONNEL.—The Secretary shall assign to each of the BLM Field Offices listed in subsection (c) such additional personnel as is necessary to ensure the effective implementation of—

(1) the Pilot Project; and

(2) other programs administered by such offices, including inspection and enforcement related to energy development on federal lands, pursuant to the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq).

(f) SAVINGS PROVISION.—Nothing in this section shall affect the operation of any federal or state law or any delegation of authority made by a Secretary or head of an Agency whose employees are participating in the program provided for by this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to implement this section.

SEC. 123. FEDERAL ONSHORE LEASING PROGRAMS FOR OIL AND GAS.

(a) TIMELY ACTION ON LEASES AND PERMITS.—To ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing, the Secretary of the Interior shall—

(1) ensure expeditious compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(2) improve consultation and coordination with the States; and

(3) improve the collection, storage, and retrieval of information related to such leasing activities.

(b) IMPROVED ENFORCEMENT.—The Secretary shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill.

(c) AUTHORIZATION OF APPROPRIATIONS.—For each of the fiscal years 2004 through 2007, in addition to amounts otherwise authorized to be appropriated for the purpose of carrying out section 17 of the Mineral Leasing Act (30 U.S.C. 226), there are authorized to be appropriated to the Secretary of the Interior—

(1) $40,000,000 for the purpose of carrying out paragraphs (1) through (3) of subsection (a); and

(2) $20,000,000 for the purpose of carrying out subsection (b).

SEC. 124. ESTIMATES OF OIL AND GAS RESOURCES UNDERLYING ONSHORE FEDERAL LANDS.

Section 604 of the Energy Act of 2000 (42 U.S.C. 6217) is amended by striking ''(a) IN GENERAL'' and all thereafter and inserting—

''(a) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, shall conduct an inventory of all onshore Federal lands and take measures necessary to update and revise this inventory. The inventory shall identify for all federal lands—

''(1) the United States Geological Survey estimates of the oil and gas resources underlying these lands;

''(2) the extent and nature of any restrictions or impediments to the exploration, production and transportation of such resources, including—

''(A) existing land withdrawals and the underlying purpose for each withdrawal;

''(B) restrictions or impediments affecting timeliness of granting leases;

''(C) post-lease restrictions or impediments such as conditions of approval, applications for permits to drill, applicable environmental permits;

''(D) permits or restrictions associated with transporting the resources; and

''(E) identification of the authority for each restriction or impediment together with the impact on additional processing or review time and potential remedies; and

''(3) the estimates of oil and gas resources not available for exploration and production by virtue of the restrictions identified above.

''(b) REPORTS.—The Secretary shall provide a progress report to the Congress by October 1, 2006 and shall complete the inventory by October 1, 2010.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to implement this section.''.

SEC. 125. SPLIT-ESTATE FEDERAL OIL & GAS LEASING AND DEVELOPMENT PRACTICES.

(a) REVIEW.—In consultation with affected private surface owners, oil and gas industry and other interested parties, the Secretary of the Interior shall undertake a review of the current policies and practices with respect to management of federal subsurface oil and gas development activities and their effects on the privately owned surface. This review shall include—

(1) a comparison of the rights and responsibilities under existing mineral and land law for the owner of a federal mineral lease, the private surface owners and the Department;

(2) a comparison of the surface owner consent provisions in section 714 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1304) concerning surface mining of federal coal deposits and the surface owner consent provisions for oil and gas development, including coalbed methane production; and

(3) recommendations for administrative or legislative action necessary to facilitate reasonable access for federal oil and gas activities while addressing surface owner concerns and minimizing impacts to private surface.

(b) REPORT.—The Secretary of the Interior shall report the results of such review to the Congress no later than 180 days after enactment of this section.

SEC. 126. COORDINATION OF FEDERAL AGENCIES TO ESTABLISH PRIORITY ENERGY TRANSMISSION RIGHTS-OF-WAY.

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

(1) The term ''utility corridor'' means any linear strip of land across Federal lands of approved width, but limited by technological, environmental, and topographical factors for use by a utility facility.

(2) The term ''Federal authorization'' means any authorization required under Federal law in order to site a utility facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, issued by a Federal agency.

(3) The term ''Federal lands'' means all lands owned by the United States, except

(A) lands in the National Park System;

(B) lands held in trust for an Indian or Indian tribe; and

(C) lands on the Outer Continental Shelf.

(4) The term ''Secretary'' means the Secretary of Energy.

(5) The term ''utility facility'' means any privately, publicly, or cooperatively owned line, facility, or system (A) for the transportation of oil and natural gas, synthetic liquid or gaseous fuels, any refined product produced therefrom, or for transportation of products in support of production, or for storage and terminal facilities in connection therewith; or (B) for the generation, transmission and distribution of electric energy.

(b) UTILITY CORRIDORS.—

(1) No later than 24 months after the date of enactment of this section, the Secretary of the Interior, with respect to public lands, and the Secretary of Agriculture, with respect to National Forest System lands, in consultation with the Secretary, shall—

(A) designate utility corridors pursuant to section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) in the eleven contiguous Western States, as identified in section 103(o) of such Act (43 U.S.C. 1702(o)); and

(B) incorporate the utility corridors designated under paragraph (A) into the relevant departmental and agency land use and resource management plans or their equivalent.

(2) The Secretary shall coordinate with the affected Federal agencies to jointly identify potential utility corridors on Federal lands in the other States and jointly develop a schedule for the designation, environmental review and incorporation of such utility corridors into relevant departmental and agency land use and resource management plans or their equivalent.

(c) FEDERAL PERMIT COORDINATION.—The Secretary, in consultation with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense, shall develop a memorandum of understanding (''MOU'') for the purpose of coordinating all applicable Federal authorizations and environmental reviews related to a proposed or existing utility facility. To the maximum extent practicable under applicable law, the Secretary shall coordinate the process developed in the MOU with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the affected utility facility to ensure timely review and permit decisions. The MOU shall provide for—

(1) the coordination among affected Federal agencies to ensure that the necessary Federal authorizations are conducted concurrently with applicable State siting processes and are considered within a specific time frame to be identified in the MOU;

(2) an agreement among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions; and

(3) a process to expedite applications to construct or modify utility facilities within utility corridors.

Subtitle C—Alaska Natural Gas Pipeline

SEC. 131. SHORT TITLE.

This subtitle may be cited as the ''Alaska Natural Gas Pipeline Act''.

SEC. 132. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) The term ''Alaska natural gas'' means natural gas derived from the area of the State of Alaska lying north of 64 degrees North latitude.

(2) The term ''Alaska natural gas transportation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under either—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 133.

(3) The term ''Alaska natural gas transportation system'' means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 and designated and described in section 2 of the President's decision.

(4) The term ''Commission'' means the Federal Energy Regulatory Commission.

(5) The term ''President's decision'' means the decision and report to Congress on the Alaska natural gas transportation system issued by the President on September 22, 1977, pursuant to section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719(e) and approved by Public Law 95–158 (91 Stat.1268).

SEC. 133. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the provisions of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through such project to markets in the contiguous United States.

(c) EXPEDITED APPROVAL PROCESS.—The Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section not more than

60 days after the issuance of the final environmental impact statement for that project pursuant to section 134.

(d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from lands within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that traverses—

(1) the submerged lands (as defined by the Submerged Lands Act) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees North latitude.

(e) OPEN SEASON.—Except where an expansion is ordered pursuant to section 135, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations governing the conduct of open seasons for such project. Such procedures shall include the criteria for and timing of any open seasons; promote competition in the exploration, development, and production of Alaska natural gas; and, for any open season for capacity beyond the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thompson units. The Commission shall issue such regulations not later than 120 days after the date of enactment of this Act.

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—Applications for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made pursuant to the Natural Gas Act. To the extent such pipeline facilities include the expansion of any facility constructed pursuant to the Alaska Natural Gas Transportation Act of 1976, the provisions of that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that it has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) ALASKA ROYALTY GAS.—The Commission, upon the request of the State of Alaska and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project for the State of Alaska or its designee for the transportation of the State's royalty gas for local consumption needs within the State; except that the rates of existing shippers of subscribed capacity on such project shall not be increased as a result of such access.

(i) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 134. ENVIRONMENTAL REVIEWS.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 133 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

(b) DESIGNATION OF LEAD AGENCY.—The Commission shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969, and shall be responsible for preparing the statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 133. The Commission shall prepare a single environmental statement under this section, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the project.

(c) OTHER AGENCIES.—All Federal agencies considering aspects of the construction and operation of an Alaska natural gas transportation project under section 133 shall cooperate with the Commission, and shall comply with deadlines established by the Commission in the preparation of the statement under this section. The statement prepared under this section shall be used by all such agencies to satisfy their responsibilities under section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) with respect to such project.

(d) EXPEDITED PROCESS.—The Commission shall issue a draft statement under this section not later than 12 months after the Commission determines the application to be complete and shall issue the final statement not later than 6 months after the Commission issues the draft statement, unless the Commission for good cause finds that additional time is needed.

SEC. 135. PIPELINE EXPANSION.

(a) AUTHORITY.—With respect to any Alaska natural gas transportation project, upon the request of one or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of such project if it determines that such expansion is required by the present and future public convenience and necessity.

(b) REQUIREMENTS.—Before ordering an expansion, the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates as established do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that the proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the then-effective tariff of the Alaska natural gas transportation project;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.—Any order of the Commission issued pursuant to this section shall be null and void unless the person or persons requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within a reasonable period of time as specified in such order.

(d) LIMITATION.—Nothing in this section shall be construed to expand or otherwise affect any authorities of the Commission with respect to any natural gas pipeline located outside the State of Alaska.

(e) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 136. FEDERAL COORDINATOR.

(a) ESTABLISHMENT.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) FEDERAL COORDINATOR.—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall

(1) be appointed by the President, by and with the advice and consent of the Senate;

(2) for a term equal to the period required to design, permit and construction the project plus one year; and

(3) be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) DUTIES.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this subtitle.

(d) REVIEWS AND ACTIONS OF OTHER FEDERAL AGENCIES.—

(1) All reviews conducted and actions taken by any Federal officer or agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines set forth in this subtitle.

(2) No Federal officer or agency shall have the authority to include terms and conditions that are permitted, but not required, by law on any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the terms and conditions would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the project.

(3) Unless required by law, no Federal officer or agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that such action would prevent or impair in any significant respect the expeditious construction and operation of, or an expansion of, the project.

(4) The Federal Coordinator's authority shall not include the ability to override—

(A) the implementation or enforcement of regulations issued by the Commission pursuant to Section 133(e); or

(B) an order by the Commission to expand the project pursuant to Section 135.

(5) Nothing in this section shall give the Federal Coordinator the authority to impose additional terms, conditions or requirements beyond those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) STATE COORDINATION.—The Federal Coordinator shall enter into a Joint Surveillance and Monitoring Agreement, approved by the President and the Governor of Alaska, with the State of Alaska similar to that in effect during construction of the Trans-Alaska Oil Pipeline to monitor the construction of the Alaska natural gas transportation project. The Federal Government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses Federal lands and private lands, and the State government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses State lands.

(f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS AND AUTHORITY.—Upon appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary of Energy pursuant to section 3012(b) of Public Law 102–486 (15 U.S.C. 719e(b)), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36,927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

SEC. 137. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—Except for review by the Supreme Court of the United States on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

(2) the constitutionality of any provision of this subtitle, or any decision made or action taken under this subtitle; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—Claims arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(d) AMENDMENT TO ANGTA.—Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended by inserting after paragraph (1) the following:

''(2) The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.''.

SEC. 138. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from the Alaska natural gas transportation project for delivery to consumers within the State of Alaska shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)), and therefore not subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Nothing in this subtitle, except as provided in section 133(d), shall preclude or affect a future gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State of Alaska for consumption within or distribution outside the State of Alaska.

(c) RATE COORDINATION.—Pursuant to the Natural Gas Act, the Commission shall establish rates for the transportation of natural gas on the Alaska natural gas transportation project. In exercising such authority, the Commission, pursuant to section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall confer with the State of Alaska regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State of Alaska.

SEC. 139. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) REQUIREMENT OF STUDY.—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission not later than 18 months after the date of enactment of this Act, the Secretary of Energy shall conduct a study of alternative approaches to the construction and operation of the project.

(b) SCOPE OF STUDY.—The study shall consider the feasibility of establishing a Government corporation to construct an Alaska natural gas transportation project, and alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the project.

(c) CONSULTATION.—In conducting the study, the Secretary of Energy shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Commanding General of the Corps of Engineers).

(d) REPORT.—If the Secretary of Energy is required to conduct a study under subsection (a), the Secretary shall submit a report containing the results of the study, the Secretary's recommendations, and any proposals for legislation to implement the Secretary's recommendations to Congress.

SEC. 140. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) SAVINGS CLAUSE.—Nothing in this subtitle affects any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719(g)) or any Presidential findings or waivers issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal officer or agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719(g)) may add to, amend, or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), so long as such action does not compel a change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision, or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary of Energy shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 141. SENSE OF CONGRESS.

It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to make every effort to use steel that is manufactured or produced in North America and to negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 142. PARTICIPATION OF SMALL BUSINESS CONCERNS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(b) STUDY.—

(1) The Comptroller General shall conduct a study on the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) Not later that 1 year after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of the study.

(3) The Comptroller General shall update the study at least once every 5 years and transmit to Congress a report containing the results of the update.

(4) After the date of completion of the construction of an Alaska natural gas transportation project, this subsection shall no longer apply.

(c) SMALL BUSINESS CONCERN DEFINED.—In this section, the term ''small business concern'' has the meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

SEC. 143. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Labor (in this section referred to as the ''Secretary'') may make grants to the Alaska Department of Labor and Workforce Development to—

(1) develop a plan to train, through the workforce investment system established in the State of Alaska under the Workforce Investment Act of 1998 (112 Stat. 936 et seq.), adult and dislocated workers, including Alaska Natives, in urban and rural Alaska in the skills required to construct and operate an Alaska gas pipeline system; and

(2) implement the plan developed pursuant to paragraph (1).

(b) REQUIREMENTS FOR PLANNING GRANTS.—The Secretary may make a grant under subsection (a)(1) only if—

(1) the Governor of Alaska certifies in writing to the Secretary that there is a reasonable expectation that construction of an Alaska gas pipeline will commence within 3 years after the date of such certification; and

(2) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (1).

(c) REQUIREMENTS FOR IMPLEMENTATION GRANTS.—The Secretary may make a grant under subsection (a)(2) only if—

(1) the Secretary has approved a plan developed pursuant to subsection (a)(1);

(2) the Governor of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of an Alaska gas pipeline system will commence within 2 years after the date of such certification; and

(3) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (2) after considering—

(A) the status of necessary State and Federal permits;

(B) the availability of financing for the pipeline project; and

(C) other relevant factors and circumstances.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary such sums as may be necessary, but not to exceed $20,000,000, to carry out this section.

SEC. 144. LOAN GUARANTEES.

(a) AUTHORITY.

(1) The Secretary may enter agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 133(b) of this Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) CONDITIONS.—

(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 133(b) of this Act or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

(c) LIMITATIONS ON AMOUNTS.—

(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

(d) LOAN TERMS AND FEES.—

(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) REGULATIONS.—The Secretary may issue regulations to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) DEFINITIONS.—In this section, the following definitions apply:

(1) The term ''Consumer Price Index'' means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) The term ''eligible lender'' means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933), including

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(3) The term ''Federal guarantee instrument'' means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) The term ''qualified infrastructure project'' means an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

(5) The term ''Secretary'' means the Secretary of Energy.

SEC. 145. SENSE OF CONGRESS ON NATURAL GAS DEMAND.

It is the sense of Congress that:

(1) North American demand for natural gas will increase dramatically over the course of the next several decades.

(2) Both the Alaska Natural Gas Pipeline and the McKenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America.

(3) Federal and state officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion.

(4) Federal and state officials should acknowledge that the smaller scope, fewer permitting requirements and lower cost of the McKenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline.

(5) Lower 48 and Canadian natural gas production alone will not be able to meet all domestic demand in the coming decades.

(6) As a result, natural gas delivered from Alaska's North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the McKenzie Delta nor production from the Lower 48.

TITLE II—COAL

Subtitle A—Clean Coal Power Initiative

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Energy (in this subtitle, referred to as ''Secretary'') to carry out the activities authorized by this subtitle $200,000,000 for each of the fiscal years 2003 through 2011, to remain available until expended.

SEC. 202. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this subtitle for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in operation or have been demonstrated as of the date of the enactment of this Act.

(b) TECHNICAL CRITERIA FOR GASIFICATION.—In allocating the funds made available under section 201, the Secretary shall ensure that at least 80 percent of the funds are used for coal-based gasification technologies or coal-based projects that include gasification combined cycle, gasification fuel cells, gasification co-production, or hybrid gasification/combustion. The Secretary shall set technical milestones specifying emissions levels that coal gasification projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2020 coal gasification projects able to—

(1) remove 99 percent of sulfur dioxide;

(2) emit no more than .05 lbs of NO_X per million BTU;

(3) achieve substantial reductions in mercury emissions; and

(4) achieve a thermal efficiency of—

(A) 60 percent for coal of more than 9,000 Btu;

(B) 59 percent for coal of 7,000 to 9,000 Btu; and

(C) 57 percent for coal of less than 7,000 Btu.

(c) TECHNICAL CRITERIA FOR OTHER PROJECTS.—For projects not described in subsection (b), the Secretary shall set technical milestones specifying emissions levels that the projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2010 projects able to—

(1) remove 97 percent of sulfur dioxide;

(2) emit no more than .08 lbs of NO_X per million BTU;

(3) achieve substantial reductions in mercury emissions; and

(4) achieve a thermal efficiency of—

(A) 45 percent for coal of more than 9,000 Btu;

(B) 44 percent for coal of 7,000 to 9,000 Btu; and

(C) 42 percent for coal of less than 7,000 Btu.

(d) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency requirements set forth in paragraphs (b)(4) and (c)(4), the projects shall be designed to achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(e) PERMITTED USES.—In allocating funds made available in this section, the Secretary may allocate funds to projects that include, as part of the project, the separation and capture of carbon dioxide.

(f) CONSULTATION.—Before setting the technical milestones under subsections (b) and (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including

coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(g) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this title unless the recipient has documented to the satisfaction of the Secretary that—

(1) the award recipient is financially viable without the receipt of additional Federal funding;

(2) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(h) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of this section and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities that use coal as the primary feedstock as of the date of the enactment of this Act.

(i) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary shall not exceed 50 percent.

(j) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.

SEC. 203. REPORTS.

(a) TEN-YEAR PLAN.—By September 30, 2004, the Secretary shall transmit to Congress a report, with respect to section 202(a), a 10-year plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under section 201 are appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

(b) TECHNICAL MILESTONES.—Not later than 1 year after the date of the enactment of this Act, and once every 2 years thereafter through 2011, the Secretary, in consultation with other appropriate Federal agencies, shall transmit to the Congress, a report describing—

(1) the technical milestones set forth in section 212 and how those milestones ensure progress toward meeting the requirements of subsections (b) and (c) of section 212; and

(2) the status of projects funded under this title.

SEC. 204. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 211, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that can show the greatest potential for advancing new clean coal technologies.

Subtitle B—Federal Coal Leases

SEC. 211. REPEAL OF THE 160-ACRE LIMITATION FOR COAL LEASES.

Section 3 of the Mineral Leasing Act (30 U.S.C. 203) is amended by striking all the text in the first sentence after ''upon'' and inserting the following:

''a finding by the Secretary that it (1) would be in the interest of the United States, (2) would not displace a competitive interest in the lands, and (3) would not include lands or deposits that can be developed as part of another potential or existing operation, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed 320 acres, or add acreage larger than that in the original lease.''.

SEC. 212. MINING PLANS.

Section 2(d)(2) of the Mineral Leasing Act (30 U.S.C. 202a(2)) is amended—

(1) by inserting ''(A)'' after ''(2)''; and

(2) by adding at the end the following:

''(B) The Secretary may establish a period of more than forty years if the Secretary determines that the longer period will ensure the maximum economic recovery of a coal deposit, or the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.''.

SEC. 213. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.

Section 7(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 207(b)) is amended by striking all after ''Secretary).'' through to ''a lease.'' and inserting:

''The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed twenty. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year.''.

SEC. 214. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE OPERATION AND RECLAMATION PLAN.

Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended by striking ''and not later than three years after a lease is issued,''.

SEC. 215. APPLICATION OF AMENDMENTS.

The amendments made by this Act apply with respect to any coal lease issued on or after the date of enactment of this Act, and, with respect to any coal lease issued before the date of enactment of this Act, upon the date of readjustment of the lease as provided for by section 7(a) of the Mineral Leasing Act, or upon request by the lessee, prior to such date.

Subtitle C—Powder River Basin Shared Mineral Estates

SEC. 221. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER RIVER BASIN.

The Secretary of the Interior shall—

(1) undertake a review of existing authorities to resolve conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana; and

(2) not later than 6 months after the enactment of this Act, report to the Congress on alternatives to resolve these conflicts and identification of a preferred alternative with specific legislative language, if any, required to implement the preferred alternative.

TITLE III—INDIAN ENERGY

SEC. 301. SHORT TITLE.

This title may be cited as the ''Indian Tribal Energy Development and Self-Determination Act of 2003''.

SEC. 302. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

(a) IN GENERAL.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) is amended by adding at the end the following:

''OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

''Sec. 217. (a) ESTABLISHMENT.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office'). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) DUTIES OF DIRECTOR.—The Director shall in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

''(1) promote Indian tribal energy development, efficiency, and use;

''(2) reduce or stabilize energy costs;

''(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

''(4) electrify Indian tribal land and the homes of tribal members.

''COMPREHENSIVE INDIAN ENERGY ACTIVITIES

''SEC. 218. (a) INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE.—

''(1) The Director shall establish programs within the Office of Indian Energy Policy and Programs to assist Indian tribes in meeting energy education, research and development, planning, and management needs.

''(2) In carrying out this section, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal consortium for use in carrying out—

''(A) energy, energy efficiency, and energy conservation programs;

''(B) studies and other activities supporting tribal acquisition of energy supplies, services, and facilities;

''(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

''(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

''(3)(A) The Director may develop, in consultation with Indian tribes, a formula for providing grants under this section.

''(B) In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

''(4) The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(5) There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2004 through 2011.

''(b) LOAN GUARANTEE PROGRAM.—

''(1) Subject to paragraph (3), the Secretary may provide loan guarantees (as defined in

section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for energy development.

''(2) A loan guaranteed under this subsection shall be made by—

''(A) a financial institution subject to examination by the Secretary; or

''(B) an Indian tribe, from funds of the Indian tribe.

''(3) The aggregate outstanding amount guaranteed by the Secretary at any time under this subsection shall not exceed $2,000,000,000.

''(4) The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(5) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

''(6) Not later than 1 year from the date of enactment of this section, the Secretary shall report to the Congress on the financing requirements of Indian tribes for energy development on Indian land.

''(c) INDIAN ENERGY PREFERENCE.—

''(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

''(2) In carrying out this subsection, a Federal agency or department shall not—

''(A) pay more than the prevailing market price for an energy product or byproduct; and

''(B) obtain less than prevailing market terms and conditions.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended—

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

(B) by striking the items relating to sections 213 through 216 and inserting the following:

''Sec. 213. Establishment of policy for National Nuclear Security Administration.
''Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
''Sec. 215. Office of Counterintelligence.
''Sec. 216. Office of Intelligence.
''Sec. 217. Office of Indian Energy Policy and Programs.
''Sec. 218. Comprehensive Indian Energy Activities.''.

(2) Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Indian Energy Policy and Programs, Department of Energy.'' after ''Inspector General, Department of Energy.''.

SEC. 303. INDIAN ENERGY.

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read as follows:

''TITLE XXVI INDIAN ENERGY

''SEC. 2601. DEFINITIONS.

''For purposes of this title:

''(1) The term 'Director' means the Director of the Office of Indian Energy Policy and Programs.

''(2) The term 'Indian land' means—

''(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

''(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

''(i) in trust by the United States for the benefit of an Indian tribe;

''(ii) by an Indian tribe, subject to restriction by the United States against alienation; or

''(iii) by a dependent Indian community; and ''(C) land conveyed to a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

''(3) The term 'Indian reservation' includes—

''(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;

''(B) a public domain Indian allotment;

''(C) a former reservation in the State of Oklahoma;

''(D) a parcel of land owned by a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

''(E) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

''(i) on original or acquired territory of the community; or

''(ii) within or outside the boundaries of any particular State.

''(4) 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) The term 'Native Corporation' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

''(6) The term 'organization' means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

''(7) The term 'Program' means the Indian energy resource development program established under section 2602(a).

''(8) The term 'Secretary' means the Secretary of the Interior.

''(9) The term 'tribal consortium' means an organization that consists of 2 or more entities, at least 1 of which is an Indian tribe.

''(10) The term 'tribal land' means any land or interests in land owned by any Indian tribe, band, nation, pueblo, community, rancheria, colony or other group, title to which is held in trust by the United States or which is subject to a restriction against alienation imposed by the United States.

''(11) The term 'vertical integration of energy resources' means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission facility), on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

''SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

''(a) IN GENERAL.—To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist Indian tribes and tribal consortia in achieving the purposes of this title.

''(b) GRANTS AND LOANS.—In carrying out the Program, the Secretary shall—

''(1) provide development grants to Indian tribes and tribal consortia for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land;

''(2) provide grants to Indian tribes and tribal consortia for use in carrying out projects to promote the vertical integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

''(3) provide low-interest loans to Indian tribes and tribal consortia for use in the promotion of energy resource development and vertical integration or energy resources on Indian land.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2014.

''SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

''(a) GRANTS.—The Secretary may provide to Indian tribes and tribal consortia, on an annual basis, grants for use in developing, administering, implementing, and enforcing tribal laws (including regulations) governing the development and management of energy resources on Indian land.

''(b) USE OF FUNDS.—Funds from a grant provided under this section may be used by an Indian tribe or tribal consortium for—

''(1) the development of a tribal energy resource inventory or tribal energy resource on Indian land;

''(2) the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

''(3) the development and enforcement of tribal laws and the development of technical infrastructure to protect the environment under applicable law; or

''(4) the training of employees that—

''(A) are engaged in the development of energy resources on Indian land; or

''(B) are responsible for protecting the environment.

''(c) OTHER ASSISTANCE.—To the maximum extent practicable, the Secretary and the Secretary of Energy shall make available to Indian tribes and tribal consortia scientific and technical data for use in the development and management of energy resources on Indian land.

''SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.

''(a) LEASES AND AGREEMENTS.—Subject to the provisions of this section—

''(1) an Indian tribe may, at its discretion, enter into a lease or business agreement for the purpose of energy development, including a lease or business agreement for—

''(A) exploration for, extraction of, processing of, or other development of energy resources on tribal land; and

''(B) construction or operation of an electric generation, transmission, or distribution facility located on tribal land; or a facility to process or refine energy resources developed on tribal land; and

''(2) a lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) or any other provision of law, if—

''(A) the lease or business agreement is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

''(B) the term of the lease or business agreement does not exceed—

''(i) 30 years; or

''(ii) in the case of a lease for the production of oil and gas resources, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

''(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including an annual trust asset evaluation of the activities of the Indian tribe conducted in accordance with the agreement).

''(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an

electric transmission or distribution line without specific approval by the Secretary if—

''(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

''(2) the term of the right-of-way does not exceed 30 years;

''(3) the pipeline or electric transmission or distribution line serves—

''(A) an electric generation, transmission, or distribution facility located on tribal land; or

''(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

''(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including an annual trust asset evaluation of the activities of the Indian tribe conducted in accordance with the agreement.

''(c) RENEWALS.—A lease or business agreement entered into or a right-of-way granted by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

''(d) VALIDITY.—No lease, business agreement, or right-of-way under this section shall be valid unless the lease, business agreement, or right-of-way is authorized in accordance with tribal energy resource agreements approved by the Secretary under subsection (e).

''(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

''(1) On promulgation of regulations under paragraph (9), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

''(2)(A) Not later than 180 days after the date on which the Secretary receives a tribal energy resource agreement submitted by an Indian tribe under paragraph (1) (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

''(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

''(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe; and

''(ii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

''(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

''(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

''(III) address amendments and renewals;

''(IV) address consideration for the lease, business agreement, or right-of-way;

''(III) address amendments and renewals;

''(IV) address consideration for the lease, business agreement, or right-of-way;

''(V) address technical or other relevant requirements;

''(VI) establish requirements for environmental review in accordance with subparagraph (C);

''(VII) ensure compliance with all applicable environmental laws;

''(VIII) identify final approval authority;

''(IX) provide for public notification of final approvals;

''(X) establish a process for consultation with any affected States concerning potential off-reservation impacts associated with the lease, business agreement, or right-of-way; and

''(XI) describe the remedies for breach of the lease, agreement, or right-of-way.

''(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

''(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative), including effects on cultural resources;

''(ii) the identification of proposed mitigation;

''(iii) a process for ensuring that the public is informed of and has an opportunity to comment on any proposed lease, business agreement, or right-of-way before tribal approval of the lease, business agreement, or right-of-way (or any amendment to or renewal of the lease, business agreement, or right-of-way); and

''(iv) sufficient administrative support and technical capability to carry out the environmental review process.

''(D) A tribal energy resource agreement negotiated between the Secretary and an Indian tribe in accordance with this subsection shall include—

''(i) provisions requiring the Secretary to conduct an annual trust asset evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources on tribal land by the Indian tribe; and

''(ii) in the case of a finding by the Secretary of imminent jeopardy to a physical trust asset, provisions authorizing the Secretary to reassume responsibility for activities associated with the development of energy resources on tribal land.

''(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted under paragraph (1).

''(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall—

''(A) notify the Indian tribe in writing of the basis for the disapproval;

''(B) identify what changes or other actions are required to address the concerns of the Secretary; and

''(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

''(5) If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements set forth in the Secretary's regulations adopted pursuant to subsection (e)(9), provide to the Secretary—

''(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

''(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payment to be made directly to the Indian tribe, documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law.

''(6) The Secretary shall continue to have a trust obligation to ensure that the rights of an Indian tribe are protected in the event of a violation of the terms of any lease, business agreement or right-of-way by any other party to the lease, business agreement, or right-of-way.

''(7)(A) The United States shall not be liable for any loss or injury sustained by any party (including an Indian tribe or any member of an Indian tribe) to a lease, business agreement, or right-of-way executed in accordance with tribal energy resource agreements approved under this subsection.

''(B) On approval of a tribal energy resource agreement of an Indian tribe under paragraph (1), the Indian tribe shall be stopped from asserting a claim against the United States on the ground that Secretary should not have approved the Tribal energy resource agreement.

''(8)(A) In this paragraph, the term 'interested party' means any person or entity the interests of which have sustained or will sustain a significant adverse impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

''(B) After exhaustion of tribal remedies, and in accordance with the process and requirements set forth in regulations adopted by the Secretary pursuant to subsection (e)(9), an interested party may submit to the Secretary a petition to review compliance of an Indian tribe with a tribal energy resource agreement of the Indian tribe approved under this subsection.

''(C) If the Secretary determines that an Indian tribe is not in compliance with a tribal energy resource agreement approved under this subsection, the Secretary shall take such action as is necessary to compel compliance, including—

''(i) suspending a lease, business agreement, or right-of-way under this section until an Indian tribe is in compliance with the approved tribal energy resource agreement; and

''(ii) rescinding approval of the tribal energy resource agreement and reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way associated with an energy pipeline or distribution line described in subsections (a) and (b).

''(D) If the Secretary seeks to compel compliance of an Indian tribe with an approved tribal energy resource agreement under subparagraph (C)(ii), the Secretary shall—

''(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

''(ii) provide the Indian tribe with a written notice of the violation together with the written determination; and

''(iii) before taking any action described in subparagraph (C)(ii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

''(E)(i) An Indian tribe described in subparagraph (D) shall retain all rights to appeal as provided in regulations promulgated by the Secretary.

''(ii) The decision of the Secretary with respect to an appeal described in clause (i), after any agency appeal provided for by regulation, shall constitute a final agency action.

''(9) Not later than 180 days after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall promulgate regulations that implement the provisions of this subsection, including—

''(A) criteria to be used in determining the capacity of an Indian tribe described in paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe; and

''(B) a process and requirements in accordance with which an Indian tribe may—

''(i) voluntarily rescind an approved tribal energy resource agreement approved by the Secretary under this subsection; and

''(ii) return to the Secretary the responsibility to approve any future leases, business agreements, and rights-of-way described in this subsection.

''(f) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of—

''(1) any Federal environmental law;

''(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

''(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

''SEC. 2605. FEDERAL POWER MARKETING ADMINISTRATIONS.

''(a) DEFINITIONS.—In this section:

''(1) The term 'Administrator' means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

''(2) The term 'power marketing administration' means—

''(A) the Bonneville Power Administration;

''(B) the Western Area Power Administration; and

''(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

''(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY DEVELOPMENT.—Each Administrator shall encourage Indian tribal energy development by taking such actions as are appropriate, including administration of programs of the Bonneville Power Administration and the Western Area Power Administration, in accordance with this section.

''(c) ACTION BY THE ADMINISTRATOR.—In carrying out this section, and in accordance with existing law—

''(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes.

''(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

''(3) the Administrator of the Western Area Power Administration may purchase power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

''(4) each Administrator shall not pay more than the prevailing market price for an energy product nor obtain less than prevailing market terms and conditions.

''(d) ASSISTANCE FOR TRANSMISSION SYSTEM USE.—

''(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

''(2) The costs of technical assistance provided under paragraph (1) shall be funded by the Secretary of Energy using nonreimbursable funds appropriated for that purpose, or by the applicable Indian tribes.

''(e) POWER ALLOCATION STUDY.—Not later than 2 years after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary of Energy shall submit to the Congress a report that—

''(1) describes the use by Indian tribes of Federal power allocations of the Western Area Power Administration (or power sold by the Southwestern Power Administration) and the Bonneville Power Administration to or for the benefit of Indian tribes in service areas of those administrations; and

''(2) identifies—

''(A) the quantity of power allocated to Indian tribes by the Western Area Power Administration;

''(B) the quantity of power sold to Indian tribes by other power marketing administrations; and

''(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to facilitate the use of Federal power by Indian tribes.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $750,000, which shall remain available until expended and shall not be reimbursable.

''SEC. 2606. INDIAN MINERAL DEVELOPMENT REVIEW.

''(a) IN GENERAL.—The Secretary shall conduct a review of all activities being conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) as of that date.

''(b) REPORT.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall submit to the Congress a report that includes—

''(1) the results of the review;

''(2) recommendations to ensure that Indian tribes have the opportunity to develop Indian energy resources; and

''(3) an analysis of the barriers to the development of energy resources on Indian land (including legal, fiscal, market, and other barriers), along with recommendations for the removal of those barriers.

''SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.

''(a) STUDY.—The Secretary, in coordination with the Secretary of the Army and the Secretary of the Interior, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

''(b) SCOPE OF STUDY.—The study shall—

''(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

''(2) review historical purchase requirements and projected purchase requirements for firming and the patterns of availability and use of firming energy;

''(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

''(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

''(5) include an independent tribal engineer as a study team member.

''(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

''(1) an analysis of the potential energy cost or benefits to the customers of the Western Area Power Administration through the blend of wind and hydropower;

''(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

''(3) recommendations for a demonstration project that could be carried out by the Western Area Power Administration in partnership with an Indian tribal government or tribal consortium to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

''(4) an identification of—

''(A) the economic and environmental costs or benefits to be realized through such a Federal-tribal partnership; and

''(B) the manner in which such a partnership could contribute to the energy security of the United States.

''(d) FUNDING.—

''(1) There is authorized to be appropriated to carry out this section $500,000, to remain available until expended.

''(2) Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.''.

SEC. 304. FOUR CORNERS TRANSMISSION LINE PROJECT.

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance as authorized by section 302 of this title and section 2602 of the Energy Policy Act of 1992, as amended by this title, for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

SEC. 305. ENERGY EFFICIENCY IN FEDERALLY ASSISTED HOUSING.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall promote energy conservation in housing that is located on Indian land and assisted with Federal resources through—

(1) the use of energy-efficient technologies and innovations (including the procurement of energy-efficient refrigerators and other appliances);

(2) the promotion of shared savings contracts; and

(3) the use and implementation of such other similar technologies and innovations as the Secretary of Housing and Urban Development considers to be appropriate.

(b) AMENDMENT.—Section 202(2) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(2)) is amended by inserting 'improvement to achieve greater energy efficiency,' after 'planning,'.

SEC. 306. CONSULTATION WITH INDIAN TRIBES.

In carrying out this Act and the amendments made by this Act, the Secretary of Energy and the Secretary shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes in a manner that is consistent with the Federal trust and the government-to-government relationships between Indian tribes and the United States.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 401. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2003''.

SEC. 402. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES'';

(2) by striking ''licenses issued between August 30, 1954, and December 31, 2003'' and inserting ''licenses issued after August 30, 1954''; and

(3) by striking ''With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2003, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2003.''

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d.(1)(A) of

the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking '', until December 31, 2004,''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170k.of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended—

(1) by striking ''licenses issued between August 30, 1954, and August 1, 2002'' and replacing it with ''licenses issued after August 30, 1954''; and

(2) by striking ''With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.''

SEC. 403. MAXIMUM ASSESSMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended—

(1) in the second proviso of the third sentence of subsection b.(1)

(A) by striking ''$63,000,000'' and inserting ''$94,000,000''; and

(B) by striking ''$10,000,000 in any 1 year'' and inserting ''$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)''; and

(2) in subsection t.(1)

(A) by inserting ''total and annual'' after ''amount of the maximum'';

(B) by striking ''the date of the enactment of the Price-Anderson Amendments Act of 1988'' and inserting ''July 1, 2003''; and

(C) by striking ''such date of enactment'' and inserting ''July 1, 2003''.

SEC. 404. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further amended by striking paragraph (3) and inserting the following—

''(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.''.

(c) LIABILITY LIMIT.—Section 170e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended by:

(1) striking ''the maximum amount of financial protection required under subsection b. or''; and

(2) striking ''paragraph (3) of subsection d., whichever amount is more'' and inserting ''paragraph (2) of subsection d.''.

SEC. 405. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 406. REPORTS.

Section 170p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''August 1, 2013''.

SEC. 407. INFLATION ADJUSTMENT.

Section 170t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

''(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date, in the case of the first adjustment under this paragraph; or

''(B) the previous adjustment under this paragraph.''.

SEC. 408. TREATMENT OF MODULAR REACTORS.

Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following:

''(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

''(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.''.

SEC. 409. APPLICABILITY.

The amendments made by sections 403, 404, and 405 do not apply to a nuclear incident that occurs before the date of the enactment of this Act.

SEC. 410. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234Ab.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NOT-FOR-PROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

''d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under the contract under which the violation occurs.

''(2) For purposes of this section, the term ''not-for-profit'' means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 occurring under a contract entered into before the date of enactment of this section.

Subtitle B—Deployment of New Nuclear Plants

SEC. 421. SHORT TITLE.

This subtitle may be cited as the ''Nuclear Energy Finance Act of 2003.''

SEC. 422. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''advanced reactor design'' means a nuclear reactor that enhances safety, efficiency, proliferation resistance, or waste reduction compared to commercial nuclear reactors in use in the United States on the date of enactment of this Act.

(2) The term ''eligible project costs'' means all costs incurred by a project developer that are reasonably related to the development and construction of a project under this subtitle, including costs resulting from regulatory or licensing delays.

(3) The term ''financial assistance'' means a loan guarantee, purchase agreement, or any combination of the foregoing.

(4) The term ''loan guarantee'' means any guarantee or other pledge by the Secretary to pay all or part of the principal and interest on a loan or other debt obligation issued by a project developer and funded by a lender.

(5) The term ''project'' means any commercial nuclear power facility for the production of electricity that uses one or more advanced reactor designs.

(6) The term ''project developer'' means an individual, corporation, partnership, joint venture, trust, or other entity that is primarily liable for payment of a project's eligible costs.

(7) The term ''purchase agreement'' means a contract to purchase the electric energy produced by a project under this subtitle.

(8) The term ''Secretary'' means the Secretary of Energy.

SEC. 423. RESPONSIBILITIES OF THE SECRETARY.

(a) FINANCIAL ASSISTANCE.—Subject to the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), the Secretary may, subject to appropriations, make available to project developers for eligible project costs such financial assistance as the Secretary determines is necessary to supplement private-sector financing for projects if he determines that such projects are needed to contribute to energy security, fuel or technology diversity, or clean air attainment goals. The Secretary shall prescribe such terms and conditions for financial assistance as the Secretary deems necessary or appropriate to protect the financial interests of the United States.

(b) REQUIREMENTS.—Approval criteria for financial assistance shall include—

(1) the creditworthiness of the project;

(2) the extent to which financial assistance would encourage public-private partnerships and attract private-sector investment;

(3) the likelihood that financial assistance would hasten commencement of the project; and,

(4) any other criteria the Secretary deems necessary or appropriate.

(c) CONFIDENTIALITY.—The Secretary shall protect the confidentiality of any information that is certified by a project developer to be commercially sensitive.

(d) FULL FAITH AND CREDIT.—All financial assistance provided by the Secretary under this subtitle shall be general obligations of the United States backed by its full faith and credit.

SEC. 424. LIMITATIONS.

(a) FINANCIAL ASSISTANCE.—The total financial assistance per project provided by this subtitle shall not exceed fifty percent of eligible project costs.

(b) GENERATION.—The total electrical generation capacity of all projects provided by this subtitle shall not exceed 8,400 megawatts.

SEC. 425. REGULATIONS.

Not later than 12 months from the date of enactment of this Act, the Secretary shall issue regulations to implement this subtitle.

SUBTITLE C—ADVANCED REACTOR HYDROGEN

Co-Generation Project

SEC. 431. PROJECT ESTABLISHMENT.

The Secretary is directed to establish an Advanced Reactor Hydrogen Co-Generation Project.

SEC. 432. PROJECT DEFINITION.

The project shall conduct the research, development, design, construction, and operation of a hydrogen production co-generation testbed that, relative to the current commercial reactors, enhances safety features, reduces waste production, enhances thermal efficiencies, increases proliferation resistance, and has the potential for improved economics and physical security in reactor siting. This testbed shall be constructed so as to enable research and development on advanced reactors of the type selected and on alternative approaches for reactor-based production of hydrogen.

SEC. 433. PROJECT MANAGEMENT.

(a) MANAGEMENT.—The project shall be managed within the Department by the Office of Nuclear Energy Science and Technology.

(b) LEAD LABORATORY.—The lead laboratory for the program, providing the site for the reactor construction, shall be the Idaho National Engineering and Environmental Laboratory (''INEEL'').

(c) STEERING COMMITTEE.—The Secretary shall establish a national steering committee with membership from the national laboratories, universities, and industry to provide advice to the Secretary and the Director of the Office of Nuclear Energy, Science and Technology on technical and program management aspects of the project.

(d) COLLABORATION.—Project activities shall be conducted at INEEL, other national laboratories, universities, domestic industry, and international partners.

SEC. 434. PROJECT REQUIREMENTS.

(a) RESEARCH AND DEVELOPMENT.—The project shall include planning, research and development, design, and construction of an advanced, next-generation, nuclear energy system suitable for enabling further research and development on advanced reactor technologies and alternative approaches for reactor-based generation of hydrogen.

(1) The project shall utilize, where appropriate, extensive reactor test capabilities resident at INEEL.

(2) The project shall be designed to explore technical, environmental, and economic feasibility of alternative approaches for reactor-based hydrogen production.

(3) The industrial lead for the project must be a United States-based company.

(b) INTERNATIONAL COLLABORATION.—The Secretary shall seek international cooperation, participation, and financial contribution in this program.

(1) The project may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners where such specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(2) International activities shall be coordinated with the Generation IV International Forum.

(3) The Secretary may combine this project with the Generation IV Nuclear Energy Systems Program.

(c) DEMONSTRATION.—The overall project, which may involve demonstration of selected project objectives in a partner nation, must demonstrate both electricity and hydrogen production and may provide flexibility, where technically and economically feasible in the design and construction, to enable tests of alternative reactor core and cooling configurations.

(d) PARTNERSHIPS.—The Secretary shall establish cost-shared partnerships with domestic industry or international participants for the research, development, design, construction and operation of the demonstration facility, and preference in determining the final project structure shall be given to an overall project which retains United States leadership while maximizing cost sharing opportunities and minimizing federal funding responsibilities.

(e) TARGET DATE.—The Secretary shall select technologies and develop the project to provide initial testing of either hydrogen production or electricity generation by 2010 or provide a report to Congress why this date is not feasible.

(f) WAIVER OF CONSTRUCTION TIMELINES.—The Secretary is authorized to conduct the Advanced Reactor Hydrogen Co-Generation Project without the constraints of DOE Order 413.3 as deemed necessary to meet the specified operational date.

(g) COMPETITION.—The Secretary may fund up to two teams for up to one year to develop detailed proposals for competitive evaluation and selection of a single proposal and concept for further progress. The Secretary shall define the format of the competitive evaluation of proposals.

(h) USE OF FACILITIES.—Research facilities in industry, national laboratories, or universities either within the United States or with cooperating international partners may be used to develop the enabling technologies for the demonstration facility. Utilization of domestic university-based testbeds shall be encouraged to provide educational opportunities for student development.

(i) ROLE OF NUCLEAR REGULATORY COMMISSION.—The Secretary shall seek active participation of the Nuclear Regulatory Commission throughout the project to develop risk-based criteria for any future commercial development of a similar reactor architecture.

(j) REPORT.—A comprehensive project plan shall be developed no later than April 30, 2004. The project plan shall be updated annually with each annual budget submission.

SEC. 435. AUTHORIZATION OF APPROPRIATIONS.

(a) RESEARCH, DEVELOPMENT AND DESIGN PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for all activities under this subtitle except for reactor construction:

(1) For fiscal year 2004, $35,000,000;

(2) For each of fiscal years 2005–2008, $150,000,000; and

(3) For fiscal years beyond 2008, such funds as are needed are authorized to be appropriated.

(b) REACTOR CONSTRUCTION.—The following sum is authorized to be appropriated to the Secretary for all project-related construction activities, to be available until expended, $500,000,000.

Subtitle D—Miscellaneous Matters

SEC. 441. URANIUM SALES AND TRANSFERS.

Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1)(A) The aggregate annual deliveries of uranium in any form (including natural uranium concentrates, natural uranium hexafluoride, enriched uranium, and depleted uranium) sold or transferred for commercial nuclear power end uses by the United States Government shall not exceed 3,000,000 pounds U_3O_8 equivalent per year through calendar year 2009. Such aggregate annual deliveries shall not exceed 5,000,000 pounds U_3O_8 equivalent per year in calendar years 2010 and 2011. Such aggregate annual deliveries shall not exceed 7,000,000 pounds U_3O_8 equivalent in calendar year 2012. Such aggregate annual deliveries shall not exceed 10,000,000 pounds U_3O_8 equivalent per year in calendar year 2013 and each year thereafter. Any sales or transfers by the United States Government to commercial end users shall be limited to long-term contracts of no less than 3 years duration.

''(B) The recovery and extraction of the uranium component from contaminated uranium bearing materials from United States Government sites by commercial entities shall be the preferred method of making uranium available under this subsection. The uranium component contained in such contaminated materials shall be counted against the annual maximum deliveries set forth in this section, provided that uranium is sold to end users.

''(C) Sales or transfers of uranium by the United States Government for the following purposes are exempt from the provisions of this paragraph—

''(i) sales or transfers provided for under existing law for use by the Tennessee Valley Authority in relation to the Department of Energy's high-enriched uranium or tritium programs;

''(ii) sales or transfers to the Department of Energy research reactor sales program;

''(iii) the transfer of up to 3,293 metric tons of uranium to the United States Enrichment Corporation to replace uranium that the Secretary transferred, prior to privatization of the United States Enrichment Corporation in July 1998, to the Corporation on or about June 30, 1993, April 20, 1998, and May 18, 1998, and that does not meet commercial specifications;

''(iv) the sale or transfer of any uranium for emergency purposes in the event of a disruption in supply to end users in the United States;

''(v) the sale or transfer of any uranium in fulfillment of the United States Government's obligations to provide security of supply with respect to implementation of the Russian HEU Agreement; and

''(vi) the sale or transfer of any enriched uranium for use in an advanced commercial nuclear power plant in the United States with nonstandard fuel requirements.

''(D) The Secretary may transfer or sell enriched uranium to any person for national security purposes, as determined by the Secretary.

''(2) Except as provided in subsections (b) and (c), and in paragraph (1)(B), clauses (i) through (iii) of paragraph (1)(C), and paragraph (1)(D) of this subsection, no sale or transfer of uranium in any form shall be made by the United States Government unless—

''(A) the President determines that the material is not necessary for national security needs;

''(B) the price paid to the Secretary, if the transaction is a sale, will not be less than the fair market value of the material, as determined at the time that such material is contracted for sale;

''(C) prior to any sale or transfer, the Secretary solicits the written views of the Department of State and the National Security Council with regard to whether such sale or transfer would have any adverse effect on national security interests of the United States, including interests related to the implementation of the Russian HEU Agreement; and

''(D) neither the Department of State nor the National Security Council objects to such sale or transfer.

The Secretary shall endeavor to determine whether a sale or transfer is permitted under this paragraph within 30 days. The Secretary's determinations pursuant to this paragraph shall be made available to interested members of the public prior to authorizing any such sale or transfer.

''(3) Within 1 year after the date of enactment of this subsection and annually thereafter the Secretary shall undertake an assessment for the purpose of reviewing available excess Government uranium inventories, and determining, consistent with the procedures and limitations established in this subsection, the level of inventory to be sold or transferred to end users.

''(4) Within 5 years after the date of enactment of this subsection and biennially thereafter the Secretary shall report to the Congress on the implementation of this subsection. The report shall include a discussion of all sales or transfers made by the United States Government, the impact of such sales or transfers on the domestic uranium industry, the spot market uranium price, and the national security interests of the United States, and any steps taken to remediate any adverse impacts of such sales or transfers.

''(5) For purposes of this subsection, the term 'United States Government' does not include the Tennessee Valley Authority.''.

SEC. 442. DECOMMISSIONING PILOT PROGRAM.

(a) PILOT PROGRAM.—The Secretary shall establish a decommissioning pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas in accordance with the decommissioning activities contained in the August 31, 1998 Department of Energy report on the reactor.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $16,000,000.

TITLE V—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 501. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 6 months after the date of enactment of this title, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (tidal and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this title, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources; and

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004 through 2008.

SEC. 502. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking ''and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting ''. If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to the Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.''.

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting ''a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government of subdivision thereof,''; and

(2) by inserting ''landfill gas,'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''after October 1, 2003, and before October 1, 2013''.

(d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting ''landfill gas,'' after ''wind, biomass,''.

(e) SUNSET.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking ''the expiration of'' and all that follows through ''of this section'' and inserting ''September 30, 2023''.

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 1212(g) of the Energy Policy Act of 1992 (42 U.S.C. 13317(g)) is amended to read as follows:

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

''(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.''.

SEC. 503. RENEWABLE ENERGY ON FEDERAL LANDS.

(a) REPORT.—Within 24 months after the date of enactment of this Act, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall develop and report to the Congress recommendations on opportunities to develop renewable energy on public lands under the jurisdiction of the Secretary of the Interior and National Forest System lands under the jurisdiction of the Secretary of Agriculture. The report shall include—

(1) 5-year plans developed by the Secretary of the Interior and the Secretary of Agriculture, respectively, for encouraging the development of renewable energy consistent with applicable law and management plans; and

(2) an analysis of—

(A) the use of rights-of-way, leases, or other methods to develop renewable energy on such lands;

(B) the anticipated benefits of grants, loans, tax credits, or other provisions to promote renewable energy development on such lands; and

(C) any issues that the Secretary of the Interior or the Secretary of Agriculture have encountered in managing renewable energy projects on such lands, or believe are likely to arise in relation to the development of renewable energy on such lands;

(3) a list, developed in consultation with the Secretary of Energy and the Secretary of Defense, of lands under the jurisdiction of the Department of Energy or Defense that would be suitable for development for renewable energy, and any recommended statutory and regulatory mechanisms for such development; and

(4) any recommendations pertaining to the issues addressed in the report.

(b) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) Not later than 90 days after the date of the enactment of this section, the Secretary of the Interior shall contract with the National Academy of Sciences to—

(A) study the potential for the development of wind, solar, and ocean (tidal and thermal) energy on the Outer Continental Shelf;

(B) assess existing Federal authorities for the development of such resources; and

(C) recommend statutory and regulatory mechanisms for such development.

(2) The results of the study shall be transmitted to the Congress within 24 months after the date of the enactment of this section.

SEC. 504. FEDERAL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be renewable energy—

(1) not less than 3 percent in fiscal years 2005 through 2007,

(2) not less than 5 percent in fiscal years 2008 through 2010, and

(3) not less than 7.5 percent in fiscal year 2011 and each fiscal year thereafter.

(b) DEFINITION.—For purposes of this section—

(1) the term ''biomass'' means any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or nonmerchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled; or

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) the term ''renewable energy'' means electric energy generated from solar, wind, biomass, geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(c) CALCULATION.—For purposes of determining compliance with the requirement of this section, the amount of renewable energy shall be doubled if—

(1) the renewable energy is produced and used on-site at a Federal facility;

(2) the renewable energy is produced on Federal lands and used at a Federal facility; or

(3) the renewable energy is produced on Indian land as defined in Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) and used at a Federal facility.

(d) REPORT.—Not later than April 15, 2005, and every 2 years thereafter, the Secretary of Energy shall provide a report to the Congress on the progress of the Federal Government in meeting the goals established by this section.

SEC. 505. INSULAR AREA RENEWABLE AND ENERGY EFFICIENCY PLANS.

The Secretary of Energy shall update the energy surveys, estimates, and assessments for the insular areas of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau undertaken pursuant to section 604 of Public Law 96–597 (48 U.S.C. 1492) and revise the comprehensive energy plan for the insular areas to reduce reliance on energy imports and increase use of renewable energy resources and energy efficiency opportunities. The update and revision shall by undertaken in consultation with the Secretary of the Interior and the chief executive officer of each insular area and shall be completed and submitted to Congress and to the chief executive officer of each insular area by December 31, 2005.

Subtitle B—Hydroelectric Licensing

SEC. 511. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after ''adequate protection and utilization of such reservation.'' at the end of the first proviso the following:

''The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such conditions.''.

(b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after ''and such fishways as may be prescribed by the Secretary of Commerce.'' the following: ''The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such fishways.''.

(c) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Part I of the Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding the following new section at the end thereof:

''SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

''(a) ALTERNATIVE CONDITIONS.—

''(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the Department under whose supervision such reservation falls (referred to in this subsection as 'the Secretary') deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant may propose an alternative condition.

''(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant or otherwise available to the Secretary, that such alternative condition—

''(A) provides for the adequate protection and utilization of the reservation; and

''(B) will either—

''(i) cost less to implement; or

''(ii) result in improved operation of the project works for electricity production, as compared to the condition initially deemed necessary by the Secretary.

''(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

''(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

''(b) ALTERNATIVE PRESCRIPTIONS.—

(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway. The alternative may include a fishway or an alternative to a fishway.

''(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee or otherwise available to the Secretary, that such alternative—

''(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

''(B) will either—

''(i) cost less to implement; or

''(ii) result in improved operation of the project works for electricity production, as compared to the fishway initially deemed necessary by the Secretary.

''(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

''(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a nonbinding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.''.

Subtitle C—Geothermal Energy

SEC. 521. COMPETITIVE LEASE SALE REQUIREMENTS.

(a) IN GENERAL.—Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended by striking the text and inserting the following:

''(a) NOMINATIONS.—The Secretary shall accept nominations at any time from companies and individuals of lands to be leased under this Act.

''(b) COMPETITIVE LEASE SALE REQUIRED.—The Secretary shall hold a competitive lease sale at least once every 2 years for lands in a State in which there are nominations pending under subsection (a) where such lands are otherwise available for leasing.

''(c) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in the competitive lease sale.''.

(b) PENDING LEASE APPLICATIONS.—It shall be a priority for the Secretary of the Interior and, with respect to National Forest lands, the Secretary of Agriculture, to ensure timely completion of administrative actions necessary to conduct competitive lease sales for lands with pending applications for geothermal leasing as of the date of enactment of this section where such lands are otherwise available for leasing.

SEC. 522. GEOTHERMAL LEASING AND PERMITTING ON FEDERAL LANDS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to the Congress a memorandum of understanding in accordance with this section regarding leasing and permitting for geothermal development of public lands and National Forest System lands under their respective jurisdictions.

(b) LEASE AND PERMIT APPLICATIONS.—The memorandum of understanding shall—

(1) identify known geothermal resources areas on lands included in the National Forest System and, when necessary, require review of management plans to consider leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

(2) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and time limits for application processing.

(c) DATA RETRIEVAL SYSTEM.—The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and providing to the applicant information as to their status within the Departments of the Interior and Agriculture, including an estimate of the time required for administrative action.

SEC. 523. LEASING AND PERMITTING ON FEDERAL LANDS WITHDRAWN FOR MILITARY PURPOSES.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Interior and the Secretary of Defense, in consultation with interested states, counties, representatives of the geothermal industry, and interested members of the public, shall submit to the Congress a joint report concerning leasing and permitting activities for geothermal energy on Federal lands withdrawn for military purposes. Such report shall—

(1) describe any differences, including differences in royalty structure and revenue sharing with states and counties, between—

(A) the implementation of the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and other applicable Federal law by the Secretary of the Interior; and

(B) the administration of geothermal leasing under section 2689 of title 10, United States Code, by the Secretary of Defense;

(2) identify procedures for interagency coordination to ensure efficient processing and administration of leases or contracts for geothermal energy on federal lands withdrawn for military purposes, consistent with the defense purposes of such withdrawals; and

(3) provide recommendations for legislative or administrative actions that could facilitate program administration, including a common royalty structure.

SEC. 524. REINSTATEMENT OF LEASES TERMINATED FOR FAILURE TO PAY RENT.

Section 5(c) of the Geothermal Steam Act of 1970 (30 U.S.C. 1004(c)), is amended in the last sentence by inserting ''or was inadvertent,'' after ''reasonable diligence,''.

SEC. 525. ROYALTY REDUCTION AND RELIEF.

(a) RULEMAKING.—Within one year after the date of enactment of this Act, the Secretary shall promulgate a final regulation providing a methodology for determining the amount or value of the steam for purposes of calculating the royalty due to be paid on such production pursuant to section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004). The final regulation shall provide for a simplified methodology for calculating the royalty. In undertaking the rulemaking, the Secretary shall consider the use of a percent of revenue method and shall ensure that the final rule will result in the same level of royalty revenues as the regulation in effect on the date of enactment of this provision.

(b) LOW TEMPERATURE DIRECT USE.—Notwithstanding the provisions of section 5(a) of the Geothermal Steam Act of 1979 (30 U.S.C. 1004(a)), with respect to the direct use of low temperature geothermal resources for purposes other than the generation of electricity, the Secretary shall establish a schedule of fees and collect fees pursuant to such schedule in lieu of royalties based upon the total amount of geothermal resources used. The schedule of fees shall ensure that there is a fair return to the public for the use of the low temperature geothermal resource. With the consent of the lessee, the Secretary may modify the terms of a lease in existence on the date of enactment of this Act in order to reflect the provisions of this subsection.

Subtitle D—Biomass Energy

SEC. 531. DEFINITIONS.

For the purposes of this subtitle:

(1) The term ''eligible operation'' means a facility that is located within the boundaries of an eligible community and uses biomass from federal or Indian lands as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products.

(2) The term ''biomass'' means pre-commercial thinnings of trees and woody plants, or non-merchantable material, from preventative treatments to reduce hazardous fuels, or reduce or contain disease or insect infestations.

(3) The term ''green ton'' means 2,000 pounds of biomass that has not been mechanically or artificially dried.

(4) The term ''Secretary'' means—

(A) with respect to lands within the National Forest System, the Secretary of Agriculture; or

(B) with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands, the Secretary of the Interior.

(5) The term ''eligible community'' means any Indian Reservation, or any county, town, township, municipality, or other similar unit of local government that has a population of not more than 50,000 individuals and is determined by the Secretary to be located in an area near federal of Indian lands which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(6) The term ''Indian tribe'' has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(7) The term ''person'' includes—

(A) an individual;

(B) a community;

(C) an Indian tribe;

(D) a small business or a corporation that is incorporated in the United States; or

(E) a nonprofit organization.

SEC. 532. BIOMASS COMMERCIAL UTILIZATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary may make grants to any person that owns or operates an eligible operation to offset the costs incurred to purchase biomass for use by such eligible operation with priority given to operations using biomass from the highest risk areas.

(b) LIMITATION.—No grant provided under this subsection shall be paid at a rate that exceeds $20 per green ton of biomass delivered.

(c) RECORDS.—Each grant recipient shall keep such records as the Secretary may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by the Secretary, the grant recipient shall provide the Secretary reasonable access to examine the inventory and records of any eligible operation receiving grant funds.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated $12,500,000 each to the Secretary of the Interior and the Secretary of Agriculture for each fiscal year from 2004 through 2008, to remain available until expended.

SEC. 533. IMPROVED BIOMASS UTILIZATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary may make grants to persons in eligible communities to offset the costs of developing or researching proposals to improve the use of biomass or add value to biomass utilization.

(b) SELECTION.—Grant recipients shall be selected based on the potential for the proposal to—

(1) develop affordable thermal or electric energy resources for the benefit of an eligible community;

(2) provide opportunities for the creation or expansion of small businesses within an eligible community;

(3) create new job opportunities within an eligible community, and

(4) reduce the hazardous fuels from the highest risk areas.

(c) LIMITATION.—No grant awarded under this subsection shall exceed $500,000.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated $12,500,000 each to the Secretary of the Interior and the Secretary of Agriculture for each fiscal year from 2004 through 2008, to remain available until expended.

SEC. 534. REPORT.

Not later than 3 years after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture shall jointly submit to the Congress a report that describes the interim results of the programs authorized under this subtitle.

TITLE VI—ENERGY EFFICIENCY

Subtitle A—Federal Programs

SEC. 601. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking ''its Federal buildings so that'' and all that follows through the end and inserting ''the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2000, by the percentage specified in the following table:

''Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.''.

(b) EFFECTIVE DATE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act, as amended by subsection (a) of this section, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

(c) REVIEW OF ENERGY PERFORMANCE REQUIREMENTS.—Section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)) is further amended by adding at the end the following:

''(3) Not later than December 31, 2011, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2022.''.

(d) EXCLUSIONS.—Section 543(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is amended by striking ''An agency may exclude'' and all that follows through the end and inserting—

''(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

''(i) compliance with those requirements would be impracticable;

''(ii) the agency has completed and submitted all federally required energy management reports;

''(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive Orders, and other Federal law; and

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

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

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

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

(e) REVIEW BY SECRETARY.—Section 543(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(2)) is amended—

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

(2) by striking ''a finding of impracticability'' and inserting ''the exclusion''.

(f) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:

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

(g) RETENTION OF ENERGY SAVINGS.—Section 546 of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by adding at the end the following new subsection:

''(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.''.

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

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

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

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

SEC. 602. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

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

''(e) METERING OF ENERGY USE.—

''(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

''(2) GUIDELINES.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

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

''(i) take into consideration

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

''(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

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

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

''(iii) establish priorities for types and locations of buildings to be metered and submetered based on cost effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

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

''(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including—

''(A) how the agency will designate personnel primarily responsible for achieving the requirements; and

''(B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.''.

SEC. 603. FEDERAL BUILDING PERFORMANCE STANDARDS.

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

(a) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the 2000 International Energy Conservation Code''; and

(b) by adding at the end the following:

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

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

''(i) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the most recent version of the International Energy Conservation Code, as appropriate; and

''(ii) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings.

''(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of amendments to ASHRAE Standard 90.1 or the 2000 International Energy Conservation Code, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

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

''(i) a list of all new Federal buildings owned, operated, or controlled by the Federal agency; and

''(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph.''.

SEC. 604. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) PERMANENT EXTENSION.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

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

''(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced life-cycle costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.

''(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.''.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means—

''(A) a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(ii) the increased efficient use of existing energy sources by co-generation or heat recovery, excluding any co-generation process for other than a federally owned building or buildings or other federally owned facilities; or

''(iii) the increased efficient use of existing water sources; or

''(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.''.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation

Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

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

''(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities. Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).''.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves water efficiency, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.''.

(f) PILOT PROGRAM FOR NON-BUILDING APPLICATIONS.—

(1) The Secretary of Defense, and the heads of other interested Federal agencies, are authorized to enter into up to 10 energy savings performance contracts under Title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) for the purpose of achieving energy or water savings, secondary savings, and benefits incidental to those purposes, in non-building applications, provided that the aggregate payments to be made by the Federal government under such contracts shall not exceed $100,000,000.

(2) The Secretary of Energy, in consultation with the Secretary of Defense and the heads of other interested Federal agencies, shall select projects that demonstrate the applicability and benefits of energy savings performance contracting to a range of non-building applications.

(3) For the purposes of this subsection:

(A) The term ''non-building application'' means—

(i) any class of vehicles, devices, or equipment that is transportable under its own power by land, sea, or air that consumes energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device, or equipment; or

(ii) any Federally owned equipment used to generate electricity or transport water.

(B) The term ''secondary savings'', means additional energy or cost savings that are a direct consequence of the energy or water savings that result from the financing and implementation of the energy savings performance contract, including, but not limited to, energy or cost savings that result from a reduction in the need for fuel delivery and logistical support, or the increased efficiency in the production of electricity.

(4) Not later than 3 years after the date of enactment of this section, the Secretary of Energy shall report to the Congress on the progress and results of the projects funded pursuant to this section. Such report shall include a description of projects undertaken; the energy, water and cost savings, secondary savings and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized permanently as a part of the program authorized under Title VIII of the National Energy Conservation Policy act (42 U.S.C. 8287 et seq.).

(5) Section 546(c)(3) of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by striking the word ''facilities'', and inserting the words ''facilities, equipment and vehicles'', in lieu thereof.

(g) REVIEW.—Within 180 days after the date of the enactment of this section, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

SEC. 605. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end the following:

''SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

''(a) DEFINITIONS.—In this section:

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

''(2) The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

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

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

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

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

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

''(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or

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

''(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

''(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

''(d) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

''(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note) is amended by inserting after the item relating to the end of the items relating to part 3 of title V the following:

''Sec. 552. Federal procurement of energy efficient products.''.

SEC. 606. CONGRESSIONAL BUILDING EFFICIENCY.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act is further amended by adding at the end:

''SEC. 553. CONGRESSIONAL BUILDING EFFICIENCY.

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

''(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the 'plan') for all facilities administered by the Congress (referred to in this section as 'congressional buildings') to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

''(2) shall submit the plan to Congress, not later than 180 days after the date of enactment of this section.

''(b) PLAN REQUIREMENTS.—The plan shall include—

''(1) a description of the life-cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

''(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

''(3) a strategy for installation of life-cycle cost-effective energy and water conservation measures;

''(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

''(5) information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

''(c) ANNUAL REPORT.—The Architect shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

''(1) energy expenditures and savings estimates for each facility;

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

''(3) future priorities to ensure compliance with this section.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1(b) of the National Energy Conservation Policy Act is amended by adding at the end of the items relating to part 3 of title V the following new item:

''SEC. 553. Energy and water savings measures in congressional buildings.''.

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

(d) ENERGY INFRASTRUCTURE.—The Architect of the Capitol, building on the Master Plan Study completed in July 2000, shall commission a study to evaluate the energy infrastructure of the Capital Complex to determine how the infrastructure could be augmented to become more energy efficient, using unconventional and renewable energy resources, in a way that would enable the Complex to have reliable utility service in the event of power fluctuations, shortages, or outages.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), not more than $2,000,000 for fiscal year 2004.

SEC. 607. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash; and

''(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C) (i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, and Committee on Transportation and Infrastructure of the House of Representatives a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this section to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. 608. UTILITY ENERGY SERVICE CONTRACTS.

Section 546(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8256(c)) is amended to read as follows:

''(1) Agencies are authorized and encouraged to participate in programs, including utility energy services contracts, conducted by gas, water and electric utilities and generally available to customers of such utilities, for the purposes of increased energy efficiency, water conservation or the management of electricity demand.''.

SEC. 609. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within one year of enactment of this section, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report of the Academy to the Congress.

Subtitle B—State and Local Programs

SEC. 611. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) GRANTS.—The Secretary of Energy is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency, identify and develop alternative, renewable and distributed energy supplies, and increase energy conservation in low income rural and urban communities.

(b) PURPOSE OF GRANTS.—The Secretary may make grants on a competitive basis for—

(1) investments that develop alternative, renewable and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) DEFINITION.—For purposes of this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services

provided by the United States to Indians because of their status as Indians.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy $20,000,000 for fiscal year 2004 and each fiscal year thereafter through fiscal year 2006.

SEC. 612. ENERGY EFFICIENT PUBLIC BUILDINGS.

(a) GRANTS.—The Secretary of Energy may make grants to the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322), or, if no such agency exists, a State agency designated by the Governor of the State, to assist units of local government in the State in improving the energy efficiency of public buildings and facilities—

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in chapter 8 of the 2000 International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

(2) through renovation of existing public buildings to achieve reductions in energy use of at least 30 percent as compared to the baseline energy use in such buildings prior to renovation, assuming a 3-year, weather-normalized average for calculating such baseline.

(b) ADMINISTRATION.—State energy offices receiving grants under this section shall—

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy such sums as may be necessary for each of fiscal years 2003 through 2012. Not more than 30 percent of appropriated funds shall be used for administration.

SEC. 613. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) The term ''eligible State'' means a State that meets the requirements of subsection (b).

(2) The term ''Energy Star program'' means the program established by section 324A of the Energy Policy and Conservation Act.

(3) The term ''residential Energy Star product'' means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(5) The term ''State program'' means a State energy efficient appliance rebate program described in subsection (b)(1).

(b) ELIGIBLE STATES.—A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (f) for the fiscal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

(d) USE OF ALLOCATED FUNDS.—The allocation to a State energy office under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) ISSUANCE OF REBATES.—Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration—

(1) the amount of the allocation to the State energy office under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to the residential Energy Star product.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for each of the fiscal years 2004 through 2008.

Subtitle C—Consumer Products

SEC. 621. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL PRODUCTS.

(a) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended—

(1) in subparagraph (30)(S), by striking the period and adding at the end the following: ''but does not include any lamps specifically designed to be used for special purpose applications, and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule.''; and

(2) by adding at the end the following:

''(32) The term 'battery charger' means a device that charges batteries for consumer products.

''(33) The term 'commercial refrigerator, freezer and refrigerator-freezer' means a refrigerator, freezer or refrigerator-freezer that—

''(A) is not a consumer product regulated under this Act; and

''(B) incorporates most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

''(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

''(35) The term 'illuminated exit sign' means a sign that—

''(A) is designed to be permanently fixed in place to identify an exit; and

''(B) consists of an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

''(36)(A) Except as provided in subparagraph (B), the term 'low-voltage dry-type transformer' means a transformer that—

''(i) has an input voltage of 600 volts or less;

''(ii) is air-cooled;

''(iii) does not use oil as a coolant; and

''(iv) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'low-voltage dry-type transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 20 percent more than the lowest voltage tap;

''(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application and the application of standards to the transformer would not result in significant energy savings.

''(37)(A) Except as provided in subsection (B), the term 'distribution transformer' means a transformer that—

''(i) has an input voltage of 34.5 kilovolts or less;

''(ii) has an output voltage of 600 volts or less; and

''(iii) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'distribution transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 15 percent more than the lowest voltage tap;

''(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, autotransformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application, and are unlikely to be used in general purpose applications; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application, is unlikely to be used in general purpose applications, and the application of standards to the transformer would not result in significant energy savings.

''(38) The term 'standby mode' means the lowest amount of electric power used by a household appliance when not performing its active functions, as defined on an individual product basis by the Secretary.

''(39) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

''(40) The term 'transformer' means a device consisting of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

''(41) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.

''(42) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.''

(b) TEST PROCEDURES.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended—

(1) in subsection (b), by adding at the end the following:

''(9) Test procedures for illuminated exit signs shall be based on the test method used under Version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

''(10) Test procedures for low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2 1998). The Secretary may review and revise this test procedure.

''(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.

''(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the August 9, 2001 version of the Energy Star program of the Environmental Protection Agency and Department of Energy for compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be marketed prior to completion of lamp life and lumen maintenance at 40% of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40% rated life and lamp life time.''; and

(2) by adding at the end the following:

''(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall within 24 months after the date of enactment of this subsection prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.''.

(c) NEW STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

''(u) STANDBY MODE ELECTRIC ENERGY CONSUMPTION.—

''(1) INITIAL RULEMAKING.—

''(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions of standby mode and test procedures for the standby mode power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing test procedures used for measuring energy consumption in standby mode and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for standby mode energy use for these products.

''(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be promulgated for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of standby energy use that—

''(i) meets the criteria of subsections (o), (p), (q), (r), (s) and (t); and

''(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

''(2) DESIGNATION OF ADDITIONAL COVERED PRODUCTS.—

''(A) Not later than 180 days after the date of enactment of this subsection, the Secretary shall publish for public comment and public hearing a notice to determine whether any non-covered products should be designated as covered products for the purpose of instituting a rulemaking under this section to determine whether an energy conservation standard restricting standby mode energy consumption, should be promulgated; except that any restriction on standby mode energy consumption shall be limited to major sources of such consumption.

''(B) In making the determinations pursuant to subparagraph (A) of whether to designate new covered products and institute rulemakings, the Secretary shall, among other relevant factors and in addition to the criteria in section 322(b), consider—

''(i) standby mode power consumption compared to overall product energy consumption; and

''(ii) the priority and energy savings potential of standards which may be promulgated under this subsection compared to other required rulemakings under this section and the available resources of the Department to conduct such rulemakings.

''(C) Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue a determination of any new covered products for which he intends to institute rulemakings on standby mode pursuant to this section and he shall state the dates by which he intends to initiate those rulemakings.

''(3) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider for covered products which are major sources of standby mode energy consumption whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, the criteria for non-covered products in subparagraph (B) of paragraph (2) of this subsection.

''(4) RULEMAKING.—

''(A) Any rulemaking instituted under this subsection or for covered products under this section which restricts standby mode power consumption shall be subject to the criteria and procedures for issuing energy conservation standards set forth in this section and the criteria set forth in subparagraph (B) of paragraph (2) of this subsection.

''(B) No standard can be proposed for new covered products or covered products in a standby mode unless the Secretary has promulgated applicable test procedures for each product pursuant to section 323.

''(C) The provisions of section 327 shall apply to new covered products which are subject to the rulemakings for standby mode after a final rule has been issued.

''(5) EFFECTIVE DATE.—Any standard promulgated under this subsection shall be applicable to products manufactured or imported 3 years after the date of promulgation.

''(6) VOLUNTARY PROGRAMS.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, which are designed to reduce standby mode energy use.

''(v) SUSPENDED CEILING FANS, VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—The Secretary shall within 36 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (l) and (m). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

''(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005 shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

''(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

''(1) shall consume not more than 190 watts of power; and

''(2) shall not be capable of operating with lamps that total more than 190 watts.

''(y) DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type transformers manufactured on or after January 1, 2005 shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

''(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006 shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this paragraph, and shall be installed with compatible, electrically-connected signal control interface devices and conflict monitoring systems.

''(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is three years after the date of enactment of the Energy Policy Act of 2003 shall be equipped with an intermittent ignition device and shall have either power venting or an automatic flue damper.

''(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2005 shall meet the following requirements prescribed by the August 9, 2001 version of the Energy Star Program Requirements for CFLs, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40% of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor;

operating frequency; and maximum allowable start time based on the requirements prescribed by the August 9, 2001 version of the Energy Star Program Requirements for CFLs. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

''(cc) EFFECTIVE DATE.—The provisions of section 327 shall apply—

''(1) to products for which standards are to be set pursuant to subsection (v) of this section on the date on which a final rule is issued by the Department of Energy, except that any state or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard set pursuant to subsection (v) for that product takes effect; and

''(2) to products for which standards are set in subsections (w) through (bb) of this section on the date of enactment of the Energy Policy Act of 2003, except that any state or local standards prescribed or enacted prior to the date of enactment of the Energy Policy Act of 2003 shall not be preempted until the standards set in subsections (w) through (bb) take effect.''.

SEC. 622. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Paragraph (2) of section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

''(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed within 2 years after the date of enactment of this subparagraph.''.

(b) RULEMAKING ON LABELING FOR ADDITIONAL PRODUCTS.—Section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)) is further amended by adding at the end the following:

''(5) The Secretary or the Commission, as appropriate, may for covered products referred to in subsections (u) through (aa) of section 325, prescribe, by rule, pursuant to this section, labeling requirements for such products after a test procedure has been set pursuant to section 323. In the case of products to which TP–1 standards under section 325(y) apply, labeling requirements shall be based on the ''Standard for the Labeling of Distribution Transformer Efficiency'' prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect upon the date of enactment of this Act.''.

SEC. 623. ENERGY STAR PROGRAM.

(a) AMENDMENT.—The Energy Policy and Conservation Act (42 U.S.C. 6201 et. seq.) is amended by inserting the following after section 324:

''SEC. 324A. ENERGY STAR PROGRAM.

''There is established at the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the two agencies. The Administrator and the Secretary shall—

''(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

''(2) work to enhance public awareness of the Energy Star label, including special outreach to small businesses;

''(3) preserve the integrity of the Energy Star label;

''(4) solicit the comments of interested parties in establishing a new Energy Star product category, specifications, or criteria, or in revising a product category, and upon adoption of a new or revised product category, specifications, or criteria, publish a notice of any changes in product categories, specifications or criteria along with an explanation of such changes, and, where appropriate, responses to comments submitted by interested parties; and

''(5) unless waived or reduced by mutual agreement between the Administrator, the Secretary, and the affected parties, provide not less than 12 months lead time prior to implementation of changes in product categories, specifications, or criteria as may be adopted pursuant to this section.''.

(b) TABLE OF CONTENTS AMENDMENT. The table of contents of the Energy Policy and Conservation Act is amended by inserting after the item relating to section 324 the following new item:

''Sec. 324A. Energy Star program.''.

SEC. 624. HVAC MAINTENANCE CONSUMER EDUCATION PROGRAM.

Section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) is amended by adding at the end the following:

''(c) HVAC MAINTENANCE.—For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, within 180 days of the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems. The Secretary shall carry out the program in a cost-shared manner in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

''(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small business to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Program, and the Department of Agriculture.''.

Subtitle D—Public Housing

SEC. 631. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AFFORDABLE HOUSING.

Section 4(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note) is amended—

(a) in paragraph (1), by inserting before the semicolon at the end the following: '', including capabilities regarding the provision of energy efficient, affordable housing and residential energy conservation measures''; and

(b) in paragraph (2), by inserting before the semicolon the following: '', including such activities relating to the provision of energy efficient, affordable housing and residential energy conservation measures that benefit low-income families''.

SEC. 632. INCREASE OF CDBG PUBLIC SERVICES CAP FOR ENERGY CONSERVATION AND EFFICIENCY ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended

(a) by inserting ''or efficiency'' after ''energy conservation'';

(b) by striking '', and except that'' and inserting ''; except that''; and

(c) by inserting before the semicolon at the end the following: ''; and except that each percentage limitation under this paragraph on the amount of assistance provided under this title that may be used for the provision of public services is hereby increased by 10 percent, but such percentage increase may be used only for the provision of public services concerning energy conservation or efficiency''.

SEC. 633. FHA MORTGAGE INSURANCE INCENTIVES FOR ENERGY EFFICIENT HOUSING.

(a) SINGLE FAMILY HOUSING MORTGAGE INSURANCE.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended, in the first undesignated and indented paragraph beginning after subparagraph (B)(iii) (relating to solar energy systems)—

(1) by inserting ''or paragraph (10)'' before the first comma; and

(2) by striking ''20 percent'' and inserting ''30 percent''.

(b) MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) is amended, in the second undesignated paragraph beginning after paragraph (3) (relating to solar energy systems and residential energy conservation measures), by striking ''20 percent'' and inserting ''30 percent''.

(c) COOPERATIVE HOUSING MORTGAGE INSURANCE.—Section 213(p) of the National Housing Act (12 U.S.C. 1715e(p)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(e) LOW-INCOME MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 221(k) of the National Housing Act (12 U.S.C. 1715l(k)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(f) ELDERLY HOUSING MORTGAGE INSURANCE.—The proviso at the end of section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(g) CONDOMINIUM HOUSING MORTGAGE INSURANCE.—Section 234(j) of the National Housing Act (12 U.S.C. 1715y(j)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

SEC. 634. PUBLIC HOUSING CAPITAL FUND.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(a) in subsection (d)(1)—

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

(2) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

''(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998

and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

''(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.''; and (b) in subsection (e)(2)(C)

(1) by striking ''The'' and inserting the following:

''(i) IN GENERAL. The''; and

(2) by adding at the end the following:

''(ii) THIRD PARTY CONTRACTS.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

''(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generations, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''.

SEC. 635. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(a) by striking ''financed with loans'' and inserting ''assisted'';

(b) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multi-family Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(c) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.''.

SEC. 636. NORTH AMERICAN DEVELOPMENT BANK.

Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m 290m–3) is amended by adding at the end the following:

''SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.

''Consistent with the focus of the Bank's Charter on environmental infrastructure projects, the Board members representing the United States should use their voice and vote to encourage the Bank to finance projects related to clean and efficient energy, including energy conservation, that prevent, control, or reduce environmental pollutants or contaminants.''.

SEC. 637. ENERGY-EFFICIENT APPLIANCES.

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 553 of the National Energy Policy and Conservation Act (as amended by this Act), unless the purchase of energy-efficient appliances is not cost-effective to the agency.

SEC. 638. ENERGY EFFICIENCY STANDARDS.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) is amended—

(1) in subsection (a)

(A) in paragraph (1)

(i) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2003'';

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

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.''; and

(B) in paragraph (2), by striking ''Council of American'' and all that follows through ''90.1—1989') and inserting ''2000 International Energy Conservation Code'';

(2) in subsection (b)—

(A) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2003''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2000 International Energy Conservation Code''; and

(3) in subsection (c)—

(A) in the heading, by striking ''MODEL ENERGY CODE'' and inserting ''INTERNATIONAL ENERGY CONSERVATION CODE''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2000 International Energy Conservation Code''.

SEC. 639. ENERGY STRATEGY FOR HUD.

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than one year after the date of the enactment of this Act, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every two years thereafter on progress in implementing the strategy.

TITLE VII—TRANSPORTATION FUELS

Subtitle A—Alternative Fuel Programs

SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED VEHICLES.

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

''(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area where—

''(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

''(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.

''(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.''.

SEC. 702. FUEL USE CREDITS.

(a) IN GENERAL.—Section 312 of the Energy Policy Act of 1992 (42 U.S.C. 13220) is amended to read as follows:

''SEC. 312. FUEL USE CREDITS.

''(a) ALLOCATION.—

''(1) The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of alternative fuel or biodiesel purchased for use in an on-road motor vehicle operated by the fleet that weighs more than 8,500 pounds gross vehicle weight rating.

''(2) No credits shall be allocated under this section for purchase of an alternative fuel or biodiesel that is required by Federal or State law.

''(3) A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under this section.

''(b) USE.—At the request of a fleet or covered person allocated a credit under subsection (a), the Secretary shall, for the year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this title, title IV, or title V.

''(c) TREATMENT.—A credit provided to a fleet or covered person under this section shall be considered a credit under section 508.

''(d) ISSUANCE OF RULE.—Not later than 6 months after the date of enactment of this section, the Secretary shall issue a rule establishing procedures for the implementation of this section.

''(e) DEFINITIONS.—For the purposes of this section—

''(1) the term ''biodiesel'' means a diesel fuel substitute produced from non-petroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act; and

''(2) the term ''qualifying volume'' means—

''(A) in the case of biodiesel, when used as a component of fuel containing at least 20 percent biodiesel by volume, 450 gallons, or if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use; or

''(B) in the case of an alternative fuel, the amount of such fuel determined by the Secretary to have an equivalent energy content to the amount of biodiesel defined as a qualifying volume pursuant to subparagraph (A).''

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 is amended by adding at the end of the items relating to title III the following new item:

''Sec. 312. Fuel use credits.''

SEC. 703. NEIGHBORHOOD ELECTRIC VEHICLES.

Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (3), by striking ''or a dual fueled vehicle'' and inserting '', a dual fueled vehicle, or a neighborhood electric vehicle'';

(2) by striking ''and'' at the end of paragraph (13);

(3) by striking the period at the end of paragraph (14) and inserting ''; and''; and

(4) by adding at the end the following:

''(15) the term 'neighborhood electric vehicle' means a motor vehicle—

''(A) which meets the definition of a low-speed vehicle, as such term is defined in part 571 of title 49, Code of Federal Regulations;

''(B) which meets the definition of a zero-emission vehicle, as such term is defined in section 86.1702–99 of title 40, Code of Federal Regulations;

''(C) which meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

''(D) which has a top speed of not greater than 25 miles per hour.''.

SEC. 704. CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following:

''(e) CREDIT FOR PURCHASE OF MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—

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

''(A) The term 'medium duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds.

''(B) The term 'heavy duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 14,000 pounds.

''(2) CREDITS FOR MEDIUM DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a medium duty dedicated vehicle.

''(3) CREDITS FOR HEAVY DUTY VEHICLES.—The Secretary shall issue 3 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a heavy duty dedicated vehicle.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

SEC. 705. ALTERNATIVE FUEL INFRASTRUCTURE.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is further amended by adding at the end the following:

''(f) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

''(1) DEFINITIONS.—In this subsection, the term 'qualifying infrastructure' means—

''(A) equipment required to refuel or recharge alternative fueled vehicles;

''(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

''(C) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

''(3) AMOUNT.—For the purposes of credits under this subsection—

''(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or equivalent expenditure, as determined by the Secretary; and

''(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

SEC. 706. INCREMENTAL COST ALLOCATION.

Section 303(c) of the Energy Policy Act of 1992 (42 U.S.C. 13212(c) is amended by striking ''may'' and inserting ''shall''.

SEC. 707. REVIEW OF ALTERNATIVE FUEL PROGRAMS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall complete a study to determine the effect that titles III, IV and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) have had on the development of alternative fueled vehicle technology, its availability in the market, and the cost of light duty motor vehicles that are alternative fueled vehicles.

(b) TOPICS.—As part of such study, the Secretary shall specifically identify—

(1) the number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles;

(2) the amount, by type, of alternative fuel actually used in alternative fueled vehicles acquired by fleets or covered persons;

(3) the amount of petroleum displaced by the use of alternative fuels in alternative fueled vehicles acquired by fleets or covered persons;

(4) the cost of compliance with vehicle acquisition requirements by fleets or covered persons; and

(5) the existence of obstacles preventing compliance with vehicle acquisition requirements and increased use of alternative fuel in alternative fueled vehicles acquired by fleets or covered persons.

(c) REPORT.—Upon completion of the study, the Secretary shall submit to the Congress a report that describes the results of the study conducted under this section and includes any recommendations of the Secretary for legislative or administrative changes concerning the alternative fueled vehicle requirements under titles III, IV and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.). Such study shall be updated on a regular basis as deemed necessary by the Secretary.

SEC. 708. HIGH OCCUPANCY VEHICLE EXCEPTION.

Notwithstanding section 102(a)(1) of title 23, United States Code, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if such vehicle is a dedicated vehicle (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)).

SEC. 709. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.

(a) ALTERNATIVE COMPLIANCE.—Title V of the Energy Policy Act of 1992 is amended by adding at the end the following:

''SEC. 515. ALTERNATIVE COMPLIANCE.

''(a) APPLICATION FOR WAIVER.—Any covered person subject to the requirements of section 501 and any State subject to the requirement of section 507(o) may petition the Secretary for a waiver of the applicable requirements of section 501 or 507(o).

''(b) GRANT OF WAIVER.—The Secretary may grant a waiver of the requirements of section 501 or 507(o) upon a showing that the fleet owned, operated, leased, or otherwise controlled by the State or covered person—

''(1) will achieve a reduction in its annual consumption of petroleum fuels equal to the reduction in consumption of petroleum that would result from compliance with section 501 or 507(o); and

''(2) is in compliance with all applicable vehicle emission standards established by the Administrator under the Clean Air Act.

''(c) REVOCATION OF WAIVER.—The Secretary shall revoke any waiver granted under this section if the State or covered person fails to comply with the requirements of subsection (b).''.

(b) CREDIT FOR HYBRID VEHICLES, DEDICATED ALTERNATIVE FUEL VEHICLES, AND INFRASTRUCTURE.—Section 507 of the Energy Policy Act of 1992 (42 U.S.C. 13258) (as amended by section 705) is amended by adding at the end the following:

''(r) CREDITS FOR NEW QUALIFIED HYBRID MOTOR VEHICLES.—

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

''(A) 2000 MODEL YEAR CITY FUEL EFFICIENCY.—The term '2000 model year city fuel efficiency', with respect to a motor vehicle, means fuel efficiency determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

''If vehicle inertia weight class is:	**The 2000 model year city fuel efficiency is:**
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

''(ii) In the case of a light truck:

''If vehicle inertia weight class is:	**The 2000 model year city fuel efficiency is:**
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

''(B) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(C) ENERGY STORAGE DEVICE.—The term 'energy storage device' means an onboard rechargeable energy storage system or similar storage device.

''(D) FUEL EFFICIENCY.—The term 'fuel efficiency' means the percentage increased fuel efficiency specified in table 1 in paragraph (2)(C) over the average 2000 model year city fuel efficiency of vehicles in the same weight class.

''(E) MAXIMUM AVAILABLE POWER.—The term 'maximum available power', with respect to a new qualified hybrid motor vehicle that is a passenger vehicle or light truck, means the quotient obtained by dividing—

''(i) the maximum power available from the electrical storage device of the new qualified hybrid motor vehicle, during a standard 10–second pulse power or equivalent test; by

''(ii) the sum of—

''(I) the maximum power described in clause (i); and

''(II) the net power of the internal combustion or heat engine, as determined in accordance with standards established by the Society of Automobile Engineers.

''(F) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

''(G) NEW QUALIFIED HYBRID MOTOR VEHICLE.—The term 'new qualified hybrid motor vehicle' means a motor vehicle that—

''(i) draws propulsion energy from both—

''(I) an internal combustion engine (or heat engine that uses combustible fuel); and

''(II) an energy storage device;

''(ii) in the case of a passenger automobile or light truck—

''(I) in the case of a 2001 or later model vehicle, receives a certificate of conformity under the Clean Air Act (42 U.S.C. 7401 et seq.) and produces emissions at a level that is at or below the standard established by a qualifying California standard described in section 243(e)(2) of the Clean Air Act (42 U.S.C. 7583(e)(2)) for that make and model year; and

''(II) in the case of a 2004 or later model vehicle, is certified by the Administrator as producing emissions at a level that is at or below the level established for Bin 5 vehicles in the Tier 2 regulations promulgated by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and

''(iii) employs a vehicle braking system that recovers waste energy to charge an energy storage device.

''(H) Vehicle inertia weight class. The term 'vehicle inertia weight class' has the meaning given the term in regulations promulgated by the Administrator for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(2) ALLOCATION.—

''(A) IN GENERAL.—The Secretary shall allocate a partial credit to a fleet or covered person under this title if the fleet or person acquires a new qualified hybrid motor vehicle that is eligible to receive a credit under each of the tables in subparagraph (C).

''(B) AMOUNT.—The amount of a partial credit allocated under subparagraph (A) for a vehicle described in that subparagraph shall be equal to the sum of—

''(i) the partial credits determined under table 1 in subparagraph (C); and

''(ii) the partial credits determined under table 2 in subparagraph (C).

''(C) TABLES.—The tables referred to in subparagraphs (A) and (B) are as follows:

''Table 1

''Partial credit for increased fuel efficiency:	**Amount of credit:**
At least 125% but less than 150% of 2000 model year city fuel efficiency	0.14
At least 150% but less than 175% of 2000 model year city fuel efficiency	0.21
At least 175% but less than 200% of 2000 model year city fuel efficiency	0.28
At least 200% but less than 225% of 2000 model year city fuel efficiency	0.35
At least 225% but less than 250% of 2000 model year city fuel efficiency	0.50.

''Table 2

''Partial credit for 'Maximum Available Power':	**Amount of credit:**
At least 5% but less than 10%	0.125
At least 10% but less than 20%	0.250
At least 20% but less than 30%	0.375
At least 30% or more	0.500.

''(D) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the qualified hybrid motor vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(3) REGULATIONS.—The Secretary shall promulgate regulations under which any Federal fleet that acquires a new qualified hybrid motor vehicle will receive partial credits determined under the tables contained in paragraph (2)(C) for purposes of meeting the requirements of section 303.

''(s) CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARDS USE OF DEDICATED VEHICLES IN NONCOVERED FLEETS.—

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

''(A) DEDICATED VEHICLE.—The term 'dedicated vehicle' includes—

''(i) a light, medium, or heavy duty vehicle; and

''(ii) a neighborhood electric vehicle.

''(B) MEDIUM OR HEAVY DUTY VEHICLE.—The term 'medium or heavy duty vehicle' includes a vehicle that—

''(i) operates solely on alternative fuel; and

''(ii) (I) in the case of a medium duty vehicle, has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds; or

''(II) in the case of a heavy duty vehicle, has a gross vehicle weight rating of more than 14,000 pounds.

''(C) SUBSTANTIAL CONTRIBUTION.—The term 'substantial contribution' (equal to 1 full credit) means not less than $15,000 in cash or in kind services, as determined by the Secretary.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title if the fleet or person makes a substantial contribution toward the acquisition and use of dedicated vehicles by a person that owns, operates, leases, or otherwise controls a fleet that is not covered by this title.

''(3) MULTIPLE CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title if the fleet or person acquires a medium or heavy duty dedicated vehicle.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(5) LIMITATION.—Per vehicle credits acquired under this subsection shall not exceed the per vehicle credits allowed under this section to a fleet for qualifying vehicles in each of the weight categories (light, medium, or heavy duty).

''(t) CREDIT FOR SUBSTANTIAL INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

''(1) DEFINITIONS.—In this section, the term 'qualifying infrastructure' means—

''(A) equipment required to refuel or recharge alternative fueled vehicles;

''(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

''(C) training programs, educational materials, or other activities necessary to provide information regarding the operation, maintenance, or benefits associated with alternative fueled vehicles; and

''(D) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

''(3) AMOUNT.—For the purposes of credits under this subsection—

''(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or in kind services, as determined by the Secretary; and

''(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

(c) LEASE CONDENSATE FUELS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (2), by inserting ''mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;'' after ''liquified petroleum gas; '';

(2) in paragraph (15), by inserting ''mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate; '' after ''liquified petroleum gas; ''; and

(3) by adding at the end the following:

''(16) the term 'lease condensate' means a mixture, primarily of pentanes and heavier hydrocarbons, which is recovered as a liquid from natural gas in lease separation facilities.''.

Subtitle B—Automobile Fuel Economy

SEC. 711. AUTOMOBILE FUEL ECONOMY STANDARDS.

(a) TITLE 49 AMENDMENT.—Section 32902(f) of title 49, United States Code, is amended to read as follows:

''(f) CONSIDERATIONS.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

''(1) technological feasibility;

''(2) economic practicability;

''(3) the effect of other motor vehicle standards of the Government on fuel economy;

''(4) the need of the United States to conserve energy;

''(5) the effects of fuel economy standards on motor vehicle and passenger safety; and

''(6) the effects of compliance with average fuel economy standards on levels of employment in the United States.''.

(b) CLARIFICATION OF AUTHORITY.—Section 32902(b) of title 49, United States Code, is amended by inserting before the period at the end the following: ''or such other number as the Secretary prescribes under subsection (c)''.

(c) ENVIRONMENTAL ASSESSMENT.—When issuing final regulations setting forth increased average fuel economy standards under section 32902(a) or section 32902(c) of title 49, United States Code, the Secretary of Transportation shall also issue an environmental assessment of the effects of the increased standards on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2004 through 2008.

SEC. 712. DUAL-FUELED AUTOMOBILES.

(a) MANUFACTURING INCENTIVES.—Section 32905 of title 49, United States Code, is amended—

(1) in subsections (b) and (d), by striking ''1993–2004'' and inserting ''1993–2008'';

(2) in subsection (f), by striking ''2001'' and inserting ''2005''.

(3) in subsection (f)(1), by striking ''2004'' and inserting ''2008'';

(4) in subsection (g), by striking ''September 30, 2000'' and inserting ''September 30, 2004''.

(b) MAXIMUM FUEL ECONOMY INCREASE.—Subsection (a)(1) of section 32906 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking ''the model years 1993–2004'' and inserting ''model years 1993–2008''; and

(2) in subparagraph (B), by striking ''the model years 2005–2008'' and inserting ''model years 2009–2012''.

SEC. 713. FEDERAL FLEET FUEL ECONOMY.

Section 32917 of title 49, United States Code, is amended to read as follows:

"§ 32917. Standards for executive agency automobiles.

''(a) BASELINE AVERAGE FUEL ECONOMY.—The head of each executive agency shall determine, for all automobiles in the agency's fleet of automobiles that were leased or bought as a new vehicle in fiscal year 1999, the average fuel economy for such automobiles. For the purposes of this section, the average fuel economy so determined shall be the baseline average fuel economy for the agency's fleet of automobiles.

''(b) INCREASE OF AVERAGE FUEL ECONOMY.—The head of an executive agency shall manage the procurement of automobiles for that agency in such a manner that not later than September 30, 2005, the average fuel economy of the new automobiles in the agency's fleet of automobiles is not less than 3 miles per gallon higher than the baseline average fuel economy determined under subsection (a) for that fleet.

''(c) CALCULATION OF AVERAGE FUEL ECONOMY.—Average fuel economy shall be calculated for the purposes of this section in accordance with guidance which the Secretary of Transportation shall prescribe for the implementation of this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'automobile' does not include any vehicle designed for combat-related missions, law enforcement work, or emergency rescue work.

''(2) The term 'executive agency' has the meaning given that term in section 105 of title 5.

''(3) The term 'new automobile', with respect to the fleet of automobiles of an executive agency, means an automobile that is leased for at least 60 consecutive days or bought, by or for the agency, after September 30, 1999.''.

SEC. 714. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary of Energy, in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall establish a cost-shared, public-private research partnership to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation. Such partnership shall involve the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads.

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $25,000,000 for fiscal year 2004, $35,000,000 for fiscal year 2005, and $50,000,000 for fiscal year 2006.

SEC. 715. REDUCTION OF ENGINE IDLING IN HEAVY-DUTY VEHICLES.

(a) IDENTIFICATION.—Not later than 180 days after the date of enactment of this section, the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall commence a study to analyze the potential fuel savings and emissions reductions resulting from use of idling reduction technologies as they are applied to heavy-duty vehicles. Upon completion of the study, the Secretary of Energy shall, by rule, certify those idling reduction technologies with the greatest economic or technical feasibility and the greatest potential for fuel savings and emissions reductions, and publish a list of such certified technologies in the Federal Register.

(b) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of Title 23, United States Code, is amended by adding at the end the following:

''In order to promote reduction of fuel use and emissions due to engine idling, the maximum gross vehicle weight limit and the axle weight limit for any motor vehicle equipped with an idling reduction technology certified by the U.S. Department of Energy will be increased by an amount necessary to compensate for the additional weight of the idling reduction system, provided that the weight increase shall be no greater than 400 pounds.''

(c) DEFINITIONS.—For the purposes of this section:

(1) The term ''idling reduction technology'' means a device or system of devices utilized to reduce long-duration idling of a vehicle.

(2) The term ''heavy-duty vehicle'' means a vehicle that has a gross vehicle weight rating greater than 8,500 pounds and is powered by a diesel engine.

(3) The term ''long-duration idling'' means the operation of a main drive engine, for a period greater than 30 consecutive minutes, where the main drive engine is not engaged in gear. Such term does not apply to routine stoppages associated with traffic movement or congestion.

TITLE VIII—HYDROGEN

Subtitle A—Basic Research Programs

SEC. 801. SHORT TITLE.

This subtitle may be cited as the ''George E. Brown, Jr. and Robert S. Walker Hydrogen Future Act of 2003''.

SEC. 802. MATSUNAGA ACT AMENDMENT.

The Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401 et seq.) is amended by striking sections 102 through 109 and inserting the following:

"SEC. 102. DEFINITIONS.

In this Act—

''(a) the term 'advisory committee' means the Hydrogen and Fuel Cell Technical Advisory Committee established under section 107.

''(b) the term 'Department' means the Department of Energy.

''(c) the term 'fuel cell' means a device that directly converts the chemical energy of a fuel into electricity by an electrochemical process.

''(d) the term 'infrastructure' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen.

''(e) the term 'Secretary' means the Secretary of Energy.

"SEC. 103. HYDROGEN RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary shall conduct a research and development program on technologies related to the production, distribution, storage, and use of hydrogen energy, fuel cells, and related infrastructure.

(b) GOAL.—The goal of such program shall be to enable the safe, economic, and environmentally sound use of hydrogen energy, fuel cells, and related infrastructure for transportation, commercial, industrial, residential, and electric power generation applications.

(c) FOCUS.—In carrying out activities under this section, the Secretary shall focus on critical technical issues including, but not limited to—

''(1) the production of hydrogen from diverse energy sources, with emphasis on cost-effective production from renewable energy sources;

''(2) the delivery of hydrogen, including safe delivery in fueling stations and use of existing hydrogen pipelines;

''(3) the storage of hydrogen, including storage of hydrogen in surface transportation;

''(4) fuel cell technologies for transportation, stationary and portable applications, with emphasis on cost-reduction of fuel cell stacks; and

''(5) the use of hydrogen energy and fuel cells, including use in—

''(A) isolated villages, islands, and areas in which other energy sources are not available or are very expensive; and

''(B) foreign markets, particularly where an energy infrastructure is not well developed.

''(d) CODES AND STANDARDS.—The Secretary shall facilitate the development of domestic and international codes and standards and seek to resolve other critical regulatory and technical barriers preventing the introduction of hydrogen energy and fuel cells into the marketplace.

''(e) SOLICITATION.—The Secretary shall carry out the research and development activities authorized under this section through solicitation of proposals, and evaluation using competitive merit review.

''(f) COST SHARING. The Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of proposed research and development projects. The Secretary may reduce or eliminate the cost sharing requirement—

''(1) if the Secretary determines that the research and development is of a basic or fundamental nature, or

''(2) for technical analyses, outreach activities, and educational programs that the Secretary does not expect to result in a marketable product.

"SEC. 104. DEMONSTRATION PROGRAMS.

''(a) REQUIREMENT.—In conjunction with activities conducted under section 103, the Secretary shall conduct demonstrations of hydrogen energy and fuel cell technologies in order to evaluate the commercial potential of such technologies.

''(b) SOLICITATION.—The Secretary shall carry out the demonstrations authorized under this section through solicitation of proposals, and evaluation using competitive merit review.

''(c) COST SHARING.—The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

"SEC. 105. TECHNOLOGY TRANSFER.

''The Secretary shall conduct programs to—

''(a) transfer critical hydrogen energy and fuel cell technologies to the private sector in order to promote wider understanding of such technologies and wider use of research progress under this Act;

''(b) to accelerate wider application of hydrogen energy and fuel cell technologies in foreign countries in order to increase the global market for the technologies and foster global development without harmful environmental effects;

''(c) foster the exchange of generic, nonproprietary information and technology developed pursuant to this Act, among industry, academia, and the Federal agencies; and

''(d) inventory and assess the technical and commercial viability of technologies related to production, distribution, storage, and use of hydrogen energy and fuel cells.

"SEC. 106. COORDINATION AND CONSULTATION.

''The Secretary shall have overall management responsibility for carrying out programs under this Act. In carrying out such programs, the Secretary—

''(a) shall establish a central point for the coordination of all hydrogen energy and fuel cell research, development, and demonstration activities of the Department;

''(b) in carrying out the Secretary's authorities pursuant to this Act, shall consult with other Federal agencies as appropriate, and may obtain the assistance of any Federal agency, on a reimbursable basis or otherwise and with the consent of such agency;

''(c) shall attempt to ensure that activities under this Act do not unnecessarily duplicate any available research and development results or displace or compete with privately funded hydrogen and fuel cell energy activities.

''SEC. 107. ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—There is hereby established the Hydrogen and Fuel Cell Technical Advisory Committee, to advise the Secretary on the programs under this Act.

''(b) MEMBERSHIP.—The advisory committee shall be comprised of not fewer than 12 nor more than 25 members appointed by the Secretary based on their technical and other qualifications from domestic industry, automakers, universities, professional societies, Federal laboratories, financial institutions, and environmental and other organizations as the Secretary deems appropriate. The advisory committee shall have a chairperson, who shall be elected by the members from among their number.

''(c) TERMS.—Members of the advisory committee shall be appointed for terms of 3 years, with each term to begin not later than 3 months after the date of enactment of the Energy Policy Act of 2003, except that one-third of the members first appointed shall serve for 1 year, and one-third of the members first appointed shall serve for 2 years, as designated by the Secretary at the time of appointment.

''(d) REVIEW.—The advisory committee shall review and make any necessary recommendations to the Secretary on—

''(1) implementation and conduct of programs under this Act;

''(2) economic, technological, and environmental consequences of the deployment of technologies related to production, distribution, storage, and use of hydrogen energy, and fuel cells;

''(3) means for resolving barriers to implementing hydrogen and fuel cell technologies; and

''(4) the coordination plan and any updates thereto prepared by the Secretary pursuant to section 108.

''(e) RESPONSE.—The Secretary shall consider any recommendations made by the advisory committee, and shall provide a response to the advisory committee within 30 days after receipt of such recommendations. Such response shall either describe the implementation of the advisory committee's recommendations or provide an explanation of the reasons that any such recommendations will not be implemented.

''(f) SUPPORT.—The Secretary shall provide such staff, funds and other support as may be necessary to enable the advisory committee to carry out its functions. In carrying out activities pursuant to this section, the advisory committee may also obtain the assistance of any Federal agency, on a reimbursable basis or otherwise and with the consent of such agency.

''SEC. 108. COORDINATION PLAN.

''(a) PLAN.—The Secretary, in consultation with other Federal agencies, shall prepare and maintain on an ongoing basis a comprehensive plan for activities under this Act.

''(b) DEVELOPMENT.—In developing such plan, the Secretary shall—

''(1) consider the guidance of the National Hydrogen Energy Roadmap published by the Department in November 2002 and any updates thereto;

''(2) consult with the advisory committee;

''(3) consult with interested parties from domestic industry, automakers, universities, professional societies, Federal laboratories, financial institutions, and environmental and other organizations as the Secretary deems appropriate.

''(c) CONTENTS.—At a minimum, the plan shall provide—

''(1) an assessment of the effectiveness of the programs authorized under this Act, including a summary of recommendations of the advisory committee for improvements in such programs;

''(2) a description of proposed research, development, and demonstration activities planned by the Department for the next five years;

''(3) a description of the role Federal laboratories, institutions of higher education, small businesses, and other private sector firms are expected to play in such programs;

''(4) cost and performance milestones that will be used to evaluate the programs for the next five years; and

''(5) any significant technical, regulatory, and other hurdles that stand in the way of achieving such cost and performance milestones, and how the programs will address those hurdles; and

''(6) to the extent practicable, an analysis of Federal, State, local, and private sector hydrogen research, development, and demonstration activities to identify areas for increased intergovernmental and private-public sector collaboration.

''(d) REPORT.—Not later than January 1, 2005, and biennially thereafter, the Secretary shall transmit to Congress the comprehensive plan developed for the programs authorized under this Act, or any updates thereto.

''SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out the purposes of this Act—

''(1) such sums as may be necessary for fiscal years 1992 through 2003;

''(2) $105,000,000 for fiscal year 2004;

''(3) $150,000,000 for fiscal year 2005;

''(4) $175,000,000 for fiscal year 2006;

''(5) $200,000,000 for fiscal year 2007; and

''(6) $225,000,000 for fiscal year 2008.''.

SEC. 803. HYDROGEN TRANSPORTATION AND FUEL INITIATIVE.

(a) VEHICLE TECHNOLOGIES.—The Secretary shall carry out a research, development, demonstration, and commercial application program on advanced hydrogen-powered vehicle technologies. Such program shall address—

(1) engine and emission control systems;

(2) energy storage, electric propulsion, and hybrid systems;

(3) automotive materials;

(4) hydrogen-carrier fuels; and

(5) other advanced vehicle technologies.

(b) HYDROGEN FUEL INITIATIVE.—In coordination with the program authorized in subsection (a), the Secretary of Energy, in partnership with the private sector, shall conduct a research, development, demonstration and commercial application program designed to enable the rapid and coordinated introduction of hydrogen-fueled vehicles and associated infrastructure into commerce. Such program shall address—

(1) production of hydrogen from diverse energy resources, including—

(A) renewable energy resources;

(B) fossil fuels, in conjunction with carbon capture and sequestration;

(C) hydrogen-carrier fuels; and

(D) nuclear energy;

(2) delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) safe, convenient, and economic refueling of vehicles, either at central refueling stations or through distributed on-site generation;

(3) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid or solid forms at refueling facilities or on-board vehicles; and

(4) development of advanced vehicle technologies, such as efficient fuel cells and direct hydrogen combustion engines, and related component technologies such as advanced materials and control systems; and

(5) development of necessary codes, standards, and safety practices to accompany the production, distribution, storage and use of hydrogen or hydrogen-carrier fuels in transportation.

(c) MATSUNAGA ACT.—In carrying out programs and projects under subsections (a) and (b), the Secretary shall ensure that such programs and projects are consistent with, and do not unnecessarily duplicate, activities carried out under the programs authorized under the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401 et seq.).

(d) ADVISORY COMMITTEE.—The Hydrogen and Fuel Cell Technical Advisory Committee authorized under section 107 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12408), as amended in this title, shall also advise the Secretary on the programs and activities carried out under this section.

(e) SOLICITATION.—The Secretary shall carry out the programs authorized under this section through solicitation of proposals, and evaluation using competitive merit review.

(f) COST SHARING.—The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(g) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary—

(1) for activities pursuant to subsection (a), to remain available until expended—

(A) $100,000,000 for each of fiscal years 2004 and 2005;

(B) $110,000,000 for each of fiscal years 2006 and 2007; and

(C) $120,000,000 for fiscal year 2008; and

(2) for activities pursuant to subsection (b), to remain available until expended—

(A) $125,000,000 for fiscal year 2004;

(B) $150,000,000 for fiscal year 2005;

(C) $175,000,000 for fiscal year 2006;

(D) $200,000,000 for each of fiscal years 2007 and 2008.

SEC. 804. INTERAGENCY TASK FORCE AND COORDINATION PLAN.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the Secretary shall establish an interagency task force to coordinate Federal hydrogen and fuel cell energy activities.

(b) COMPOSITION.—The task force shall be chaired by a designee of the Secretary, and shall include representatives of—

(1) the Office of Science and Technology Policy;

(2) the Department of Transportation;

(3) the Department of Defense;

(4) the Department of Commerce (including the National Institute for Standards and Technology);

(5) the Environmental Protection Agency;

(6) the National Aeronautics and Space Administration;

(7) the Department of State; and

(8) other Federal agencies as the Director considers appropriate.

(c) COORDINATION PLAN.—The task force shall prepare a comprehensive coordination

plan for Federal hydrogen and fuel cell energy activities, which shall include a summary of such activities.

(d) REPORT.—Not later than one year after it is established, the task force shall report to Congress on the coordination plan in subsection (c) and on the interagency coordination of Federal hydrogen and fuel cell energy activities.

SEC. 805. REVIEW BY THE NATIONAL ACADEMIES.

Not later than two years after the date of enactment of this Act, and every four years thereafter, the Secretary shall enter into a contract with the National Academies. Such contract shall require the National Academies to perform a review of the progress made through Federal hydrogen and fuel cell energy programs and activities, including the need for modified or additional programs, and to report to the Congress on the results of such review. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the requirements of this section.

Subtitle B—Demonstration Programs

SEC. 811. DEFINITIONS.

For the purposes of this subtitle and subtitle C—

(a) the term ''fuel cell'' means a device that directly converts the chemical energy of a fuel into electricity by an electrochemical process.

(b) the term ''hydrogen-carrier fuel'' means any hydrocarbon fuel that is capable of being thermochemically processed or otherwise reformed to produce hydrogen;

(c) the term ''infrastructure'' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen or hydrogen-carrier fuels.

(d) the term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(b) the term ''Secretary'' means the Secretary of Energy;

SEC. 812. HYDROGEN VEHICLE DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a program for demonstration and commercial application of hydrogen-powered vehicles and associated hydrogen fueling infrastructure in a variety of transportation-related applications, including—

(1) fuel cell vehicles in light-duty vehicle fleets;

(2) heavy-duty fuel cell on-road and off-road vehicles, including mass transit buses;

(3) use of hydrogen-powered vehicles and hydrogen fueling infrastructure (including multiple hydrogen refueling stations) along major transportation routes or in entire regions; and

(4) other similar projects as the Secretary may deem necessary to contribute to the rapid demonstration and deployment of hydrogen-based technologies in widespread use for transportation.

(b) ELIGIBILITY.—Federal, State, tribal, and local governments, academic and other nonprofit organizations, private entities, and consortia of these entities shall be eligible for these projects.

(c) SELECTION.—In selecting projects under this section, the Secretary shall—

(1) consult with Federal, State, local and private fleet managers to identify potential projects where hydrogen-powered vehicles may be placed into service;

(2) identify not less than 10 sites at which to carry out projects under this program, 2 of which must be based at Federal facilities;

(3) select projects based on the following factors—

(A) geographic diversity;

(B) a diverse set of operating environments, duty cycles, and likely weather conditions;

(C) the interest and capability of the participating agencies, entities, or fleets;

(D) the availability and appropriateness of potential sites for refueling infrastructure and for maintenance of the vehicle fleet;

(E) the existence of traffic congestion in the area expected to be served by the hydrogen-powered vehicles;

(F) proximity to non-attainment areas as defined in section 171 of the Clean Air Act (42 U.S.C. 7501); and

(G) such other criteria as the Secretary determines to be appropriate in order to carry out the purposes of the program.

(d) INFRASTRUCTURE.—In funding projects under this section, the Secretary shall also support the installation of refueling infrastructure at sites necessary for success of the project, giving preference to those infrastructure projects that include co-production of both—

(1) hydrogen for use in transportation; and

(2) electricity that can be consumed on site.

(e) OPERATION AND MAINTENANCE PERIOD.—Vehicles purchased for projects under this section shall be operated and maintained by the participating agencies or entities in regular duty cycles for a period of not less than 12 months.

(f) TRAINING AND TECHNICAL SUPPORT.—In funding proposals under this section, the Secretary shall also provide funding for training and technical support as may be necessary to assure the success of such projects, including training and technical support in—

(1) the installation, operation, and maintenance of fueling infrastructure;

(2) the operation and maintenance of fuel cell vehicles; and

(3) data collection necessary to monitor project performance.

(g) COST-SHARING.—Except as otherwise provided, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(h) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $50,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

SEC. 813. STATIONARY FUEL CELL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a program for demonstration and commercial application of hydrogen fuel cells in stationary applications, including—

(1) fuel cells for use in residential and commercial buildings;

(2) portable fuel cells, including auxiliary power units in trucks;

(3) small form and micro fuel cells of 20 watts or less;

(4) distributed generation systems with fuel cells using renewable energy; and

(5) other similar projects as the Secretary may deem necessary to contribute to the rapid demonstration and deployment of hydrogen-based technologies in widespread use.

(b) COMPETITIVE EVALUATION.—Proposals submitted in response to solicitations issued pursuant to this section shall be evaluated on a competitive basis using peer review. The Secretary is not required to make an award under this section in the absence of a meritorious proposal.

(c) PREFERENCE.—The Secretary shall give preference, in making an award under this section, to proposals that—

(1) are submitted jointly from consortia that include two or more participants from institutions of higher education, industry, State, tribal, or local governments, and Federal laboratories; and

(2) that reflect proven experience and capability with technologies relevant to the projects proposed.

(d) TRAINING AND TECHNICAL SUPPORT.—In funding proposals under this section, the Secretary shall also provide funding for training and technical support as may be necessary to assure the success of such projects, including training and technical support in the installation, operation, and maintenance of fuel cells and the collection of data to monitor project performance.

(e) COST-SHARING.—Except as otherwise provided, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(f) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $50,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

SEC. 814. HYDROGEN DEMONSTRATION PROGRAMS IN NATIONAL PARKS.

(a) STUDY.—Not later than 1 year after the date of enactment of this section, the Secretary of the Interior and the Secretary of Energy shall jointly study and report to Congress on—

(1) the energy needs and uses at National Parks; and

(2) the potential for fuel cell and other hydrogen-based technologies to meet such energy needs in—

(A) stationary applications, including power generation, combined heat and power for buildings and campsites, and standby and backup power systems; and

(B) transportation-related applications, including support vehicles, passenger vehicles and heavy-duty trucks and buses.

(b) PILOT PROJECTS.—Based on the results of the study conducted under subsection (a), the Secretary of the Interior shall fund not fewer than 3 pilot projects in national parks to provide for demonstration of fuel cells or other hydrogen-based technologies in those applications where the greatest potential for such use in National Parks has been identified. Such pilot projects shall be geographically distributed throughout the United States.

(c) DEFINITION.—For the purpose of this section, the term ''National Parks'' means those areas of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior $1,000,000 for fiscal year 2004, and $15,000,000 for fiscal year 2005, to remain available until expended.

SEC. 815. INTERNATIONAL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation with the Administrator of the U.S. Agency for International Development, shall conduct demonstrations of fuel cells and associated hydrogen fueling infrastructure in countries other than the United States, particularly in areas where an energy infrastructure is not already well developed.

(b) ELIGIBLE TECHNOLOGIES.—The program may demonstrate—

(1) fuel cell vehicles in light-duty vehicle fleets;

(2) heavy-duty fuel cell on-road and off-road vehicles;

(3) stationary fuel cells in residential and commercial buildings; or

(4) portable fuel cells, including auxiliary power units in trucks.

(c) PARTICIPANTS.—

(1) ELIGIBILITY.—Foreign nations, non-profit organizations, and private companies shall be eligible for these pilot projects.

(2) COOPERATION.—Eligible entities may perform the projects in cooperation with United States non-profit organizations and private companies.

(3) COST-SHARING.—The Secretary may require a commitment from participating private companies and from participating foreign countries.

(d) AUTHORIZATION OF APPROPRIATIONS.—For activities conducted under this section, there are authorized to be appropriated to the Secretary $25,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

SEC. 816. TRIBAL STATIONARY HYBRID POWER DEMONSTRATION.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with Indian tribes, shall develop and transmit to Congress a strategy for a demonstration and commercial application program to develop hybrid distributed power systems on Indian lands that combine—

(1) one renewable electric power generating technology of 2 megawatts or less located near the site of electric energy use; and

(2) fuel cell power generation suitable for use in distributed power systems.

(b) DEFINITION.—For the purposes of this section, the terms ''Indian tribe'' and ''Indian land'' have the meaning given such terms under Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.), as amended by this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—For activities under this section, there are authorized to be appropriated to the Secretary of Energy $1,000,000 for fiscal year 2005, and $5,000,000 for each of fiscal years 2006 through 2008.

SEC. 817. DISTRIBUTED GENERATION PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall support a demonstration program to develop, deploy, and commercialize distributed generation systems to significantly reduce the cost of producing hydrogen from renewable energy for use in fuel cells. Such program shall provide the necessary infrastructure to test these distributed generation technologies at pilot scales in a real-world environment.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy, to remain available until expended, for the purposes of carrying out this section:

(1) $10,000,000 for fiscal year 2004;

(2) $15,000,000 for fiscal year 2005; and

(3) $20,000,000 for each of fiscal years 2006 through 2008.

Subtitle C—Federal Programs

SEC. 821. PUBLIC EDUCATION AND TRAINING.

(a) EDUCATION.—The Secretary shall conduct a public education program designed to increase public interest in and acceptance of hydrogen energy and fuel cell technologies.

(b) TRAINING.—The Secretary shall conduct a program to promote university-based training in critical skills for research in, production of, and use of hydrogen energy and fuel cell technologies. Such program may include research fellowships at institutions of higher education, centers of excellence in critical technologies, internships in industry, and such other measures as the Secretary deems appropriate.

(c) AUTHORIZATION OF APPROPRIATIONS.—For activities pursuant to this section, there are authorized to be appropriated to the Secretary $7,000,000 for each of fiscal years 2004 through 2008.

SEC. 822. HYDROGEN TRANSITION STRATEGIC PLANNING.

(a) IN GENERAL.—Not later than September 30, 2004, the head of each federal agency with annual outlays of greater than $20,000,000 shall submit to the Director of the Office of Management and Budget and to the Congress a hydrogen transition strategic plan containing a comprehensive assessment of how the transition to a hydrogen-based economy could to assist the mission, operation and regulatory program of the agency.

(b) CONTENTS.—At a minimum, each plan shall contain—

(1) a description of areas within the agency's control where using hydrogen and/or fuel cells could benefit the operation of the agency, assist in the implementation of its regulatory functions or enhance the agency's mission; and

(2) a description of any agency management practices, procurement policies, regulations, policies, or guidelines that may inhibit the agency's transition to use of fuel cells and hydrogen as an energy source;

(c) DURATION AND REVISION.—The strategic plan shall cover a period of not less than the five years following the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

SEC. 823. MINIMUM FEDERAL FLEET REQUIREMENT.

(a) Section 303(b) of the Energy Policy Act of 1992 (42 U.S.C. 13212(b)) is amended by adding at the end the following:

''(4) HYDROGEN VEHICLES.—

''(A) Of the number of vehicles acquired under paragraph (1)(D) by a Federal fleet of 100 or more vehicles, not less than—

(i) 5 percent in fiscal years 2006 and 2007;

(ii) 10 percent in fiscal years 2008 and 2009;

(iii) 15 percent in fiscal years 2010 and 2011; and

(iv) 20 percent in fiscal years 2012 and thereafter,

shall be hydrogen-powered vehicles that meet standards for performance, reliability, cost, and maintenance established by the Secretary.

''(B) The Secretary may establish a lesser percentage, or waive the requirement under subparagraph (A) for any fiscal year entirely, if hydrogen-powered vehicles meeting the standards set by the Secretary pursuant to subparagraph (A) are not available at a purchase price that is less than 150 percent of the purchase price of other comparable alternative fueled vehicles.

''(C) The Secretary may by rule, delay the implementation of the requirements under subparagraph (A) in the event that the Secretary determines that hydrogen-powered vehicles are not commercially or economically available, or that fuel for such vehicles is not commercially or economically available.

''(D) The Secretary, in consultation with the Administrator of General Services, may for reasons of refueling infrastructure use and cost optimization, elect to allocate the acquisitions necessary to achieve the requirements in subparagraph (A) to certain Federal fleets in lieu of requiring each Federal fleet to achieve the requirements in subparagraph (A).''.

(b) REFUELING.—Section 304 of the Energy Policy Act of 1992 (42 U.S.C. 13213) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in the second sentence of subsection (a), by striking ''If publicly'' and inserting the following:

''(b) COMMERCIAL ARRANGEMENTS.—

''(1) IN GENERAL.—If publicly''; and

(3) in subsection (b) (as designated by paragraph (2)), by adding at the end the following:

''(2) MANDATORY ARRANGEMENTS.—

''(A) IN GENERAL.—In a case in which publicly available fueling facilities are not convenient or accessible to the locations of 2 or more Federal fleets for which hydrogen-powered vehicles are required to be purchased under section 303(b)(4), the Federal agency for which the Federal fleets are maintained (or the Federal agencies for which the Federal fleets are maintained, acting jointly under a memorandum of agreement providing for cost sharing) shall enter into a commercial arrangement as provided in paragraph (1).

''(B) SUNSET.—Subparagraph (A) ceases to be effective at the end of fiscal year 2013.''.

SEC. 824. STATIONARY FUEL CELL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically practicable and technically feasible, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be generated by fuel cells—

(1) not less than 1 percent in fiscal years 2006 through 2008;

(2) not less than 2 percent in fiscal years 2009 and 2010; and

(3) not less than 3 percent in fiscal year 2011 and each fiscal year thereafter.

(b) COMPLIANCE.—In complying with the requirements of subsection (a), Federal agencies are encouraged to—

(1) use innovative purchasing practices;

(2) use fuel cells at the site of electricity usage and in combined heat and power applications; and

(3) use fuel cells in stand alone power functions, such as but not limited to battery power and backup power.

(c) DEFINITIONS.— For purposes of this section—

(1) the term ''fuel cells'' means an integrated system comprised of a fuel cell stack assembly and balance of plant components that converts a fuel into electricity using an electrochemical means.

(2) the term ''electrical energy'' includes on and off grid power, including premium power applications, standby power applications and electricity generation.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $30,000,000 for fiscal years 2004, $70,000,000 for fiscal year 2005, and $100,000,000 for each of fiscal years 2006 and thereafter.

SEC. 825. DEPARTMENT OF ENERGY STRATEGY.

Not later than 1 year after the date of enactment of this Act, the Secretary shall publish and transmit to Congress a plan identifying critical technologies, enabling strategies and applications, technical targets, and associated timeframes that support the commercialization of hydrogen-fueled fuel cell vehicles.

TITLE IX—RESEARCH AND DEVELOPMENT

SEC. 901. SHORT TITLE.

This Title may be cited as the ''Energy Research, Development, Demonstration, and Commercial Application Act of 2003''.

SEC. 902. GOALS.

(a) IN GENERAL.—In order to achieve the purposes of this title, the Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application, focused on—

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies,

(2) promoting diversity of energy supply,

(3) decreasing the nation's dependence on foreign energy supplies,

(4) improving United States energy security, and

(5) decreasing the environmental impact of energy-related activities.

(b) GOALS.—The Secretary shall publish measurable cost and performance-based goals with each annual budget submission in at least the following areas:

(1) energy efficiency for buildings, energy-consuming industries, and vehicles;

(2) electric energy generation (including distributed generation), transmission, and storage;

(3) renewable energy technologies including wind power, photovoltaics, solar thermal systems, geothermal energy, hydrogen-fueled systems, biomass-based systems, biofuels, and hydropower;

(4) fossil energy including power generation, onshore and offshore oil and gas resource recovery, and transportation; and

(5) nuclear energy including programs for existing and advanced reactors, and education of future specialists.

(c) PUBLIC COMMENT.—The Secretary shall provide mechanisms for input on the annually published goals from industry, university, and other public sources.

(d) EFFECT OF GOALS.—Nothing in subsection (a) or the annually published goals creates any new authority for any Federal agency, or may be used by a Federal agency to support the establishment of regulatory standards or regulatory requirements.

SEC. 903. DEFINITIONS.

For purposes of this title:

(1) The term ''Department'' means the Department of Energy.

(2) The term ''departmental mission'' means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) The term ''National Laboratory'' means any of the following laboratories owned by the Department:

(A) Ames Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Accelerator Laboratory.

(E) Idaho National Engineering and Environmental Laboratory.

(F) Lawrence Berkeley National Laboratory.

(G) Lawrence Livermore National Laboratory.

(H) Los Alamos National Laboratory.

(I) National Energy Technology Laboratory.

(J) National Renewable Energy Laboratory.

(K) Oak Ridge National Laboratory.

(L) Pacific Northwest National Laboratory.

(M) Princeton Plasma Physics Laboratory.

(N) Sandia National Laboratories.

(O) Stanford Linear Accelerator Center.

(P) Thomas Jefferson National Accelerator Facility.

(5) The term ''nonmilitary energy laboratory'' means the laboratories listed in (4) with the exclusion of (4)(G), (4)(H), and (4)(N).

(6) The term ''Secretary'' means the Secretary of Energy.

(7) The term ''single-purpose research facility'' means any of the primarily single-purpose entities owned by the Department or any other organization of the Department designated by the Secretary.

Subtitle A—Energy Efficiency

SEC. 911. ENERGY EFFICIENCY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for energy efficiency and conservation research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) for fiscal year 2004, $616,000,000;

(2) for fiscal year 2005, $695,000,000;

(3) for fiscal year 2006, $772,000,000;

(4) for fiscal year 2007, $865,000,000; and

(5) for fiscal year 2008, $920,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 912—

(A) for fiscal year 2004, $20,000,000; and

(B) for fiscal year 2005, $30,000,000.

(2) For activities under section 914—

(A) for fiscal year 2004, $4,000,000; and

(B) for each of fiscal years 2005 through 2008, $7,000,000.

(3) For activities under section 915—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $25,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for activities under section 912, $50,000,000 for each of fiscal years 2006 through 2013.

(d) None of the funds authorized to be appropriated under this section may be used for—

(1) the promulgation and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act;

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act; or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act.

SEC. 912. NEXT GENERATION LIGHTING INITIATIVE.

(a) IN GENERAL.—The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes.

(b) OBJECTIVES.—The objectives of the initiative shall be to develop advanced solid-state organic and inorganic lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are longer lasting; more energy-efficient; cost-competitive and have less environmental impact.

(c) INDUSTRY ALLIANCE.—The Secretary shall, within 3 months from the date of enactment of this section, competitively select an Industry Alliance to represent participants who are private, for-profit firms which, as a group, are broadly representative of United States solid state lighting research, development, infrastructure, and manufacturing expertise as a whole.

(d) RESEARCH.—

(1) The Secretary shall carry out the research activities of the Next Generation Lighting Initiative through competitively awarded grants to researchers, including Industry Alliance participants, national laboratories and institutions of higher education.

(2) The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) assessment of the progress of the Initiative's research activities; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) The information and roadmaps under (2) shall be available to the public.

(e) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—The Secretary shall carry out a development, demonstration, and commercial application program for the Next Generation Lighting Initiative through competitively selected awards. The Secretary may give preference to participants of the Industry Alliance selected pursuant to subsection (c).

(f) COST SHARING.—The Secretary shall require cost sharing according to 42 U.S.C. 13542.

(g) INTELLECTUAL PROPERTY.—The Secretary may require, in accordance with the authorities provided in 35 U.S.C. 202(a)(ii), 42 U.S.C. 2182 and 42 U.S.C. 5908, that for any new invention from subsection (d)—

(1) that the Industry Alliance members who are active participants in research, development and demonstration activities related to the advanced solid-state lighting technologies that are the subject of this legislation shall be granted first option to negotiate with the invention owner, at least in the field of solid-state lighting, non-exclusive licenses and royalties on terms that are reasonable under the circumstances;

(2) that the invention owner must offer to negotiate licenses with the Industry Alliance participants cited in (1), in good faith, for at least 1 year after U.S. patents are issued on any such new invention; and

(3) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(h) NATIONAL ACADEMY REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative.

(i) DEFINITIONS.—As used in this section:

(1) The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) The term ''research'' includes basic research on the technologies, materials and manufacturing processes required for white light emitting diodes.

(3) The term ''Industry Alliance'' means an entity selected by the Secretary under subsection (c).

(4) The term ''white light emitting diode'' means a semiconducting package, utilizing either organic or inorganic materials, that produces white light using externally applied voltage.

SEC. 913. NATIONAL BUILDING PERFORMANCE INITIATIVE.

(a) INTERAGENCY GROUP.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (in this section referred to as the ''Initiative''). The interagency group shall be co-chaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) INTEGRATION OF EFFORTS.—The Initiative shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the interagency group shall submit to Congress a plan

for carrying out the appropriate Federal role in the Initiative. The plan shall include—

(1) research, development, demonstration, and commercial application of systems and materials for new construction and retrofit relating to the building envelope and building system components; and

(2) the collection, analysis, and dissemination of research results and other pertinent information on enhancing building performance to industry, government entities, and the public.

(d) DEPARTMENT OF ENERGY ROLE.—Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(e) ADVISORY COMMITTEE.—The Director of the Office of Science and Technology Policy shall establish an advisory committee to—

(1) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(2) review and provide recommendations on the plan described in subsection (c).

(f) CONSTRUCTION.—Nothing in this section provides any Federal agency with new authority to regulate building performance.

SEC. 914. SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.

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

(1) The term ''battery'' means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity.

(2) The term ''associated equipment'' means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

(b) PROGRAM.—The Secretary shall establish and conduct a research, development, demonstration, and commercial application program for the secondary use of batteries. Such program shall be—

(1) designed to demonstrate the use of batteries in secondary applications, including utility and commercial power storage and power quality;

(2) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and the necessary supporting infrastructure, including reuse and disposal of batteries; and

(3) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(c) SOLICITATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(d) SELECTION OF PROPOSALS.—

(1) The Secretary shall, not later than 90 days after the closing date established by the Secretary for receipt of proposals under subsection (c), select up to 5 proposals which may receive financial assistance under this section once the Department is in receipt of appropriated funds.

(2) In selecting proposals, the Secretary shall consider diversity of battery type, geographic and climatic diversity, and life-cycle environmental effects of the approaches.

(3) No one project selected under this section shall receive more than 25 percent of the funds authorized for this Program.

(4) The Secretary shall consider the extent of involvement of State or local government and other persons in each demonstration project to optimize use of federal resources.

(5) The Secretary may consider such other criteria as the Secretary considers appropriate.

(e) CONDITIONS.—The Secretary shall require that—

(1) relevant information be provided to the Department, the users of the batteries, the proposers, and the battery manufacturers; and

(2) the proposer provide at least 50 percent of the costs associated with the proposal.

SEC. 915. ENERGY EFFICIENCY SCIENCE INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for research relating to energy efficiency.

(b) REPORT.—The Secretary shall submit to the Congress, along with the President's annual budget request under section 1105(a) of title 31, United States Code, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

Subtitle B—Distributed Energy and Electric Energy Systems

SEC. 921. DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.

(a) IN GENERAL.—

(1) The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

(A) for fiscal year 2004, $190,000,000;
(B) for fiscal year 2005, $200,000,000;
(C) for fiscal year 2006, $220,000,000;
(D) for fiscal year 2007, $240,000,000; and
(E) for fiscal year 2008, $260,000,000.

(2) For the Initiative in subsection 927(e), there are authorized to be appropriated—

(A) for fiscal year 2004, $15,000,000;
(B) for fiscal year 2005, $20,000,000;
(C) for fiscal year 2006, $30,000,000;
(D) for fiscal year 2007, $35,000,000; and
(E) for fiscal year 2008, $40,000,000.

(b) MICRO-COGENERATION ENERGY TECHNOLOGY.—From amounts authorized under subsection (a), $20,000,000 for each of fiscal years 2004 and 2005 shall be available for activities under section 924.

SEC. 922. HYBRID DISTRIBUTED POWER SYSTEMS.

Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to the Congress a strategy for a comprehensive research, development, demonstration, and commercial application program to develop hybrid distributed power systems that combine—

(1) one or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

SEC. 923. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive research, development, demonstration, and commercial application program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 924. MICRO-COGENERATION ENERGY TECHNOLOGY.

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology. The consortia shall explore the use of small-scale combined heat and power in residential heating appliances, the use of excess power to operate other appliances within the residence and supply of excess generated power to the power grid.

SEC. 925. DISTRIBUTED ENERGY TECHNOLOGY DEMONSTRATION PROGRAM.

The Secretary, within the sums authorized under section 921(a)(1), may provide financial assistance to coordinating consortia of interdisciplinary participants for demonstrations designed to accelerate the utilization of distributed energy technologies, such as fuel cells, microturbines, reciprocating engines, thermally activated technologies, and combined heat and power systems, in highly energy intensive commercial applications.

SEC. 926. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

(a) CREATION OF AN OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.—Title II of the Department of Energy Organization Act is amended by inserting the following after section 217 (42 U.S.C. 7144d):

''OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION

''Sec. 218. (a) There is established within the Department an Office of Electric Transmission and Distribution. This Office shall be headed by a Director, who shall be appointed by the Secretary. The Director shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) The Director shall—

''(1) coordinate and develop a comprehensive, multi-year strategy to improve the Nation's electricity transmission and distribution;

''(2) ensure that the recommendations of the Secretary's National Transmission Grid Study are implemented;

''(3) carry out the research, development, and demonstration functions;

''(4) grant authorizations for electricity import and export;

''(5) perform other electricity transmission and distribution-related functions assigned by the Secretary; and

''(6) develop programs for workforce training in power and transmission engineering.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents of the Department of Energy Act is amended by inserting after the item relating to section 217 the following new item:

''218. Office of Electric Transmission and Distribution.''.

(2) Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Electric Transmission and Distribution, Department of Energy.'' after ''Inspector General, Department of Energy.''.

SECTION 927. ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAMS.

(a) DEMONSTRATION PROGRAM.—The Secretary, acting through the Director of the Office of Electric Transmission and Distribution, shall establish a comprehensive research, development, and demonstration program to ensure the reliability, efficiency, and environmental integrity of electrical transmission and distribution systems. This program shall include—

(1) advanced energy and energy storage technologies, materials, and systems, giving priority to new transmission technologies, including composite conductor materials and other technologies that enhance reliability, operational flexibility, or power-carrying capability;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) supply of electricity to the power grid by small scale, distributed and residential-based power generators;

(9) the development and use of advanced grid design, operation and planning tools;

(10) any other infrastructure technologies, as appropriate; and

(11) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this legislation, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and transmit to Congress a 5–year program plan to guide activities under this section. In preparing the program plan, the Secretary shall consult with utilities, energy services providers, manufacturers, institutions of higher education, other appropriate State and local agencies, environmental organizations, professional and technical societies, and any other persons the Secretary considers appropriate.

(c) IMPLEMENTATION.—The Secretary shall consider implementing this program using a consortium of industry, university and national laboratory participants.

(d) REPORT.—Not later than 2 years after the transmittal of the plan under subsection (b), the Secretary shall transmit a report to Congress describing the progress made under this section and identifying any additional resources needed to continue the development and commercial application of transmission and distribution infrastructure technologies.

(e) POWER DELIVERY RESEARCH INITIATIVE.—The Secretary shall establish a research, development and demonstration initiative specifically focused on power delivery utilizing components incorporating high temperature superconductivity.

(1) Goals of this Initiative shall be to—

(A) establish world-class facilities to develop high temperature superconductivity power applications in partnership with manufacturers and utilities;

(B) provide technical leadership for establishing reliability for high temperature superconductivity power applications including suitable modeling and analysis;

(C) facilitate commercial transition toward direct current power transmission, storage, and use for high power systems utilizing high temperature superconductivity; and

(D) facilitate the integration of very low impedance high temperature superconducting wires and cables in existing electric networks to improve system performance, power flow control and reliability.

(2) The Initiative shall include—

(A) feasibility analysis, planning, research, and design to construct demonstrations of superconducting links in high power, direct current and controllable alternating current transmission systems;

(B) public-private partnerships to demonstrate deployment of high temperature superconducting cable into testbeds simulating a realistic transmission grid and under varying transmission conditions, including actual grid insertions; and

(C) testbeds developed in cooperation with national laboratories, industries, and universities to demonstrate these technologies, prepare the technologies for commercial introduction, and address cost or performance roadblocks to successful commercial use.

(g) TRANSMISSION AND DISTRIBUTION GRID PLANNING AND OPERATIONS INITIATIVE.—The Secretary shall establish a research, development and demonstration initiative specifically focused on tools needed to plan, operate and expand the transmission and distribution grids in the presence of competitive market mechanisms for energy, load demand, customer response and ancillary services. Goals of this Initiative shall be to:

(1) develop and utilize a geographically distributed Center, consisting of research universities and national laboratories, with expertise and facilities to develop the underlying theory and software for power system application, and to assure commercial development in partnership with software vendors and utilities;

(2) provide technical leadership in engineering and economic analysis for reliability and efficiency of power systems planning and operations in the presence of competitive markets for electricity;

(3) model, simulate and experiment with new market mechanisms and operating practices to understand and optimize such new methods before actual use; and

(4) provide technical support and technology transfer to electric utilities and other participants in the domestic electric industry and marketplace.

Subtitle C—Renewable Energy

SEC. 931. RENEWABLE ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for renewable energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) for fiscal year 2004, $480,000,000;

(2) for fiscal year 2005, $550,000,000;

(3) for fiscal year 2006, $610,000,000;

(4) for fiscal year 2007, $659,000,000; and

(5) for fiscal year 2008, $710,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 932:

(1) for fiscal year 2004, $135,425,000;

(2) for fiscal year 2005, $155,600,000;

(3) for fiscal year 2006, $167,650,000;

(4) for fiscal year 2007, $180,000,000; and

(5) for fiscal year 2008, $192,000,000.

(c) BIODIESEL ENGINE TESTING.—From amounts authorized under subsection (a), $5,000,000 is authorized to be appropriated in each of fiscal years 2004 and 2008 to carry out section 933.

(d) CONCENTRATING SOLAR POWER.—From amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 934:

(1) for fiscal year 2004, $20,000,000;

(2) for fiscal year 2005, $40,000,000; and

(2) for each of fiscal years 2006, 2007 and 2008, $50,000,000.

(e) LIMITS ON USE OF FUNDS.—

(1) None of the funds authorized to be appropriated under this section may be used for Renewable Support and Implementation.

(2) Of the funds authorized under subsection (b), not less than $5,000,000 for each fiscal year shall be made available for grants to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions.

(f) CONSULTATION.— In carrying out this section, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of advanced wind power technology, including combined use with coal gasification; biomass; geothermal energy systems; and other renewable energy technologies to assist in delivering electricity to rural and remote locations.

SEC. 932. BIOENERGY PROGRAMS.

(a) IN GENERAL.—The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) bioproducts;

(4) integrated biorefineries that may produce biopower, biofuels and bioproducts;

(5) cross-cutting research and development in feedstocks; and

(6) economic analysis.

(b) BIOFUELS AND BIOPRODUCTS.—The goals of the biofuels and bioproducts programs shall be to develop, in partnership with industry—

(1) advanced biochemical and thermochemical conversion technologies capable of making fuels from cellulosic feedstocks that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles; and

(2) advanced biotechnology processes capable of making biofuels and bioproducts with emphasis on development of biorefinery technologies using enzyme-based processing systems.

(c) DEFINITION.—For purposes of (b), the term ''cellulosic feedstock'' means any portion of a crop not normally used in food production or any non-food crop grown for the purpose of producing biomass feedstock.

SEC. 933. BIODIESEL ENGINE TESTING PROGRAM.

(a) IN GENERAL.—Not later that 180 days after enactment of this Act, the Secretary shall initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers to include biodiesel testing in advanced diesel engine and fuel system technology.

(b) SCOPE.—The study shall provide for testing to determine the impact of biodiesel on current and future emission control technologies, with emphasis on

(1) the impact of biodiesel on emissions warranty, in-use liability, and anti-tampering provisions;

(2) the impact of long-term use of biodiesel on engine operations;

(3) the options for optimizing these technologies for both emissions and performance when switching between biodiesel and diesel fuel; and

(4) the impact of using biodiesel in these fueling systems and engines when used as a blend with 2006 Environmental Protection Agency-mandated diesel fuel containing a maximum of 15–parts-per-million sulfur content.

(c) REPORT.—Not later than 2 years after the date of enactment, the Secretary shall provide an interim report to Congress on the findings of this study, including a comprehensive analysis of impacts from biodiesel on engine operation for both existing and expected future diesel technologies, and recommendations for ensuring optimal emissions reductions and engine performance with biodiesel.

(d) DEFINITION.—For purposes of this section, the term ''biodiesel'' means a diesel fuel substitute produced from non-petroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials

D6751–02a ''Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.''

SEC. 934 CONCENTRATING SOLAR POWER RESEARCH PROGRAM.

(a) IN GENERAL.—The Secretary shall conduct a program of research and development to evaluate the potential of concentrating solar power for hydrogen production, including co-generation approaches for both hydrogen and electricity. Such program shall take advantage of existing facilities to the extent possible and shall include—

(1) development of optimized technologies that are common to both electricity and hydrogen production;

(2) evaluation of thermo-chemical cycles for hydrogen production at the temperatures attainable with concentrating solar power;

(3) evaluation of materials issues for the thermo-chemical cycles in (2);

(4) system architectures and economics studies; and

(5) coordination with activities in the Advanced Reactor Hydrogen Co-generation Project on high temperature materials, thermo-chemical cycle and economic issues.

(b) ASSESSMENT.—In carrying out the program under this section, the Secretary is directed to assess conflicting guidance on the economic potential of concentrating solar power for electricity production received from the National Research Council report entitled ''Renewable Power Pathways: A Review of the U.S. Department of Energy's Renewable Energy Programs'' in 2000 and subsequent DOE-funded reviews of that report and provide an assessment of the potential impact of this technology before, or concurrent with, submission of the fiscal year 2006 budget.

(c) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall provide a report to Congress on the economic and technical potential for electricity or hydrogen production, with or without co-generation, with concentrating solar power, including the economic and technical feasibility of potential construction of a pilot demonstration facility suitable for commercial production of electricity and/or hydrogen from concentrating solar power.

SEC. 935. MISCELLANEOUS PROJECTS.

The Secretary shall conduct research, development, demonstration, and commercial application programs for—

(1) ocean energy, including wave energy;

(2) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies; and

(3) renewable energy technologies for co-generation of hydrogen and electricity.

Subtitle D—Nuclear Energy

SEC. 941. NUCLEAR ENERGY.

(a) CORE PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle, other than those described in subsection (b):

(1) for fiscal year 2004, $273,000,000;

(2) for fiscal year 2005, $305,000,000;

(3) for fiscal year 2006, $330,000,000;

(4) for fiscal year 2007, $355,000,000; and

(5) for fiscal year 2008, $495,000,000.

(b) NUCLEAR INFRASTRUCTURE SUPPORT.—The following sums are authorized to be appropriated to the Secretary for activities under section 942(f):

(1) for fiscal year 2004, $125,000,000;

(2) for fiscal year 2005, $130,000,000;

(3) for fiscal year 2006, $135,000,000;

(4) for fiscal year 2007, $140,000,000; and

(5) for fiscal year 2008, $145,000,000.

(c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 943—

(A) for fiscal year 2004, $140,000,000;

(B) for fiscal year 2005, $145,000,000;

(C) for fiscal year 2006, $150,000,000;

(D) for fiscal year 2007, $155,000,000; and

(E) for fiscal year 2008, $275,000,000.

(2) For activities under section 944—

(A) for fiscal year 2004, $33,000,000;

(B) for fiscal year 2005, $37,900,000;

(C) for fiscal year 2006, $43,600,000;

(D) for fiscal year 2007, $50,100,000; and

(E) for fiscal year 2008, $56,000,000.

(3) For activities under section 946, for each of fiscal years 2004 through 2008, $6,000,000.

(d) None of the funds authorized under this section may be used for decommissioning the Fast Flux Test Facility.

SEC. 942. NUCLEAR ENERGY RESEARCH PROGRAMS.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.—The Secretary shall carry out a Nuclear Energy Plant Optimization Program to support research and development activities addressing reliability, availability, productivity, component aging, safety and security of existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.—The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations in the October 2001 report entitled ''A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010'' issued by the Nuclear Energy Research Advisory Committee of the Department. The Program shall include—

(1) utilization of the expertise and capabilities of industry, universities, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

(2) consideration of a variety of reactor designs suitable for both developed and developing nations;

(3) participation of international collaborators in research, development, and design efforts as appropriate; and

(4) encouragement for university and industry participation.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.—The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application. The Initiative shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(1) are economically competitive with other electric power generation plants;

(2) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(3) use fuels that are proliferation resistant and have substantially reduced production of high-level waste per unit of output; and

(4) use improved instrumentation.

(e) REACTOR PRODUCTION OF HYDROGEN.—The Secretary shall carry out research to examine designs for high-temperature reactors capable of producing large-scale quantities of hydrogen using thermo-chemical processes.

(f) NUCLEAR INFRASTRUCTURE SUPPORT.—The Secretary shall develop and implement a strategy for the facilities of the Office of Nuclear Energy, Science, and Technology and shall transmit a report containing the strategy along with the President's budget request to the Congress for fiscal year 2006. Such strategy shall provide a cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility upgrades and modifications; and

(4) building new facilities.

SEC. 943. ADVANCED FUEL CYCLE INITIATIVE.

(a) IN GENERAL.—The Secretary, through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling technology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies which minimize environmental or public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Secretary's Nuclear Energy Research Advisory Committee or other independent entity, as appropriate. Opportunities to enhance progress of this program through international cooperation should be sought.

(b) REPORTS.—The Secretary shall report on the activities of the advanced fuel recycling technology research and development program as part of the Department's annual budget submission.

SEC. 944. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to invest in human resources and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall establish fellowship and faculty assistance programs, as well as provide support for fundamental research and encourage collaborative research among industry, national laboratories, and universities through the Nuclear Energy Research Initiative. The Secretary is encouraged to support activities addressing the entire fuel cycle through involvement of both the Offices of Nuclear Energy, Science and Technology and Civilian Radioactive Waste Management. The Secretary shall support communication and outreach related to nuclear science, engineering and nuclear waste management.

(c) MAINTAINING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—

(1) converting research reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;

(2) providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading training reactors as part of a student training program; and

(3) providing funding for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop sabbatical fellowship and visiting scientist programs to encourage sharing of personnel between national laboratories and universities.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a

portion of the operating and maintenance costs of a research reactor at an institution of higher education used in the research project.

SEC. 945. SECURITY OF NUCLEAR FACILITIES.

The Secretary, through the Director of the Office of Nuclear Energy, Science and Technology shall conduct a research and development program on cost-effective technologies for increasing the safety of nuclear facilities from natural phenomena and the security of nuclear facilities from deliberate attacks.

SEC. 946. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE SOURCES.

(a) SURVEY.—Not later than August 1, 2004, the Secretary shall provide to the Congress results of a survey of industrial applications of large radioactive sources. The survey shall—

(1) consider well-logging sources as one class of industrial sources;

(2) include information on current domestic and international Department, Department of Defense, State Department and commercial programs to manage and dispose of radioactive sources; and

(3) discuss available disposal options for currently deployed or future sources and, if deficiencies are noted for either deployed or future sources, recommend legislative options that Congress may consider to remedy identified deficiencies.

(b) PLAN.—In conjunction with the survey in subsection (a), the Secretary shall establish a research and development program to develop alternatives to such sources that reduce safety, environmental, or proliferation risks to either workers using the sources or the public. Miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site shall be considered as part of the research and development efforts. Details of the program plan shall be provided to the Congress by August 1, 2004.

Subtitle E—Fossil Energy

SEC. 951. FOSSIL ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for fossil energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) for fiscal year 2004, $523,000,000;

(2) for fiscal year 2005, $542,000,000;

(3) for fiscal year 2006, $558,000,000;

(4) for fiscal year 2007, $585,000,000; and

(5) for fiscal year 2008, $600,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 952(b)(2), $28,000,000 for each of the fiscal years 2004 through 2008.

(2) For activities under section 953—

(A) for fiscal year 2004, $12,000,000;

(B) for fiscal year 2005, $15,000,000; and

(C) for each of fiscal years 2006 through 2008, $20,000,000.

(3) For activities under section 954, to remain available until expended,—

(A) for fiscal year 2004, $200,000,000;

(B) for fiscal year 2005, $210,000,000; and

(C) for fiscal year 2006, $220,500,000.

(4) For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), $25,000,000 for each of fiscal years 2004 through 2008.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), $25,000,000 for each of fiscal years 2009 through 2012.

(d) LIMITS ON USE OF FUNDS.—

(1) None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.

(2) Of the funds authorized under subsection (b)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.

SEC. 952. OIL AND GAS RESEARCH PROGRAMS.

(a) OIL AND GAS RESEARCH.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on oil and gas, including—

(1) exploration and production;

(2) gas hydrates;

(3) reservoir life and extension;

(4) transportation and distribution infrastructure;

(5) ultraclean fuels;

(6) heavy oil and oil shale; and

(7) related environmental research.

(b) FUEL CELLS.—

(1) The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) The demonstrations shall include fuel cell proton exchange membrane technology for commercial, residential, and transportation applications, and distributed generation systems, utilizing improved manufacturing production and processes.

(c) NATURAL GAS AND OIL DEPOSITS REPORT.—Not later than 2 years after the date of the enactment of this Act, and every 2 years thereafter, the Secretary of the Interior, in consultation with other appropriate Federal agencies, shall transmit a report to the Congress of the latest estimates of natural gas and oil reserves, reserves growth, and undiscovered resources in Federal and State waters off the coast of Louisiana and Texas.

(d) INTEGRATED CLEAN POWER AND ENERGY RESEARCH.—

(1) The Secretary shall establish a national center or consortium of excellence in clean energy and power generation, utilizing the resources of the existing Clean Power and Energy Research Consortium, to address the nation's critical dependence on energy and the need to reduce emissions.

(2) The center or consortium will conduct a program of research, development, demonstration and commercial application on integrating the following six focus areas:

(A) efficiency and reliability of gas turbines for power generation;

(B) reduction in emissions from power generation;

(C) promotion of energy conservation issues;

(D) effectively utilizing alternative fuels and renewable energy;

(E) development of advanced materials technology for oil and gas exploration and utilization in harsh environments; and

(F) education on energy and power generation issues.

SEC. 953. RESEARCH AND DEVELOPMENT FOR COAL MINING TECHNOLOGIES.

(a) ESTABLISHMENT.—The Secretary shall carry out a program of research and development on coal mining technologies. The Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education with mining engineering departments, and other relevant entities.

(b) PROGRAM.—The research and development activities carried out under this section shall—

(1) be guided by the mining research and development priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies;

(2) include activities exploring minimization of contaminants in mined coal that contribute to environmental concerns including development and demonstration of electromagnetic wave imaging ahead of mining operations;

(3) develop and demonstrate coal bed electromagnetic wave imaging and radar techniques for horizontal drilling in order to increase methane recovery efficiency, prevent spoilage of domestic coal reserves and minimize water disposal associated with methane extraction; and

(4) expand mining research capabilities at institutions of higher education.

SEC. 954. COAL AND RELATED TECHNOLOGIES PROGRAM.

(a) IN GENERAL.—In addition to the program authorized under Title II of this Act, the Secretary of Energy shall conduct a program of technology research, development and demonstration and commercial application for coal and power systems, including programs to facilitate production and generation of coal-based power through—

(1) innovations for existing plants;

(2) integrated gasification combined cycle;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration research and development;

(6) coal-derived transportation fuels and chemicals;

(7) solid fuels and feedstocks; and (8) advanced coal-related research.

(B) COST AND PERFORMANCE GOALS.—In carrying out programs authorized by this section, the Secretary shall identify cost and performance goals for coal-based technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel in 2007, 2015, and the years after 2020. In establishing such cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department of Energy in support of such assessment;

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations and organizations representing workers;

(3) not later than 120 days after the date of enactment of this section, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(4) not later than 180 days after the date of enactment of this section and every four years thereafter, submit to Congress a report describing final cost and performance goals for such technologies that includes a list of technical milestones as well as an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under Title II of this Act.

SEC. 955. COMPLEX WELL TECHNOLOGY TESTING FACILITY.

The Secretary of Energy, in coordination with industry leaders in extended research drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technologies.

Subtitle F—Science

SEC. 961. SCIENCE.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for research, development, demonstration, and commercial application activities of the Office of Science, including activities authorized under this subtitle, including the amounts authorized under the amendment made by section 967(c)(2)(D), and including basic energy sciences, advanced scientific and computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, and research analysis and infrastructure support:

(1) for fiscal year 2004, $3,785,000,000;
(2) for fiscal year 2005, $4,153,000,000;
(3) for fiscal year 2006, $4,586,000,000
(4) for fiscal year 2007, $5,000,000,000; and
(5) For fiscal year 2008, $5,400,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities of the Fusion Energy Sciences Program, including activities under section 962—
(A) for fiscal year 2004, $335,000,000;
(B) for fiscal year 2005, $349,000,000;
(C) for fiscal year 2006, $362,000,000;
(D) for fiscal year 2007, $377,000,000; and
(E) for fiscal year 2008, $393,000,000.

(2) For the Spallation Neutron Source—
(A) for construction in fiscal year 2004, $124,600,000;
(B) for construction in fiscal year 2005, $79,800,000; and
(C) for completion of construction in fiscal year 2006, $41,100,000; and
(D) for other project costs (including research and development necessary to complete the project, preoperations costs, and capital equipment related to construction), $103,279,000 for the period encompassing fiscal years 2003 through 2006, to remain available until expended through September 30, 2006.

(3) For Catalysis Research activities under section 965—
(A) for fiscal year 2004, $33,000,000;
(B) for fiscal year 2005, $35,000,000;
(C) for fiscal year 2006, $36,500,000;
(D) for fiscal year 2007, $38,200,000; and
(E) for fiscal year 2008, $40,100,000.

(4) For Nanoscale Science and Engineering Research activities under section 966—
(A) for fiscal year 2004, $270,000,000;
(B) for fiscal year 2005, $290,000,000;
(C) for fiscal year 2006, $310,000,000;
(D) for fiscal year 2007, $330,000,000; and
(E) for fiscal year 2008, $375,000,000.

(5) For activities under subsection 966(c), from the amounts authorized under subparagraph (4)—
(A) for fiscal year 2004, $135,000,000;
(B) for fiscal year 2005, $150,000,000;
(C) for fiscal year 2006, $120,000,000;
(D) for fiscal year 2007, $100,000,000; and
(E) for fiscal year 2008, $125,000,000.

(6) For activities in the Genomes to Life Program under section 968—
(A) for fiscal year 2004, $100,000,000;
(B) for fiscal year 2005, $170,000,000;
(C) for fiscal year 2006, $325,000,000;
(D) for fiscal year 2007, $415,000,000; and
(E) for fiscal year 2008, $455,000,000.

(7) For construction and ancillary equipment of the Genomes to Life User Facilities under section 968(d), of funds authorized under (6)—
(A) for fiscal year 2004, $16,000,000;
(B) for fiscal year 2005, $70,000,000;
(C) for fiscal year 2006, $175,000,000;
(D) for fiscal year 2007, $215,000,000; and
(E) for fiscal year 2008, $205,000,000.

(8) For activities in the Water Supply Technologies Program under section 970, $30,000,000 for each of fiscal years 2004 through 2008.

(c) In addition to the funds authorized under subsection (b)(1), the following sums are authorized for construction costs associated with the ITER project under section 962—
(1) for fiscal year 2006, $55,000,000;
(2) for fiscal year 2007, $95,000,000; and
(3) for fiscal year 2008, $115,000,000.

SEC. 962. UNITED STATES PARTICIPATION IN ITER.

(a) PARTICIPATION.—

(1) The Secretary of Energy is authorized to undertake full scientific and technological cooperation in the International Thermonuclear Experimental Reactor project (referred to in this title as ''ITER'').

(2) In the event that ITER fails to go forward within a reasonable period of time, the Secretary shall send to Congress a plan, including costs and schedules, for implementing the domestic burning plasma experiment known as the Fusion Ignition Research Experiment. Such a plan shall be developed with full consultation with the Fusion Energy Sciences Advisory Committee and be reviewed by the National Research Council.

(3) It is the intent of Congress that such sums shall be largely for work performed in the United States and that such work contributes the maximum amount possible to the U.S. scientific and technological base.

(b) PLANNING.—

(1) Not later than 180 days of the date of enactment of this act, the Secretary shall present to Congress a plan, with proposed cost estimates, budgets and potential international partners, for the implementation of the goals of this section. The plan shall ensure that—
(A) existing fusion research facilities are more fully utilized;
(B) fusion science, technology, theory, advanced computation, modeling and simulation are strengthened;
(C) new magnetic and inertial fusion research facilities are selected based on scientific innovation, cost effectiveness, and their potential to advance the goal of practical fusion energy at the earliest date possible, and those that are selected are funded at a cost-effective rate;
(D) communication of scientific results and methods between the fusion energy science community and the broader scientific and technology communities is improved;
(E) inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development; and
(F) attractive alternative inertial and magnetic fusion energy approaches are more fully explored.

(2) Such plan shall also address the status of and, to the degree possible, costs and schedules for—
(A) in coordination with the program in section 969, the design and implementation of international or national facilities for the testing of fusion materials; and
(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

SEC. 963. SPALLATION NEUTRON SOURCE.

(a) DEFINITION.—For the purposes of this section, the term ''Spallation Neutron Source'' means Department Project 9909E 09334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) REPORT.—The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

(c) AUTHORIZATION OF APPROPRIATIONS.—The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source may not exceed—
(1) $1,192,700,000 for costs of construction;
(2) $219,000,000 for other project costs; and
(3) $1,411,700,000 for total project cost.

SEC. 964. SUPPORT FOR SCIENCE AND ENERGY FACILITIES AND INFRASTRUCTURE.

(a) FACILITY AND INFRASTRUCTURE POLICY.—The Secretary shall develop and implement a strategy for facilities and infrastructure supported primarily from the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science and Technology Programs at all national laboratories and single-purpose research facilities. Such strategy shall provide cost-effective means for—
(1) maintaining existing facilities and infrastructure, as needed;
(2) closing unneeded facilities;
(3) making facility modifications; and
(4) building new facilities.

(b) REPORT.—

(1) The Secretary shall prepare and transmit, along with the President's budget request to the Congress for fiscal year 2006, a report containing the strategy developed under subsection (a).

(2) For each national laboratory and single-purpose research facility, for the facilities primarily used for science and energy research, such report shall contain—
(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;
(B) a current ten-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;
(C) the total current budget for all facilities and infrastructure funding; and
(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 965. CATALYSIS RESEARCH PROGRAM.

(A) ESTABLISHMENT.—The Secretary, through the Office of Science, shall support a program of research and development in catalysis science consistent with the Department's statutory authorities related to research and development. The program shall include efforts to—
(1) enable catalyst design using combinations of experimental and mechanistic methodologies coupled with computational modeling of catalytic reactions at the molecular level;
(2) develop techniques for high throughput synthesis, assay, and characterization at nanometer and sub-nanometer scales in situ under actual operating conditions,
(3) synthesize catalysts with specific site architectures;
(4) conduct research on the use of precious metals for catalysis; and
(5) translate molecular understanding to the design of catalytic compounds.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out this program, the Director of the Office of Science shall—
(1) support both individual investigators and multidisciplinary teams of investigators to pioneer new approaches in catalytic design;
(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators in collaboration with national user facilities such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other federal agencies.

(c) TRIENNIAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every three years to report on gains made in the fundamental science of catalysis and its progress towards developing new fuels for energy production and material fabrication processes.

SEC. 966. NANOSCALE SCIENCE AND ENGINEERING RESEARCH.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application in nanoscience and nanoengineering. The program shall include efforts to further the understanding of the chemistry, physics, materials science, and engineering of phenomena on the scale of nanometers and to apply this knowledge to the Department's mission areas.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) support both individual investigators and teams of investigators, including multidisciplinary teams;

(2) carry out activities under subsection (c);

(3) support technology transfer activities to benefit industry and other users of nanoscience and nanoengineering; and

(4) coordinate research and development activities with other DOE programs, industry and other Federal agencies.

(c) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—

(1) The Secretary shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanoscience and nanoengineering.

(2) Projects under paragraph (1) may include the measurement of properties at the scale of nanometers, manipulation at such scales, and the integration of technologies based on nanoscience or nanoengineering into bulk materials or other technologies.

(3) Facilities under paragraph (1) may include electron microcharacterization facilities, microlithography facilities, scanning probe facilities, and related instrumentation.

(4) The Secretary shall encourage collaborations among DOE programs, institutions of higher education, laboratories, and industry at facilities under this subsection.

SEC. 967. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge, computationally based, science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge science problems on new generations of computing platforms in collaboration with other DOE program offices;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets;

(4) maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address departmental missions are available; and

(5) explore new computing approaches and technologies that promise to advance scientific computing including developments in quantum computing.

(c) HIGH-PERFORMANCE COMPUTING ACT OF 1991 AMENDMENTS.—The High-Performance Computing Act of 1991 is amended—

(1) in section 4 (15 U.S.C. 5503)—

(A) in paragraph (3) by striking ''means'' and inserting ''and 'networking and information technology' mean'', and by striking ''(including vector supercomputers and large scale parallel systems)''; and

(B) in paragraph (4), by striking ''packet switched''.

(2) in section 203 (15 U.S.C. 5523)—

(A) in subsection (a), by striking all after ''As part of the'' and inserting—

''Networking and Information Technology Research and Development Program, the Secretary of Energy shall conduct basic and applied research in networking and information technology, with emphasis on supporting fundamental research in the physical sciences and engineering, and energy applications; providing supercomputer access and advanced communication capabilities and facilities to scientific researchers; and developing tools for distributed scientific collaboration.'';

(B) in subsection (b), by striking ''Program'' and inserting ''Networking and Information Technology Research and Development Program''; and

(C) by amending subsection (e) to read as follows:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out the Networking and Information Technology Research and Development Program such sums as may be necessary for fiscal years 2004 through 2008.''.

(d) COORDINATION.—The Secretary shall ensure that the program under this section is integrated and consistent with—

(1) the Accelerated Strategic Computing Initiative of the National Nuclear Security Administration; and

(2) other national efforts related to advanced scientific computing for science and engineering.

SEC. 968. GENOMES TO LIFE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall carry out a program of research, development, demonstration, and commercial application, to be known as the Genomes to Life Program, in systems biology and proteomics consistent with the Department's statutory authorities.

(b) PLANNING.—

(1) The Secretary shall prepare a program plan describing how knowledge and capabilities would be developed by the program and applied to Department missions relating to energy security, environmental cleanup, and national security.

(2) The program plan will be developed in consultation with other relevant Department technology programs.

(3) The program plan shall focus science and technology on long-term goals, including—

(A) contributing to U.S. independence from foreign energy sources, including production of hydrogen;

(B) converting carbon dioxide to organic carbon;

(C) advancing environmental cleanup;

(D) providing the science and technology for new biotechnology industries; and

(E) improving national security and combating bioterrorism.

(4) The program plan shall establish specific short-term goals and update these goals with the Secretary's annual budget submission.

(c) PROGRAM EXECUTION.—In carrying out the program under this Act, the Secretary shall

(1) support individual investigators and multidisciplinary teams of investigators;

(2) subject to subsection (d), develop, plan, construct, acquire, or operate special equipment or facilities for the use of investigators conducting research, development, demonstration, or commercial application in systems biology and proteomics;

(3) support technology transfer activities to benefit industry and other users of systems biology and proteomics; and

(4) coordinate activities by the Department with industry and other federal agencies.

(d) GENOMES TO LIFE USER FACILITIES AND ANCILLARY EQUIPMENT.—

(1) Within the funds authorized to be appropriated pursuant to this Act, the amounts specified under section 961(b)(7) shall, subject to appropriations, be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities for investigators conducting research, development, demonstration, and commercial application in systems biology and proteomics and associated biological disciplines.

(2) Projects under paragraph (1) may include—

(A) the identification and characterization of multiprotein complexes;

(B) characterization of gene regulatory networks;

(C) characterization of the functional repertoire of complex microbial communities in their natural environments at the molecular level; and

(D) development of computational methods and capabilities to advance understanding of complex biological systems and predict their behavior.

(3) Facilities under paragraph (1) may include facilities, equipment, or instrumentation for—

(A) the production and characterization of proteins;

(B) whole proteome analysis;

(C) characterization and imaging of molecular machines; and

(D) analysis and modeling of cellular systems.

(4) The Secretary shall encourage collaborations among universities, laboratories and industry at facilities under this subsection. All facilities under this subsection shall have a specific mission of technology transfer to other institutions.

SEC. 969. FISSION AND FUSION ENERGY MATERIALS RESEARCH PROGRAM.

In the President's fiscal year 2006 budget request, the Secretary shall establish a research and development program on material science issues presented by advanced fission reactors and the Department's fusion energy program. The program shall develop a catalog of material properties required for these applications, develop theoretical models for materials possessing the required properties, benchmark models against existing data, and develop a roadmap to guide further research and development in this area.

SEC. 970. ENERGY-WATER SUPPLY TECHNOLOGIES PROGRAM.

(a) ESTABLISHMENT.—There is established within the Office of Science, Office of Biological and Environmental Research, the

''Energy-Water Supply Technologies Program,'' to study energy-related issues associated with water resources and municipal waterworks and to study water supply issues related to energy production.

(b) DEFINITIONS.—

(1) The term ''Foundation'' means the American Water Works Association Research Foundation.

(2) 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).

(3) The term ''Program'' means the Water Supply Technologies Program established by section 970(a).

(c) PROGRAM AREAS.— The program shall conduct research and development, including—

(1) arsenic removal under subsection (d);

(2) desalination research program under subsection (e);

(3) the water and energy sustainability program under subsection (f); and

(4) other energy-intensive water supply and treatment technologies and other technologies selected by the Secretary.

(d) ARSENIC REMOVAL PROGRAM.—

(1) As soon as practicable after the date of enactment of this Act, the Secretary shall enter into a contract with the Foundation to utilize the facilities, institutions and relationships established in the ''Consolidated Appropriations Resolution, 2003'' as described in Senate Report 107–220 that will carry out a research program to develop and demonstrate innovative arsenic removal technologies.

(2) In carrying out the arsenic removal program, the Foundation shall, to the maximum extent practicable, conduct research on means of—

(A) reducing energy costs incurred in using arsenic removal technologies;

(B) minimizing materials, operating, and maintenance costs incurred in using arsenic removal technologies; and

(C) minimizing any quantities of waste (especially hazardous waste) that result from use of arsenic removal technologies.

(3) The Foundation shall carry out peer-reviewed research and demonstration projects to develop and demonstrate water purification technologies.

(4) In carrying out the arsenic removal program—

(A) demonstration projects will be implemented with municipal water system partners to demonstrate the applicability of innovative arsenic removal technologies in areas with different water chemistries representative of areas across the United States with arsenic levels near or exceeding EPA guidelines; and

(B) not less than 40 percent of the funds of the Department used for demonstration projects under the arsenic removal program shall be expended on projects focused on needs of and in partnership with rural communities or Indian tribes.

(5) The Foundation shall develop evaluations of cost effectiveness of arsenic removal technologies used in the program and an education, training, and technology transfer component for the program.

(6) The Secretary shall consult with the Administrator of the Environmental Protection Agency to ensure that activities under the arsenic removal program are coordinated with appropriate programs of the Environmental Protection Agency and other federal agencies, state programs and academia.

(7) Not later than 1 year after the date of commencement of the arsenic removal program, and annually thereafter, the Secretary shall submit to Congress a report on the results of the arsenic removal program.

(e) DESALINATION PROGRAM.—

(1) The Secretary, in cooperation with the Commissioner of Reclamation, shall carry out a desalination research program in accordance with the desalination technology progress plan developed in Title II of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 498), and described in Senate Report 107–39 under the heading ''WATER AND RELATED RESOURCES'' in the ''BUREAU OF RECLAMATION'' section.

(2) The desalination program shall—

(A) draw on the national laboratory partnership established with the Bureau of Reclamation to develop the January 2003 national Desalination and Water Purification Technology Roadmap for next-generation desalination technology;

(B) focus on research relating to, and development and demonstration of, technologies that are appropriate for use in desalinating brackish groundwater, wastewater and other saline water supplies; disposal of residual brine or salt; and

(C) consider the use of renewable energy sources.

(3) Under the desalination program, funds made available may be used for construction projects, including completion of the National Desalination Research Center for brackish groundwater and ongoing facility operational costs.

(4) The Secretary and the Commissioner of Reclamation shall jointly establish a steering committee for the desalination program. The steering committee shall be jointly chaired by 1 representative from this Program and 1 representative from the Bureau of Reclamation.

(f) WATER AND ENERGY SUSTAINABILITY PROGRAM.—

(1) The Secretary shall carry out a research program to develop understanding and technologies to assist in ensuring that sufficient quantities of water are available to meet present and future requirements.

(2) Under this program and in collaboration with other programs within the Department including those within the Offices of Fossil Energy and Energy Efficiency and Renewable Energy, the Secretary of the Interior, Army Corps of Engineers, Environmental Protection Agency, Department of Commerce, Department of Defense, state agencies, non-governmental agencies and academia, the Secretary shall assess the current state of knowledge and program activities concerning—

(A) future water resources needed to support energy production within the United States including but not limited to the water needs for hydropower and thermo-electric power generation;

(B) future energy resources needed to support development of water purification and treatment including desalination and long-distance water conveyance;

(C) reuse and treatment of water produced as a by-product of oil and gas extraction;

(D) use of impaired and non-traditional water supplies for energy production and other uses; and

(E) technologies to reduce water use in energy production.

(3) In addition to the assessments in (2), the Secretary shall—

(A) develop a research plan defining the scientific and technology development needs and activities required to support long-term water needs and planning for energy sustainability, use of impaired water for energy production and other uses, and reduction of water use in energy production;

(B) carry out the research plan required under (A) including development of numerical models, decision analysis tools, economic analysis tools, databases, planning methodologies and strategies;

(C) implement at least three planning demonstration projects using the models, tools and planning approaches developed under subparagraph (B) and assess the viability of these tools at the scale of river basins with at least one demonstration involving an international border; and

(D) transfer these tools to other federal agencies, state agencies, non-profit organizations, industry and academia for use in their energy and water sustainability efforts.

(4) Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the water and energy sustainability program that describes the research elements described under paragraph (2), and makes recommendations for a management structure that optimizes use of Federal resources and programs.

(g) COST SHARING.—

(1) Research projects under this section shall not require cost-sharing.

(2) Each demonstration project carried out under the Program shall be carried out on a cost-shared basis, as determined by the Secretary.

(3) With respect to a demonstration project, the Secretary may accept in-kind contributions, and waive the cost-sharing requirement in appropriate circumstances.

Subtitle G—Energy and Environment

SEC. 971. UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.

(a) PROGRAM.—The Secretary shall establish a research, development, demonstration, and commercial application program to be carried out in collaboration with entities in Mexico and the United States to promote energy efficient, environmentally sound economic development along the United States-Mexico border which minimizes public health risks from industrial activities in the border region.

(b) PROGRAM MANAGEMENT.—The program under subsection (a) shall be managed by the Department of Energy Carlsbad Environmental Management Field Office.

(c) TECHNOLOGY TRANSFER.—In carrying out projects and activities under this section, the Secretary shall assess the applicability of technology developed under the Environmental Management Science Program of the Department.

(d) INTELLECTUAL PROPERTY.—In carrying out this section, the Secretary shall comply with the requirements of any agreement entered into between the United States and Mexico regarding intellectual property protection.

(e) AUTHORIZATION OF APPROPRIATIONS.— The following sums are authorized to be appropriated to the Secretary to carry out activities under this section:

(1) For each of fiscal years 2004 and 2005, $5,000,000; and

(2) For each of fiscal years 2006, 2007, and 2008, $6,000,000.

SEC. 972. COAL TECHNOLOGY LOAN.

There are authorized to be appropriated to the Secretary $125,000,000 to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE–FC–22–91PC90544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

Subtitle H—Management

SEC. 981. AVAILABILITY OF FUNDS.

Funds authorized to be appropriated to the Department under this title shall remain available until expended.

SEC. 982. COST SHARING.

(a) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of

the project. Cost sharing is not required for research and development of a basic or fundamental nature.

(b) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this subtitle, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this subtitle to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(c) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under subsection (a) or (b), the Secretary may include personnel, services, equipment, and other resources.

SEC. 983. MERIT REVIEW OF PROPOSALS.

Awards of funds authorized under this title shall be made only after an impartial review of the scientific and technical merit of the proposals for such awards has been carried out by or for the Department.

SEC. 984. EXTERNAL TECHNICAL REVIEW OF DEPARTMENTAL PROGRAMS.

(a) NATIONAL ENERGY RESEARCH AND DEVELOPMENT ADVISORY BOARDS.—

(1) The Secretary shall establish one or more advisory boards to review Department research, development, demonstration, and commercial application programs in energy efficiency, renewable energy, nuclear energy, and fossil energy.

(2) The Secretary may designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this subsection, and may enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) UTILIZATION OF EXISTING COMMITTEES.—The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act by the Office of Science to oversee research and development programs under that Office.

(c) MEMBERSHIP.—Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

(d) MEETINGS AND PURPOSES.—Each advisory board under this section shall meet at least semi-annually to review and advise on the progress made by the respective research, development, demonstration, and commercial application program or programs. The advisory board shall also review the measurable cost and performance-based goals for such programs as established under section 902, and the progress on meeting such goals.

(e) PERIODIC REVIEWS AND ASSESSMENTS.—The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of the programs authorized by this title, the measurable cost and performance-based goals for such programs as established under section 902, if any, and the progress on meeting such goals. Such reviews and assessments shall be conducted every 5 years, or more often as the Secretary considers necessary, and the Secretary shall transmit to the Congress reports containing the results of all such reviews and assessments.

SEC. 985. IMPROVED COORDINATION OF TECHNOLOGY TRANSFER ACTIVITIES.

(a) TECHNOLOGY TRANSFER COORDINATOR.—The Secretary shall designate a Technology Transfer Coordinator to perform oversight of and policy development for technology transfer activities at the Department. The Technology Transfer Coordinator shall coordinate the activities of the Technology Transfer Working Group, shall oversee the expenditure of funds allocated to the Technology Transfer Working Group, and shall coordinate with each technology partnership ombudsman appointed under section 11 of the Technology Transfer Commercialization Act of 2000 (42 U.S.C. 7261c).

(b) TECHNOLOGY TRANSFER WORKING GROUP.—The Secretary shall establish a Technology Transfer Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices, including alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department, including those related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters.

(c) TECHNOLOGY TRANSFER RESPONSIBILITY.—Nothing in this section shall affect the technology transfer responsibilities of Federal employees under the Stevenson-Wydler Technology Innovation Act of 1980.

SEC. 986. TECHNOLOGY INFRASTRUCTURE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(b) PURPOSE.—The purpose of the Technology Infrastructure Program shall be to improve the ability of National Laboratories and single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

(2) improving the ability of National Laboratories and single-purpose research facilities to leverage and benefit from commercial research, technology, products, processes, and services; and

(3) encouraging the exchange of scientific and technological expertise between National Laboratories or single-purpose research facilities and entities that can support departmental missions at the National Laboratories or single-purpose research facilities, such as institutions of higher education; technology-related business concerns; nonprofit institutions; and agencies of State, tribal, or local governments.

(c) PROJECTS.—The Secretary shall authorize the Director of each National Laboratory or single-purpose research facility to implement the Technology Infrastructure Program at such National Laboratory or facility through projects that meet the requirements of subsections (d) and (e).

(d) PROGRAM REQUIREMENTS.—Each project funded under this section shall meet the following requirements:

(1) Each project shall include at least one of each of the following entities: a business; an institution of higher education; a nonprofit institution; and an agency of a State, local, or tribal government.

(2) Not less than 50 percent of the costs of each project funded under this section shall be provided from non-Federal sources. The calculation of costs paid by the non-Federal sources to a project shall include cash, personnel, services, equipment, and other resources expended on the project after start of the project. Independent research and development expenses of Government contractors that qualify for reimbursement under section 3109205 0918(e) of the Federal Acquisition Regulations issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) may be credited towards costs paid by non-Federal sources to a project, if the expenses meet the other requirements of this section.

(3) All projects under this section shall be competitively selected using procedures determined by the Secretary.

(4) Any participant that receives funds under this section may use generally accepted accounting principles for maintaining accounts, books, and records relating to the project.

(5) No Federal funds shall be made available under this section for construction or any project for more than 5 years.

(e) SELECTION CRITERIA.—

(1) The Secretary shall allocate funds under this section only if the Director of the National Laboratory or single-purpose research facility managing the project determines that the project is likely to improve the ability of the National Laboratory or single-purpose research facility to achieve technical success in meeting departmental missions.

(2) The Secretary shall consider the following criteria in selecting a project to receive Federal funds—

(A) the potential of the project to promote the development of a commercially sustainable technology cluster following the period of Department investment, which will derive most of the demand for its products or services from the private sector, and which will support departmental missions at the participating National Laboratory or single-purpose research facility;

(B) the potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating National Laboratory or single-purpose research facility to achieve its mission or the commercial development of technological innovations made at the participating National Laboratory or single-purpose research facility;

(C) the extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the missions of the participating National Laboratory or single-purpose research facility and that will make substantive contributions to achieving the goals of the project;

(D) the extent to which the project focuses on promoting the development of technology-related business concerns that are small businesses or involves such small businesses substantively in the project; and

(E) such other criteria as the Secretary determines to be appropriate.

(f) ALLOCATION.—In allocating funds for projects approved under this section, the Secretary shall provide—

(1) the Federal share of the project costs; and

(2) additional funds to the National Laboratory or single-purpose research facility managing the project to permit the National Laboratory or single-purpose research facility to carry out activities relating to the project, and to coordinate such activities with the project.

(g) REPORT TO CONGRESS.—Not later than July 1, 2006, the Secretary shall report to Congress on whether the Technology Infrastructure Program should be continued and, if so, how the program should be managed.

(h) DEFINITIONS.—In this section:

(1) The term ''technology cluster'' means a concentration of technology-related business

concerns, institutions of higher education, or nonprofit institutions, that reinforce each other's performance in the areas of technology development through formal or informal relationships.

(2) The term ''technology-related business concern'' means a for-profit corporation, company, association, firm, partnership, or small business concern that conducts scientific or engineering research; develops new technologies; manufactures products based on new technologies; or performs technological services.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $10,000,000 for each of fiscal years 2004, 2005, and 2006.

SEC. 987. SMALL BUSINESS ADVOCACY AND ASSISTANCE.

(a) SMALL BUSINESS ADVOCATE.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to designate a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on the actual participation of small business concerns in procurement and collaborative research along with recommendations, if appropriate, on how to improve participation;

(3) make available to small businesses training, mentoring, and information on how to participate in procurement and collaborative research activities;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of such program to the Director of the National Laboratory or single-purpose research facility.

(b) ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE PROGRAM.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to establish a program to provide small business concerns—

(1) assistance directed at making them more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facility; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the small business concern's products or services.

(c) USE OF FUNDS.—None of the funds expended under subsection (b) may be used for direct grants to the small business concerns.

(d) DEFINITIONS.—In this section:

(1) The term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term ''socially and economically disadvantaged small business concerns'' has the meaning given such term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for activities under this section $5,000,000 for each of fiscal years 2004 through 2008.

SEC. 988. MOBILITY OF SCIENTIFIC AND TECHNICAL PERSONNEL.

Not later than 2 years after the date of enactment of this section, the Secretary shall transmit a report to the Congress identifying any policies or procedures of a contractor operating a National Laboratory or single-purpose research facility that create disincentives to the temporary transfer of scientific and technical personnel among the contractor-operated National Laboratories or contractor-operated single-purpose research facilities and provide suggestions for improving inter-laboratory exchange of scientific and technical personnel.

SEC. 989. NATIONAL ACADEMY OF SCIENCES REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the Academy to—

(1) conduct a study on—

(A) the obstacles to accelerating the research, development, demonstration, and commercial application cycle for energy technology; and

(B) the adequacy of Department policies and procedures for, and oversight of, technology transfer-related disputes between contractors of the Department and the private sector; and

(2) report to the Congress on recommendations developed as a result of the study.

SEC. 990. OUTREACH.

The Secretary shall ensure that each program authorized by this title includes an outreach component to provide information, as appropriate, to manufacturers, consumers, engineers, architects, builders, energy service companies, institutions of higher education, facility planners and managers, State and local governments, and other entities.

SEC. 991. COMPETITIVE AWARD OF MANAGEMENT CONTRACTS.

None of the funds authorized to be appropriated to the Secretary by this title may be used to award a management and operating contract for a nonmilitary energy laboratory of the Department unless such contract is competitively awarded or the Secretary grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver and shall submit to the Congress a report notifying the Congress of the waiver and setting forth the reasons for the waiver at least 60 days prior to the date of the award of such a contract.

SEC. 992. REPROGRAMMING.

(a) DISTRIBUTION REPORT.—Not later than 60 days after the date of the enactment of an Act appropriating amounts authorized under this title, the Secretary shall transmit to the appropriate authorizing committees of the Congress a report explaining how such amounts will be distributed among the authorizations contained in this title.

(b) PROHIBITION.—

(1) No amount identified under subsection (a) shall be reprogrammed if such reprogramming would result in an obligation which changes an individual distribution required to be reported under subsection (a) by more than 5 percent unless the Secretary has transmitted to the appropriate authorizing committees of the Congress a report described in subsection (c) and a period of 30 days has elapsed after such committees receive the report.

(2) In the computation of the 30-day period described in paragraph (1), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain.

(c) REPROGRAMMING REPORT.—A report referred to in subsection (b)(1) shall contain a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of the proposed action.

SEC. 993. CONSTRUCTION WITH OTHER LAWS.

Except as otherwise provided in this title, the Secretary shall carry out the research, development, demonstration, and commercial application programs, projects, and activities authorized by this title in accordance with the applicable provisions of the Atomic Energy Act of 1954 (42 U.S.C. et seq.), the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35, United States Code (commonly referred to as the Bayh-Dole Act), and any other Act under which the Secretary is authorized to carry out such activities.

SEC. 994. IMPROVED COORDINATION AND MANAGEMENT OF CIVILIAN SCIENCE AND TECHNOLOGY PROGRAMS.

(a) EFFECTIVE TOP-LEVEL COORDINATION OF RESEARCH AND DEVELOPMENT PROGRAMS.—Section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)) is amended to read as follows:

''(b)(1) There shall be in the Department an Under Secretary for Energy and Science, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) The Under Secretary for Energy and Science shall be appointed from among persons who—

''(A) have extensive background in scientific or engineering fields; and

''(B) are well qualified to manage the civilian research and development programs of the Department of Energy.

''(3) The Under Secretary for Energy and Science shall—

''(A) serve as the Science and Technology Advisor to the Secretary;

''(B) monitor the Department's research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

''(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;

''(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

''(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

''(F) exercise authority and responsibility over Assistant Secretaries carrying out energy research and development and energy technology functions under sections 203 and 209, as well as other elements of the Department assigned by the Secretary.''.

(b) RECONFIGURATION OF POSITION OF DIRECTOR OF THE OFFICE OF SCIENCE.—

(1) Section 209 of the Department of Energy Organization Act (41 U.S.C. 7139) is amended to read as follows:

''OFFICE OF SCIENCE

''SEC. 209. (a) There shall be within the Department an Office of Science, to be headed by an Assistant Secretary for Science, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) The Assistant Secretary for Science shall be in addition to the Assistant Secretaries provided for under section 203 of this Act.

''(c) It shall be the duty and responsibility of the Assistant Secretary for Science to carry out the fundamental science and engineering research functions of the Department, including the responsibility for policy and management of such research, as well as other functions vested in the Secretary which he may assign to the Assistant Secretary.''.

(2) Notwithstanding section 3345(b)(1) of title 5, United States Code, the President may designate the Director of the Office of Science immediately prior to the effective date of this Act to act in the office of the Assistant Secretary of Energy for Science until the office is filled as provided in section 209 of the Department of Energy Organization Act, as amended by paragraph (1). While so acting, such person shall receive compensation at the rate provided by this Act for the office of Assistant Secretary for Science.

(c) ADDITIONAL ASSISTANT SECRETARY POSITION TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY ISSUES.—

(1) Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking ''There shall be in the Department six Assistant Secretaries'' and inserting ''Except as provided in section 209, there shall be in the Department seven Assistant Secretaries''.

(2) It is the sense of the Congress that the leadership for departmental missions in nuclear energy should be at the Assistant Secretary level.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 202 of the Department of Energy Organization Act (42 U.S.C. 7132) is further amended by adding the following at the end:

''(d) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(e) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''.

(2) Section 5314 of title 5, United States Code, is amended by striking ''Under Secretaries of Energy (2)'' and inserting ''Under Secretaries of Energy (3)''.

(3) Section 5315 of title 5, United States Code, is amended by—

(A) striking ''Director, Office of Science, Department of Energy.''; and

(B) striking ''Assistant Secretaries of Energy (6)'' and inserting ''Assistant Secretaries of Energy (8)''.

(4) The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking ''Section 209'' and inserting ''Sec. 209'';

(B) by striking ''213.'' and inserting ''Sec. 213.'';

(C) by striking ''214.'' and inserting ''Sec. 214.'';

(D) by striking ''215.'' and inserting ''Sec. 215.''; and

(E) by striking ''216.'' and inserting ''Sec. 216.''.

SEC. 995. EDUCATIONAL PROGRAMS IN SCIENCE AND MATHEMATICS

(a) Section 3165a of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end:

''(14) Support competitive events for students, under supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.''

(b) Section 3169 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381e), as redesignated by this Act, is amended by inserting before the period: ''; and $40,000,000 for each of fiscal years 2004 through 2008.''

SEC. 996. OTHER TRANSACTIONS AUTHORITY.

Section 646 of the Department of Energy Organization act (42 U.S.C. 7256) is amended by adding at the end the following:

''(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may enter into other transactions on such terms as the Secretary may deem appropriate in furtherance of research, development, or demonstration functions vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908).

''(2)(A) The Secretary shall ensure that

''(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department; and

''(ii) To the extent the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction.

''(iii) To the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).

''(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary determines the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

''(3)(A) The Secretary shall protect from disclosure, including disclosure under section 552 of title 5, United States Code, for up to 5 years after the date the information is received by the Secretary—

''(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award to the party submitting the information entering into a transaction under paragraph (1); and

''(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.

''(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) which developed information is of a character that it would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.

''(4) Not later than 90 days after the date of enactment of this section, the Secretary shall prescribe guidelines for using other transactions authorized by the amendment under subsection (a). Such guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.

''(5) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be delegated to any other person.''.

SEC. 997. REPORT ON RESEARCH AND DEVELOPMENT PROGRAM EVALUATION METHODOLOGIES.

Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to investigate and report on the scientific and technical merits of any evaluation methodology currently in use or proposed for use in relation to the scientific and technical programs of the Department by the Secretary or other Federal official. Not later than 6 months after receiving the report of the National Academy, the Secretary shall submit such report to Congress, along with any other views or plans of the Secretary with respect to the future use of such evaluation methodology.

TITLE X—PERSONNEL AND TRAINING

SEC. 1001. WORKFORCE TRENDS AND TRAINEESHIP GRANTS.

(a) WORKFORCE TRENDS.—

(1) The Secretary of Energy (in this title referred to as the ''Secretary''), in consultation with the Secretary of Labor and utilizing statistical data collected by the Secretary of Labor, shall monitor trends in the workforce of skilled technical personnel supporting energy technology industries, including renewable energy industries, companies developing and commercializing devices to increase energy efficiency, the oil and gas industry, the nuclear power industry, the coal industry, and other industrial sectors as the Secretary may deem appropriate.

(2) The Secretary shall report to the Congress whenever the Secretary determines that significant national shortfalls of skilled technical personnel in one or more energy industry segments are forecast or have occurred.

(b) TRAINEESHIP GRANTS FOR SKILLED TECHNICAL PERSONNEL.—The Secretary, in consultation with the Secretary of Labor, may establish grant programs in the appropriate offices of the Department of Energy to enhance training of skilled technical personnel for which a shortfall is determined under subsection (a).

(c) DEFINITION.—For purposes of this section, the term ''skilled technical personnel'' means journey and apprentice level workers who are enrolled in or have completed a State or federally recognized apprenticeship program and other skilled workers in energy technology industries.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.

SEC. 1002. RESEARCH FELLOWSHIPS IN ENERGY RESEARCH.

(a) POSTDOCTORAL FELLOWSHIPS.—The Secretary shall establish a program of fellowships to encourage outstanding young scientists and engineers to pursue postdoctoral research appointments in energy research and development at institutions of higher education of their choice.

(b) DISTINGUISHED SENIOR RESEARCH FELLOWSHIPS.—The Secretary shall establish a program of fellowships to allow outstanding senior researchers in energy research and development and their research groups to explore research and development topics of their choosing for a fixed period of time. Awards under this program shall be made on the basis of past scientific or technical accomplishment and promise for continued accomplishment during the period of support, which shall not be less than 3 years.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $40,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.

SEC. 1003. TRAINING GUIDELINES FOR ELECTRIC ENERGY INDUSTRY PERSONNEL.

The Secretary of Labor, in consultation with the Secretary of Energy and jointly with the electric industry and recognized employee representatives, shall develop model personnel training guidelines to support electric system reliability and safety. The training guidelines shall, at a minimum—

(1) include training requirements for workers engaged in the construction, operation, inspection, and maintenance of electric generation, transmission, and distribution, including competency and certification requirements, and assessment requirements that include initial and ongoing evaluation of workers, recertification assessment procedures, and methods for examining or testing the qualification of individuals performing covered tasks; and

(2) consolidate existing training guidelines on the construction, operation, maintenance, and inspection of electric generation, transmission, and distribution facilities, such as those established by the National Electric Safety Code and other industry consensus standards.

SEC. 1004. NATIONAL CENTER ON ENERGY MANAGEMENT AND BUILDING TECHNOLOGIES.

The Secretary shall support the establishment of a National Center on Energy Management and Building Technologies, to carry out research, education, and training activities to facilitate the improvement of energy efficiency and indoor air quality in industrial, commercial, and residential buildings. The National Center shall be established by—

(1) recognized representatives of employees in the heating, ventilation, and air-conditioning industry;

(2) contractors that install and maintain heating, ventilation, and air-conditioning systems and equipment;

(3) manufacturers of heating, ventilation, and air-conditioning systems and equipment;

(4) representatives of the advanced building envelope industry, including design, windows, lighting, and insulation industries; and

(5) other entities as the Secretary may deem appropriate.

SEC. 1005. IMPROVED ACCESS TO ENERGY-RELATED SCIENTIFIC AND TECHNICAL CAREERS.

(a) DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end the following:

''(c) PROGRAMS FOR STUDENTS FROM UNDER-REPRESENTED GROUPS.—In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage students from under-represented groups to pursue scientific and technical careers.''.

(b) PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING INSTITUTIONS, AND TRIBAL COLLEGES.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by redesignating sections 3167 and 3168 as sections 3168 and 3169, respectively; and

(2) by inserting after section 3166 the following:

''SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVING INSTITUTIONS, AND TRIBAL COLLEGES.

''(a) DEFINITIONS. In this section:

''(1) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given that term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

''(2) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

''(3) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given that term in section 903(5) of the Energy Policy Act of 2003.

''(4) SCIENCE FACILITY.—The term 'science facility' has the meaning given the term 'single-purpose research facility' in section 903(8) of the Energy Policy Act of 2003.

''(5) TRIBAL COLLEGE.—The term 'tribal college' has the meaning given the term 'tribally controlled college or university' in section 2(a) of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)).

''(b) EDUCATION PARTNERSHIP.—The Secretary shall direct the Director of each National Laboratory, and may direct the head of any science facility, to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that increase the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

''(c) ACTIVITIES.—An activity under subsection (b) may include—

''(1) collaborative research;

''(2) equipment transfer;

''(3) training activities conducted at a National Laboratory or science facility; and

''(4) mentoring activities conducted at a National Laboratory or science facility.

''(d) REPORT.—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Congress a report on the activities carried out under this section.''.

SEC. 1006. NATIONAL POWER PLANT OPERATIONS TECHNOLOGY AND EDUCATION CENTER.

(a) ESTABLISHMENT.—The Secretary shall support the establishment of a National Power Plant Operations Technology and Education Center (in this section referred to as the ''Center''), to address the need for training and educating certified operators for electric power generation plants.

(b) ROLE.—The Center shall provide both training and continuing education relating to electric power generation plant technologies and operations. The Center shall conduct training and education activities on site and through Internet-based information technologies that allow for learning at remote sites.

(c) CRITERIA FOR COMPETITIVE SELECTION.—The Secretary shall support the establishment of the Center at an institution of higher education with expertise in power plant technology and operation and with the ability to provide on-site as well as Internet-based training.

SEC. 1007. FEDERAL MINE INSPECTORS.

In light of projected retirements of Federal mine inspectors and the need for additional personnel, the Secretary of Labor shall hire, train, and deploy such additional skilled Federal mine inspectors as necessary to ensure the availability of skilled and experienced individuals and to maintain the number of Federal mine inspectors at or above the levels authorized by law or established by regulation.

TITLE XI—ELECTRICITY

SEC. 1101. DEFINITIONS.

(a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

''(22) 'electric utility' means any person or Federal or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing agency;''.

(b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

''(23) 'transmitting utility' means an entity, including any entity described in section 201(f), that owns or operates facilities used for the transmission of electric energy—

''(A) in interstate commerce; or

''(B) for the sale of electric energy at wholesale;''.

(c) ADDITIONAL DEFINITIONS.—At the end of section (3) of the Federal Power Act, add the following:

''(26) 'unregulated transmitting utility' means an entity that—

''(A) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

''(B) is an entity described in section 201(f) or a rural electric cooperative with financing from the Rural Utilities Service.

''(27) 'distribution utility' means an electric utility that does not own or operate transmission facilities or an unregulated transmitting utility that provides 90 percent of the electric energy its transmits to customers at retail.''

(d) For the purposes of this title, the term ''the Commission'' means the Federal Energy Regulatory Commission.

Subtitle A—Reliability

SEC. 1111. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following:

''ELECTRIC RELIABILITY

''SEC. 215. (a) For the purposes of this section:

''(1) The term 'bulk-power system' means—

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c), the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system components and the design of planned additions or modifications to such components to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such components or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the components of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system components.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other

components within the system to maintain reliable operation of the portion of the system within their control.

''(6) The term 'transmission organization' means an RTO or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section. The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) Following the issuance of a Commission rule under subsection (b), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify one such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (d)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

''(2) has established rules that—

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

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

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

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

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d)(1) The ERO shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

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

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

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

''(6) The final rule adopted under subsection (b) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

''(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e)(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

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

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

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

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

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

''(g) The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

''(i)(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

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

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

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

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

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

''(k) The provisions of this section do not apply to Alaska or Hawaii.''.

Subtitle B—Regional Markets

SEC. 1121. IMPLEMENTATION DATE FOR PROPOSED RULEMAKING ON STANDARD MARKET DESIGN.

The Commission's proposed rulemaking entitled ''Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design'' (Docket No. RM01–12–000) is remanded to the Commission for reconsideration. No final rule pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, may be issued before July 1, 2005. Any final rule issued by the Commission pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, shall be proceeded by a notice of proposed rulemaking issued after the date of enactment of this Act and an opportunity for public comment.

SEC. 1122. SENSE OF THE CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.

It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should voluntarily become members of independently administered Regional Transmission Organizations (''RTO'') that have operational or functional control of facilities used for the transmission of electric energy in interstate commerce and do not own or control generation facilities used to supply electric energy for sale at wholesale.

SEC. 1123. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

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

(1) The term ''appropriate Federal regulatory authority'' means—

(A) with respect to a Federal power marketing agency, the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) The term ''Federal utility'' means a Federal power marketing agency or the Tennessee Valley Authority.

(3) The term ''transmission system'' means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) TRANSFER.—

(1) The appropriate Federal regulatory authority is authorized to enter into a contract, agreement or other arrangement transferring control and use of all or part of the Federal utility's transmission system to a Regional Transmission Organization (''RTO''). Such contract, agreement or arrangement shall be voluntary and include—

(A) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement or other arrangement, consistency with existing contracts and third-party financing arrangements, and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(B) provisions for monitoring and oversight by the Federal utility of the RTO fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision that may provide for the resolution of disputes through arbitration or other means with the RTO or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(C) a provision that allows the Federal utility to withdraw from the RTO and terminate the contract, agreement or other arrangement in accordance with its terms.

(2) Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using an RTO shall serve to confer upon the Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(1) Any statutory provision requiring or authorizing a Federal utility to transmit electric power, or to construct, operate or maintain its transmission system shall not be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of subsection (b).

(2) This subsection shall not be construed to—

(A) suspend, or exempt any Federal utility from any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

SEC. 1124. REGIONAL CONSIDERATION OF COMPETITIVE WHOLESALE MARKETS.

(a) STATE REGULATORY COMMISSIONS.—Not later than 90 days after the date of enactment of this Act, the Commission shall convene regional discussions with State regulatory commissions, as defined in section 3(21) of the Federal Power Act. The regional discussions should address whether wholesale electric markets in each region are working effectively to provide reliable service to electric consumers in the region at the lowest reasonable cost. Priority should be given to discussions in regions that do not have, as of the date of enactment of this Act, a Regional Transmission Organization ''(RTO''). The regional discussions shall consider—

(1) the need for an RTO or other organizations in the region to provide non-discriminatory transmission access and generation interconnection;

(2) a process for regional planning of transmission facilities with State regulatory authority participation and for consideration of multi-state projects;

(3) a means for ensuring that costs for all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and buyers of wholesale energy or capacity are reasonable and economically efficient;

(4) a means for ensuring that all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), within the region maintain their ability to use the existing transmission system without incurring unreasonable additional costs in order to expand the transmission system for new customers;

(5) whether the integrated transmission and electric power supply system can and should be operated in a manner that schedules and economically prioritizes all available electric generation resources, so as to minimize the costs of electric energy to all consumers (''economic dispatch'') and maintaining system reliability;

(6) a means to provide transparent price signals to ensure efficient expansion of the electric system and efficiently manage transmission congestion;

(7) eliminating in a reasonable manner, consistent with applicable State and Federal law, multiple, cumulative charges for transmission service across successive locations within a region (''pancaked rates'');

(8) resolution of seams issues with neighboring regions and inter-regional coordination;

(9) a means of providing information electronically to potential users of the transmission system;

(10) implementation of a market monitor for the region with State regulatory authority and Commission oversight and establishment of rules and procedures that ensure that State regulatory authorities are provided access to market information and that provides for expedited consideration by the Commission of any complaints concerning exercise of market power and the operation of wholesale markets;

(11) a process by which to phase-in any proposed RTO or other organization designated to provide non-discriminatory transmission access so as to best meet the needs of a region, and, if relevant, shall take into account the special circumstances that may be found in the Western Interconnection related to the existence of transmission congestion, the existence of significant hydroelectric capacity, the participation of unregulated

transmitting utilities, and the distances between generation and load; and,

(12) a timetable to meet the objectives of this section.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall report to Congress on the progress made in addressing the issues in subsection (a) of this section in discussions with the States.

(c) SAVINGS.—Nothing in this section shall affect any discussions between the Commission and State or other retail regulatory authorities that are on-going prior to enactment of this Act.

Subtitle C—Improving Transmission Access and Protecting Service Obligations

SEC. 1131. SERVICE OBLIGATION SECURITY AND PARITY.

The Federal Power Act (16 U.S.C. 824e) is amended by adding the following:

''SEC. 220. (a)(1) The Commission shall exercise its authority under this Act to ensure that any load-serving entity that, as of the date of enactment of this section—

''(A) owns generation facilities, markets the output of federal generation facilities, or holds rights under one or more long-term contracts to purchase electric energy, for the purpose of meeting a service obligation, and

''(B) by reason of ownership of transmission facilities, or one or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation, is entitled to use such firm transmission rights, or equivalent financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations.

''(b) Nothing in this section shall affect any methodology for the allocation of transmission rights by a Commission-approved entity that, prior to the date of enactment of this section, has been authorized by the Commission to allocate transmission rights.

''(c) Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.''

''(d) Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

''(e) For purposes of this section:

''(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users.

''(2) The term 'load-serving entity' means a distribution utility or an electric utility (including an entity described in section 201(f) or a rural cooperative) that has a service obligation to end-users or a distribution utility.

''(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility (including an entity described in section 201(f) or a rural cooperative) under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.''

''(f) Nothing in the section shall apply to an entity located in an area referred to in section 212(k)(2)(A).''

SEC. 1132. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

''OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

''SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

''(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

''(b) The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

''(1) is a distribution utility that sells no more than 4,000,000 megawatt hours of electricity per year; or

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) Whenever the Commission, after a hearing held upon a complaint, finds any exemption granted pursuant to subsection (b) adversely affects the reliable and efficient operation of an interconnected transmission system, it may revoke the exemption.

''(d) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(e) In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(f) The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

''(g) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(h) Nothing in this Act authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved organization designated to provide non-discriminatory transmission access.''.

SEC. 1133. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act is amended by adding the following:

''SUSTAINABLE TRANSMISSION NETWORKS RULEMAKING

''SEC. 221. Within six months of enactment of this section, the Commission shall issue a final rule establishing transmission pricing policies applicable to all public utilities and policies for the allocation of costs associated with the expansion, modification or upgrade of existing interstate transmission facilities and for the interconnection of new transmission facilities for utilities and facilities which are not included within a Commission approved RTO. Consistent with section 205 of this Act, such rule shall, to the maximum extent practicable:

''(1) promote capital investment in the economically efficient transmission systems;

''(2) encourage the construction of transmission and generation facilities in a manner which provides the lowest overall risk and cost to consumers;

''(3) encourage improved operation of transmission facilities and deployment of transmission technologies designed to increase capacity and efficiency of existing networks;

''(4) ensure that the costs of any transmission expansion or interconnection be allocated in such a way that all users of the affected transmission system bear the appropriate share of costs; and

''(5) ensure that parties who pay for facilities necessary for transmission expansion or interconnection receive appropriate compensation for those facilities.''.

Subtitle D—Amendments to the Public Utility Regulatory Policies Act of 1978

SEC. 1141. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—

''(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

''(i) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section 111(d)(13), the term net metering service shall mean a service provided in accordance with the following standards:

''(1) An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(2) An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with reasonable metering practices.

''(3) If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during

the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with reasonable metering practices.

''(4) If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

''(5) An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(6) The Commission, after consultation with State regulatory authorities and unregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

''(7) For purposes of this subsection—

''(A) The term 'eligible on-site generating facility' means a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

''(B) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

''(C) The term 'high efficiency system' means fuel cells or combined heat and power.

''(D) The term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.''.

SEC. 1142. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(12) TIME-BASED METERING AND COMMUNICATIONS.

''(A) Each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

''(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

''(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

''(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption; and

''(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis and may change as often as hourly.

''(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

''(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

''(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than twelve (12) months after enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).''.

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the at the end the following:

''(k) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.''.

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Polices Act of 1978 (16 U.S.C. 2642(a)) is amended by striking ''and'' at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting ''; and'', and by adding the following at the end thereof:

''(5) technologies, techniques and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.''.

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

''(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

''(1) educating consumers on the availability, advantages and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;

''(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and

''(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2003, providing the Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2005.''.

(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

(1) It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; and

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs.

(3) Not later than 1 year after the date of enactment of this Act, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

(B) existing demand response programs and time-based rate programs;

(C) the annual resource contribution of demand resources;

(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes; and

(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party.

(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated.

SEC. 1143. ADOPTION OF ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

''(6) Each electric utility shall provide distributed generation, combined heat and power, and district heating and cooling systems competitive access to the local distribution grid and competitive pricing of service, and shall use simplified standard contracts for the interconnection of generating facilities that have a power production capacity of 250 kilowatts or less.

''(7) No electric utility may refuse to interconnect a generating facility with the distribution facilities of the electric utility if the owner or operator of the generating facility complies with technical standards adopted by the State regulatory authority and agrees to pay the costs established by such State regulatory authority.

''(8) Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

''(9) Each electric utility shall develop and implement a ten-year plan to increase the efficiency of its fossil fuel generation.''.

(b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

''(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of subsection (b), any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this subsection.''.

SEC. 1144. TECHNICAL ASSISTANCE.

Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is amended to read as follows:

''(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide such technical assistance as determined appropriate to assist State regulatory authorities and electric utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and (9) of section 113(b).''.

SEC. 1145. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.-

''(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has access to an independently administered, auction-based day ahead and real time wholesale market for the sale of electric energy.

''(2) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if competing retail electric suppliers are able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility.

''(3) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

''(4) RECOVERY OF COSTS.—''(A) REGULATION.—The Commission shall promulgate such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section before the date of enactment of this subsection recovers all prudently incurred costs associated with the purchase.

''(B) ENFORCEMENT.—A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).''.

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended

(1) by striking paragraph (17)(C) and inserting the following:

''(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;''; and

(2) by striking paragraph (18)(B) and inserting the following:

''(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;''.

SEC. 1146. RECOVERY OF COSTS.

(a) REGULATION.—To ensure recovery by any electric utility that purchases electricity or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) before the date of enactment of this Act of all costs associated with the purchases, the Commission shall promulgate and enforce such regulations as are required to ensure that no utility shall be required directly or indirectly to absorb the costs associated with the purchases.

(b) TREATMENT.—A regulation under subsection (a) shall be treated as a rule enforceable under the Federal Power Act (16 U.S.C. 791a et seq.).

Subtitle E—Provisions Regarding the Public Utility Holding Company Act of 1935

SEC. 1151. DEFINITIONS.

For the purposes of this subtitle:

(1) The term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) THE TERM ''HOLDING COMPANY'' MEANS—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and (B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1152. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective 12 months after the date of enactment of this Act.

SEC. 1153. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall

maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 1154. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or any associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public utility company; and (3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, or other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, or other records, under Federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 1155. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the date of enactment of this title, the Commission shall promulgate a final rule to exempt from the requirements of section 203 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility company or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility company, the Commission shall exempt such person or transaction from the requirements of section 203.

SEC. 1156. AFFILIATE TRANSACTIONS.

Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company, public utility, or natural gas company from an associate company.

SEC. 1157. APPLICABILITY.

No provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of such officer, agent, or employee's official duty.

SEC. 1158. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1159. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 1160. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a and following) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 and following) (including section 8 of that Act).

SEC. 1161. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this title, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle; and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 1162. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 1163. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this title.

SEC. 1164. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

Subtitle F—Market Transparency, Anti-Manipulation and Enforcement

SEC. 1171. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is amended by adding:

"MARKET TRANSPARENCY RULES

"SEC. 222. (a) Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public. The Commission shall have authority to obtain such information from any electric and transmitting utility, including any entity described in section 201(f).

"(b) The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A).".

SEC. 1172. MARKET MANIPULATION.

Part II of the Federal Power Act is amended by the following:

"PROHIBITION ON FILING FALSE INFORMATION

"SEC. 223. It shall be a violation of this Act for any person or any other entity (including entities described in section 201(f)) willfully and knowingly to report any information relating to the price of electricity sold at wholesale, which information the person or any other entity knew to be false at the time of the reporting, to any governmental entity with the intent to manipulate the data being compiled by such governmental entity.

"PROHIBITION ON ROUND TRIP TRADING

"SEC. 224. (a) It shall be a violation of this Act for any person or any other entity (including entities described in section 201(f)) willfully and knowingly to enter into any contract or other arrangement to execute a 'round-trip trade' for the purchase or sale of electric energy at wholesale.

"(b) For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or any other entity—

"(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

"(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and "(3) enters into the contract or arrangement with the intent to deceptively affect reported revenues, trading volumes, or prices.".

SEC. 1173. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by

(1) inserting "electric utility (including entities described in section 201(f) and rural cooperative entities)," after "Any person,"; and

(2) inserting ''transmitting utility,'' after ''licensee'' each place it appears.

(b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended by inserting ''or transmitting utility'' after ''any person'' in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting ''electric utility,'' after ''Any person,'' in the first sentence.

(d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and (3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

(f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'; and

(2) in subsection (b), by striking ''$500'' and inserting ''$50,000''.

SEC. 1174. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by (1) striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of'';

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''; and

(4) striking the fifth sentence and inserting: ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.''.

Subtitle G—Consumer Protections

SEC. 1181. CONSUMER PRIVACY.

The Federal Trade Commission shall issue rules protecting the privacy of electric consumers from the disclosure of consumer information in connection with the sale or delivery of electric energy to a retail electric consumer. If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 1182. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if determined by the appropriate State regulatory authority to be necessary to prevent loss of service.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(c) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 1183. DEFINITIONS.

For purposes of this subtitle—

(1) ''State regulatory authority '' has the meaning given that term in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)).

(2) ''electric consumer'' and ''electric utility'' have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Technical Amendments

SEC. 1191. TECHNICAL AMENDMENTS.

(a) Section 211(c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

(1) striking ''(2)';

(2) striking ''(A)'' and inserting ''(1)'''

(3) striking ''(B)'' and inserting ''(2)''; and

(4) striking ''termination of modification'' and inserting ''termination or modification''.

(b) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by striking ''electric utility'' the second time it appears and inserting ''transmitting utility''.

(c) Section 315 of the Federal Power Act (16 U.S.C. 825n) is amended by striking ''subsection'' and inserting ''section''.

By Mr. ENZI (for himself, Mr. DORGAN, Mr. BAUCUS, Mr. DAYTON, Mr. BINGAMAN, Mr. CHAFEE, Mr. CRAIG, Mr. JOHNSON, and Mrs. MURRAY):

S. 950. A bill to allow travel between the United States and Cuba; to the Committee on Foreign Relations.

Mr. ENZI. Mr. President, today I offer a bill that will make a very small change in our Cuba policy. It deals only with travel provisions to Cuba.

I have been watching Cuba since the 1960s. I went to George Washington University, and I was there at the time of the Cuban missile crisis. I have had the opportunity to watch what has happened with Cuba throughout the years. I am reminded of something my dad used to say, which was that if you keep on doing what you always have been doing, you are going to wind up getting what you already got. That is kind of the situation with Cuba. We have been trying the same thing for over 40 years, and it hasn't worked.

I am suggesting just a small change to maybe get a few more people in there to increase conversation with people who understand the way the United States works and the way Cuba works and how they ought to drift more rapidly toward where we are.

In recent weeks, as we shared the joy of the Iraqi people as they were liberated from the ruthless regime of Saddam Hussein, we also felt the pain of those in Cuba who had dared to speak out in a vain but valiant effort to demand those same freedoms for themselves. As they did, 75 Cuban citizens were arrested and received harsh sentences—some for more than 20 years—all for the crime of yearning to be free. Once again, Castro has shown himself to be his own worst enemy when it comes to Cuba's image overseas, and so, when faced with an outcry from around the world about his actions, he quickly tried to blame the United States for his own actions. It was a hard sell at best, and, given the reactions we've seen from all sides of this issue, I don't think anyone is buying it.

Still, Castro's cruelty might tempt us to tighten the already strong restrictions on the relations between our two countries, but I hope we will not do that. If we increase the diplomatic pressure on the Cuban government that is now emanating from every corner of the world, we might be successful in bringing about a better way of life for the Cuban people.

If, however, we stop Cuban-Americans from bringing financial assistance to their families in Cuba, and end the people to people exchanges that have been so successful, and stop the sale of agricultural and medicinal products to Cuba, we will not be hurting the Cuban government nearly as badly as we will be hurting the Cuban people by diminishing their faith and trust in the United States and reducing the strength of the ties that bind the people of our two countries.

If we allow more and freer travel to Cuba, if we increase trade and dialogue, we take away Castro's ability to blame the hardships of the Cuban people on the United States. In a very real sense, the better we try to make things for the Cuban people, the more we will reduce the level and the tone of the rhetoric used against us by Fidel Castro.

I have often heard it said that it is foolish to do the same thing over and over again and expect different results. In a way, that is what we are doing in Cuba. We are continuing to try to exert pressure from our side and, as we do, we are giving Castro a scapegoat to blame for the poor living conditions in his country in the process. It's time for a different policy, one that goes further than embargoes and replaces a restrictive and confusing travel policy with a new one that will more effectively help us to achieve our goals in that country.

Today, Senators DORGAN, BAUCUS, and BINGAMAN and I are introducing the Freedom to Travel to Cuba Act.

Our bill is very straightfoward. It states that the President shall not prohibit, either directly or indirectly, travel to or from Cuba by United States citizens or transactions incident to such travel.

In 1958 the Supreme Court affirmed or Constitutional right to travel, but the U.S. government then prohibited Americans from spending money in Cuba. We simply said, okay, you have a right to travel, but try traveling without spending a dime.

Most of us know that certain people can and do continue to travel to Cuba. Cuban Americans can apply for a license to travel for humanitarian reasons to visit ailing family members and such, but not always conveniently.

The way I got involved in this whole process was a Cuban American from Jackson, WY, who had been in Cuba visiting his family, doing his one visit a year. As he left and was on the plane coming back to Wyoming, one of his

parents died. He could not go back there for a year. That is not a good situation for any family.

Educational groups can apply for licenses to travel for scholarly reasons, for educational opportunities and conferences. Members of the U.S. Government can travel for fact-finding reasons, but for the average American, that process is too complicated.

Even with the proper licenses, the regulations on where you can go and whom you can talk to are confusing, misleading, and frustrating. Each year the Office of Foreign Assets Control levies fines on travelers who followed the law to the best of their ability. Fines and punishments were imposed without guidelines and seemingly at the whim of a nameless bureaucrat.

I must ask my colleagues, why are we continuing to support a policy that was basically implemented 40 years ago? Why are we supporting a policy that has had little effect on the Government we oppose? Why do we not improve our policy so that it will improve conditions for the Cuban people and their image of the United States?

The bill we are introducing today makes real change in our policy toward Cuba that will lead to a real change for the people of Cuba. What better way to let the Cuban people know of our concern for their plight than for them to hear it from their friends and their extended family in the United States, or let them hear it from the American people who will go there?

The people of this country are our best ambassadors, and we should let them show the people of Cuba what we as a nation are all about. One thing we should not do is to play into Castro's hand by enacting stricter and more stringent regulations and create a situation where the United States is easy to blame for the problems in Cuba. Unilateral sanctions will not improve human rights for Cuban citizens. The rest of the world is not doing what we are doing. Cuba is being supplied by the rest of the world with everything they need.

Open dialog and exchange of ideas and commerce can move a country toward democracy. What better way to share the rewards of democracy than through people-to-people exchanges? We cannot stop that program. If the United States Government continues on its current course to put an economic stranglehold on the Cuban Government, the people of Cuba will suffer. Unilateral sanctions stop not just the flow of goods but the flow of ideas. Ideas of freedom and democracy are the keys to change in any nation.

Some may ask why we want to increase dialog right now, why open the door to Cuba when Castro is behaving so poorly? No one is denying that the actions of Castro and his government are deplorable, as is his refusal to provide basic human rights to his people. But if we truly believe Castro is a dictator with no good intentions, how can we say we should wait for him to behave before we engage? He controls the entire media in Cuba. The entire message that is coming out, unless we have people interacting, is his message. Keeping the door closed and hollering at Castro on the other side does not do anything.

Mr. DORGAN. Mr. President, this morning, my colleague from Wyoming, Senator ENZI, has introduced a piece of legislation I am an original cosponsor of. I want to make a point about the legislation.

The legislation deals with the freedom of the American people to travel in the country of Cuba. I want to talk about that just for a moment. I support that legislation. The legislation has nothing to do with supporting Fidel Castro. We do not support Fidel Castro. It has nothing to do with making life easier for Fidel Castro. This issue is not about Fidel Castro; it is about the American people.

Ninety miles off our shores sits a country ruled by communists, a communist government run by Fidel Castro. We have a communist government in the country of China, with 1.3 billion people half way around the globe. We have a communist government in the country of Vietnam. I have visited both.

In both of those countries, we have an American Chamber of Commerce. They are doing business in those countries. We have engaged in trade and tourism. People travel there. People do business there. Why? Because our country thinks engagement is the right way to move these communist countries in the right direction toward greater personal freedom and greater liberty for the people of China and Vietnam.

But Cuba is 90 miles off the coast of Florida, and we are told that Cuba is different. Instead of engagement being constructive for Cuba, we are told a 40-year embargo, which has not worked, should be retained. That embargo includes not only an embargo on trade with Cuba, but it also includes a restriction on the American people's ability to travel to Cuba. And the restriction is so absurd and so byzantine, here is what it has provoked.

I had a hearing on this about a year and a half ago. We have people down in the Treasury Department who are spending their days, with taxpayers' money, tracking Americans who have traveled to Cuba, so they can levy a civil fine on those Americans.

Let me tell you of one: A retired school teacher in Illinois. She is a cyclist, loves to bicycle. She answered an ad in a cycling magazine and signed up for a 10-day cycling trip in Cuba. This retired school teacher—I hope she won't mind me saying, a little, old, retired schoolteacher—from Illinois, bicycles in Cuba for 10 days with a cycling group, organized by a Canadian cycling company, and she gets back to this country only to receive in the mail a notice by the U.S. Treasury Department that she has been fined $9,600 for traveling in Cuba.

She would not be fined for traveling in China, a communist country. She would not be fined for traveling in Vietnam, a communist country. But she is fined for traveling in Cuba.

Or do you want one better? How about the guy whose dad died, who was a Cuban citizen who came to this country, and the last thing he wanted was for his ashes to be taken back to Cuba and spread on Cuban soil. So his son did that. But guess what? That son gets caught in the net of the U.S. Treasury Department, because at a time when we are worried about terrorism, we have people down at the Treasury Department who are chasing retired school teachers and sons of deceased American citizens who used to live in Cuba who want to take their parents' ashes back to Cuba.

We have people down there spending the taxpayers' dollars and their time, their effort, and energy to see if we can't levy a civil fine against Americans who travel in Cuba. My colleague, Senator ENZI, has introduced legislation, with myself and others, to say it is not hurting Fidel Castro by limiting the freedom and choice of the American people to travel in Cuba. Cuba and the Cuban people would be much better off with additional travel by Americans and expanded trade. The same circumstances that lead people to believe that engagement with China and Vietnam is helpful ought to understand that it would be helpful with Cuba as well.

I have been to Cuba. I have visited with the dissidents. Frankly, they believe the embargo is counterproductive, and they believe lifting the embargo and the travel restrictions would be helpful to their cause.

Fidel Castro is a Communist and a dictator. What he has done in recent weeks is appalling to me. He has thrown people in jail, dissidents, for what they have said and what they think. He has executed several people in recent weeks who attempted to allow others to escape. Shame on him. But it makes no sense for us to continue a policy that is counterproductive.

Again, talk to the dissidents in Cuba and they will tell you that allowing people to travel to Cuba and allowing our family farmers to sell grain to Cuba is constructive.

We are finally for the first time able to sell some products into the Cuban marketplace because I and then former Senator John Ashcroft, now Attorney General, offered legislation that opened that embargo of 40 years that did not work, and for the first time in 40 years, 22 train carloads of dried peas left North Dakota to go to the Cuban market, purchased by the Cubans.

Our farmers for the first time in 42 years sold some food to Cuba. That makes good sense. We should never use food as a weapon. Travel is the same circumstance. Limiting the freedom of the American people makes no sense to me.

The Enzi bill, which I am proud to cosponsor, moves in the direction of eliminating that limitation on travel by the American people.

Mr. BAUCUS. Madam President, I rise today to offer legislation, along with my colleagues Senator ENZI and Senator DORGAN, that would end the restrictions placed on travel to Cuba.

I understand our colleagues in the House will introduce companion legislation in the coming weeks. I look forward to working with my colleagues in both chambers, and on both sides of the aisle, as we move forward.

With this legislation, we are undertaking a serious cause. Repeal of the travel ban is long overdue.

There are numerous reasons to introduce this legislation, but I want to focus today on just two: first, the current situation in Cuba; and second, our troubled economy here at home.

Introduction of this legislation comes at a crucial time in U.S.-Cuba relations. Last month, nearly 80 Cuban dissidents were arrested. All of them have been sentenced to an average of almost 20 years in prison.

Democratic governments around the world, as well as human rights organizations and others, including myself and my colleagues in the Senate and House Cuba Working Groups, have harshly criticized the Castro regime for these appalling acts of repression. Yet, throughout all of this, the Castro regime has remained defiant and undaunted.

Why? In my view it is because Castro wants the embargo to continue. Observers have noted an emerging pattern: every time we get close to more open relations, Castro shuts the process down with some repressive act, designed to have a chilling effect on U.S.-Cuban relations.

Castro fears an end to the embargo. He knows the day the embargo falls is the day he runs out of excuses. Without the embargo, Castro would have no one to blame for the failing Cuban economy.

Nor would his way of governing be able to survive the influx of Americans and democratic ideas that would flood his island if the embargo were lifted.

Now, some Cuba watchers have predicted that the dissident arrests and the resulting decline of U.S.-Cuba relations are a death knell to the engagement debate in Washington.

I strongly disagree. And I think now, more than ever, a genuine, honest debate about the merits of the embargo is needed.

Some people seem to think tightening the embargo is a rational response to the Castro regime. I guess if you think an embargo can hurt Castro without hurting the Cuban people, then tightening the embargo might make some sense.

But it does not work that way. The embargo actually hurts the Cuban people much more than it hurts Castro.

This is why many Cuban dissidents, including Oswaldo Paya, the founder of the Varela Project, oppose our embargo and support engagement.

Indeed, after 43 years, it ought to be clear to everyone that the embargo has failed to weaken Castro. A better approach is to reach out to the Cuban people. Ending the travel ban is the first and best way to do this.

If Castro fears contact between the Cuban people and the American people, the rational American response is to send more Americans, not fewer.

Of course, ending the travel ban would have benefits not only for the Cuban people, but also for Americans. Ending the travel ban would have an immediate and direct economic impact, beyond even the immediate travel sector.

Most importantly for my home state of Montana, ending the travel ban would help farmers and ranchers.

Americans are currently allowed to sell food and medicine to Cuba on a cash basis. But there is a lot of red tape thrown in their way. And without the ability to travel to Cuba and develop the business contacts, the full potential of these sales is not realized.

In fact, one study has suggested that lifting the travel ban could result in an additional quarter billion dollars of agricultural sales, and create thousands of new jobs.

Ending the travel ban would bring benefits to both Cubans and to Americans. And that, after all, is what this debate should be about. Supporters of the embargo are so focused on hurting Castro that they actually strengthen him—at the expense of the Cuban people, and at the expense of our own economy.

I hope my colleagues will join me in co-sponsoring this important legislation. I believe it is the best way to show that we truly care about the Cuban people

And indeed, if we truly care about democracy, then let us send Cuba exactly that. Let us travel to Cuba and show them democracy in action.

I yield the floor.

Mr. DAYTON. I commend my colleague from Wyoming and his leadership in relationship to Cuba, which is of strong interest to businesses and farmers in my home State of Minnesota. I ask unanimous consent to be added as a cosponsor to his legislation. I look forward to working with him as part of his caucus to further those relationships. I again commend the Senator for his leadership in this important area and look forward to working with him.

By Mr. WARNER (for himself, Mr. DAYTON, and Ms. COLLINS):

S. 951. A bill to amend the Internal Revenue Code of 1986 to allow medicare beneficiaries a refundable credit against income tax for the purchase of outpatient prescription drugs; to the Committee on Finance.

Mr. WARNER. Mr. President, I rise today to introduce this morning a bill on which my distinguished colleagues from Minnesota and Maine and I have collaborated. That is the Older Americans Prescription Drug Tax Relief Act. I will speak a minute or two on it, then should the Senator from Minnesota desire to speak to this, I will yield to the Senator and then resume the balance of my statement.

By way of introduction, all Members of this body have heard the tragic stories about older Americans who must choose between paying for their groceries and paying for their medicines. Many older Americans are forced into this choice because, unbelievably, the Medicare program still lacks an outpatient prescription drug benefit. America's seniors deserve much better.

Our President, the House of Representatives, and every single Member of this Senate, all 100 Members, share the common goal of enacting a comprehensive Medicare prescription drug benefit. Over the years, we worked diligently to achieve those goals but have yet not reached what I would consider, and I think others would consider, success. We have all worked in support of this vitally important goal, but, again, success has alluded us. Unfortunately, we have not been able to reach a consensus.

I hope this bill might be a new initiative that would merit the attention of my colleagues, and that it might provide a basis for that consensus. As we here in the Nation's Capital debate how best to add a Medicare prescription drug benefit and continue to debate the specifics of such benefits such as premiums, co-pays, deductibles, formularies, and whether to run the program through the existing Medicare system or through a public-private partnership, our seniors continue to suffer. Medicare beneficiaries have waited far too long for Congress to provide some sort of relief for their prescription drug costs.

I remain committed, as are my distinguished colleagues from Minnesota and Maine, to working with our colleagues on creating a comprehensive prescription drug benefit in the Medicare program. I believe we must act now, however, to provide some relief at this point in time. We cannot defer this decision any longer. The Warner-Dayton-Collins proposal will provide real relief to Medicare beneficiaries. The legislation is simple and can be described in three points.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank the senior Senator from Virginia, a leader on this measure. I will be brief because I am scheduled to meet in my office in just a few moments with the nominee for the new superintendent of the Air Force Academy, which is a matter on which the Senator from Virginia has also exhibited great leadership on behalf of this country.

I am very proud to join with Senator WARNER in sponsoring this legislation. I agree and associate myself with everything the Senator has said regarding this matter.

I came to the Senate a little over 2 years ago, believing the most urgent matter facing our country in the area of social legislation was to provide prescription drug coverage for all of our elderly. I have been dismayed at our inability—all of us—to reach necessary agreements so such legislation could be enacted.

I could not agree more with the Senator from Virginia that this is something I hope our colleagues will consider. If there is a better approach that we can all agree on this year, then so be it. But in the absence of that, as there has been that failure during the last 2 years, I hope our colleagues will look at this as a very feeling alternative. Even if long-term legislation is enacted, I believe it will be at least a year or two before that is available to our senior citizens, before that program is set up. This is an approach that could be implemented very swiftly, could be available almost immediately, and could provide, on an interim basis if not a long-term basis, the financial assistance our elderly citizens desperately need.

I thank the senior Senator from Virginia. I am proud to associate myself with this legislation.

I yield the floor.

Mr. WARNER. I thank my distinguished colleague for responding. I wish to emphasize a very important point the Senator from Minnesota made.

This may not be the final resolution of this complex set of issues. But given the desperate circumstances of so many who have to make the choice between food and drugs, I think it is a very carefully crafted interim step that could be enacted into law and later quickly superseded should that hoped-for event occur in the future of a more comprehensive piece of legislation.

I think the emphasis on that is very important.

I would say, all of us here in the Senate benefit greatly by professional staff. On my staff, Chris Yianilos really worked diligently to bring this legislation into being and he collaborated with a distinguished member of your staff, Mr. Bob Hall. I also thank Priscilla Hanley, who worked with Senator COLLINS on the legislation.

The first is that the Warner-Dayton-Collins bill provides Medicare beneficiaries with a refundable—I repeat—a refundable tax credit of 50 cents on every dollar of out-of-pocket prescription drug costs. Whether you actually pay income taxes or not, you are eligible to get the benefit of this tax credit.

The benefit is capped at $500 for the expenses of an individual senior. Married seniors would be eligible for a credit up to $1,000. The cap is based on a recent study by the Kaiser Family Foundation that estimates that the average senior's out-of-pocket prescription drug costs is almost $1,000. Thus the proposal will cover 50 percent of the out-of-pocket drug costs for the average senior.

To take advantage of this refundable tax credit, Medicare beneficiaries will not have to worry about whether their drug is covered under some formulary. In addition, there are no premiums, no deductibles. Medicare beneficiaries will simply take their prescriptions, get them filled, and then apply for their refundable tax credit.

Second, in recognition that a generous but necessary refundable tax credit such as this can be costly, we have imposed a responsible income phase-out on older Americans who can benefit from this tax credit. The phase-out level begins for individuals who earn $75,000 per year. Married Medicare beneficiaries begin to phase-out of the benefit at $150,000 a year. This cost containment mechanism will affect less than 10 percent of all Medicare beneficiaries but allows us to responsibly provide a refundable tax credit that will cover about 50 percent of the average Medicare beneficiary's out-of-pocket drug costs.

Again 90 percent of all Medicare beneficiaries will not be affected by the phase-out. In other words, they are beneath the phase-out caps. Only those individuals who are blessed with a larger income among America's seniors, who can afford in large measure to pay for their prescription drugs, will be phased-out.

Third, the legislation will sunset once a comprehensive Medicare prescription drug benefit is signed into law. Again, as my colleague from Minnesota mentioned, and others, this is an interim proposal. Therefore, it can be superseded by a more comprehensive bill.

We wholeheartedly agree this legislation is not a substitute for a comprehensive prescription drug Medicare benefit, and we will continue to work with the President and our colleagues from both sides of the aisle in the Senate who support a more comprehensive piece of legislation. But as I stated earlier, America's seniors cannot wait any longer for relief, and this proposal provides a real benefit to America's seniors.

I am pleased to be joined by Senator DAYTON and Senator COLLINS in introducing the Older Americans Prescription Drug Tax Relief Act. I urge my colleagues to give this matter consideration and, hopefully, it can be enacted into law.

Let us do something. Let us open the door and talk to the Cuban people.

Travel and other policies that deal with Cuba will continue to be a top priority for those of us in the newly formed Senate Cuba Working Group. The working group members have expressed their support for changes in our policies toward Cuba, and we will continue to be a part of the dialogue. I do encourage all of my colleagues to join us in that effort.

I encourage all of my colleagues to take a look at this bill that has been introduced today. I know there are people looking at it. I expect a lot more cosponsors on it. This is the most reasonable provision dealing with Cuba that has been presented during the 6 years I have been here. We have tried some bigger bites at the apple. They have not worked. So we are moving back to the travel restrictions, a bill that is very limited. It allows one to travel and to have those things that are necessary for travel. For instance, the right to take baggage to Cuba cannot be cut off. That is another way the law can be subverted. So it is a very straightforward travel policy that will get Americans into Cuba to talk to Cubans to promote the ideas we believe in. I ask my colleagues to join me in this effort.

By Mr. CORZINE:

S. 952. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to reintroduce my legislation, the Patient and Physician Safety and Protection Act of 2003, to limit medical resident work hours to 80 hours a week and to provide real protections for patients and resident physicians who are negatively affected by excessive work hours. I feel strongly that as Congress begins to consider proposals to reduce medical malpractice premiums and improve quality of care, we must consider the role that excessive work hours play in exacerbating medical liability problems and reducing quality of care.

It is very troubling that hospitals across the Nation are requiring young doctors to work 36 hour shifts and as many as 120 hours a week in order to complete their residency programs. These long hours lead to a deterioration of cognitive function similar to the effects of blood alcohol levels of 0.1 percent. This is a level of cognitive impairment that would make these doctors unsafe to drive—yet these physicians are not only allowed but in fact are required to care for patients and perform procedures on patients under these conditions.

The Patient and Physician Safety and Protection Act of 2003 will limit medical resident work hours to 80 hours a week. Not 40 hours or 60 hours. 80 hours a week. It is hard to argue that this standard is excessively strict. In fact, it is unconscionable that we now have resident physicians, or any physicians for that matter, caring for very sick patients 120 hours a week and 36 hours straight with fewer than 10 hours between shifts. This is an outrageous violation of a patient's right to quality care.

In addition to limiting work hours to 80 hours a week, my bill limits the length of any one shift to 24 consecutive hours, while allowing for up to three hours of patient transition time, and limits the length of an emergency room shift to 12 hours. The bill also ensures that residents have at least one

out of seven days off and ''on-call'' shifts no more often that every third night.

Since I first introduced the Patient and Physician Safety and Protection Act in the 107th Congress, the medical community and the Accreditation Council for Graduate Medical Education, ACGME, specifically have taken critical steps to address the problem of excessive work hours. The ACGME's recommendations to reduce resident work hours are commendable. If appropriately enforced, these new work hour guidelines will go a long way toward reducing the number of hours that residents must work, thereby improving the health of our Nation's medical residents and ensuring the safety of the patients.

Despite the medical community's best intentions to reduce work hours, however, I am very concerned that the ACGME's policy lacks the enforcement mechanisms that are essential to ensure compliance with the new work hour rules. Too many hospitals failed to comply with previous work hour requirements mandated by the ACGME because there was insufficient oversight and enforcement. While the new policy establishes more stringent work hours reductions, it fails to create effective enforcement and oversight tools. These rules are meaningless without enforcement.

That is why Federal legislation is necessary. The Patient and Physician Safety and Protection Act of 2003 not only recognizes the problem of excessive work hours, but also creates strong enforcement mechanisms. The bill also provides funding support to teaching hospitals to implement new work hour standards. Without enforcement and financial support efforts to reduce work hours are not likely to be successful.

Finally, my legislation provides meaningful enforcement mechanisms that will protect the identity of resident physicians who file complaints about work hour violations. The ACGME's guidelines do not contain any whistleblower protections for residents that seek to report program violations. Without this important protection, residents will be reluctant to report these violations, which in turn will weaken enforcement.

My legislation also makes compliance with these work hour requirements a condition of Medicare participation. Each year, Congress provides $8 billion to teaching hospitals to train new physicians. While Congress must continue to vigorously support adequate funding so that teaching hospitals are able to carry out this important public service, these hospitals must also make a commitment to ensuring safe working conditions for these physicians and providing the highest quality of care to the patients they treat.

In closing I would like to read a quote from an Orthopedic Surgery Resident from Northern California, which I think illustrates why we need this legislation.

I quote, ''I was operating post-call after being up for over 36 hours and was holding retractors. I literally fell asleep standing up and nearly face-planted into the wound. My upper arm hit the side of the gurney, and I caught myself before I fell to the floor. I nearly put my face in the open wound, which would have contaminated the entire field and could have resulted in an infection for the patient.''

This is a very serious problem that must be addressed before medical errors like this occur. I hope every member of the Senate will consider this legislation and the potential it has to reduce medical errors, improve patient care, and create a safer working environment for the backbone of our Nation's health system.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 952

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 ''Patient and Physician Safety and Protection Act of 2003''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Federal Government, through the medicare program, pays approximately $8,000,000,000 per year solely to train resident-physicians in the United States, and as a result, has an interest in assuring the safety of patients treated by resident-physicians and the safety of resident-physicians themselves.

(2) Resident-physicians spend as much as 30 to 40 percent of their time performing activities not related to the educational mission of training competent physicians.

(3) The excessive numbers of hours worked by resident-physicians is inherently dangerous for patient care and for the lives of resident-physicians.

(4) The scientific literature has consistently demonstrated that the sleep deprivation of the magnitude seen in residency training programs leads to cognitive impairment.

(5) A substantial body of research indicates that excessive hours worked by resident-physicians lead to higher rates of medical error, motor vehicle accidents, depression, and pregnancy complications.

(6) The medical community has not adequately addressed the issue of excessive resident-physician work hours.

(7) The Federal Government has regulated the work hours of other industries when the safety of employees or the public is at risk.

(8) The Institute of Medicine has found that as many as 98,000 deaths occur annually due to medical errors and has suggested that 1 necessary approach to reducing errors in hospitals is reducing the fatigue of resident-physicians.

SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION REGARDING WORKING HOURS OF MEDICAL RESIDENTS, INTERNS, AND FELLOWS.

(a) IN GENERAL.—Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)—

(A) by striking ''and'' at the end of subparagraph (R);

(B) by striking the period at the end of subparagraph (S) and inserting '', and''; and

(C) by inserting after subparagraph (S) the following new subparagraph:

''(T) in the case of a hospital that uses the services of postgraduate trainees (as defined in subsection (j)(4)), to meet the requirements of subsection (j).''; and

(2) by adding at the end the following new subsection:

''(j)(1)(A) In order that the working conditions and working hours of postgraduate trainees promote the provision of quality medical care in hospitals, as a condition of participation under this title, each hospital shall establish the following limits on working hours for postgraduate trainees:

''(i) Subject to subparagraphs (B) and (C), postgraduate trainees may work no more than a total of 24 hours per shift.

''(ii) Subject to subparagraph (C), postgraduate trainees may work no more than a total of 80 hours per week.

''(iii) Subject to subparagraph (C), postgraduate trainees—

''(I) shall have at least 10 hours between scheduled shifts;

''(II) shall have at least 1 full day out of every 7 days off and 1 full weekend off per month;

''(III) subject to subparagraph (B), who are assigned to patient care responsibilities in an emergency department shall work no more than 12 continuous hours in that department;

''(IV) shall not be scheduled to be on call in the hospital more often than every third night; and

''(V) shall not engage in work outside of the educational program that interferes with the ability of the postgraduate trainee to achieve the goals and objectives of the program or that, in combination with the program working hours, exceeds 80 hours per week.

''(B)(i) Subject to clause (ii), the Secretary shall promulgate such regulations as may be necessary to ensure quality of care is maintained during the transfer of direct patient care from 1 postgraduate trainee to another at the end of each shift.

''(ii) Such regulations shall ensure that, except in the case of individual patient emergencies, the period in which a postgraduate trainee is providing for the transfer of direct patient care (as referred to in clause (i)) does not extend such trainee's shift by more than 3 hours beyond the 24-hour period referred to in subparagraph (A)(i) or the 12-hour period referred to in subparagraph (A)(iii)(III), as the case may be.

''(C) The work hour limitations under subparagraph (A) and requirements of subparagraph (B) shall not apply to a hospital during a state of emergency declared by the Secretary that applies with respect to that hospital.

''(2) The Secretary shall promulgate such regulations as may be necessary to monitor and supervise postgraduate trainees assigned patient care responsibilities as part of an approved medical training program, as well as to assure quality patient care.

''(3) Each hospital shall inform postgraduate trainees of—

''(A) their rights under this subsection, including methods to enforce such rights (including so-called whistle-blower protections); and

''(B) the effects of their acute and chronic sleep deprivation both on themselves and on their patients.

''(4) For purposes of this subsection, the term 'postgraduate trainee' means a postgraduate medical resident, intern, or fellow.''.

(b) DESIGNATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall designate an individual within the Department of Health and Human Services to handle all complaints of violations that arise from a postgraduate trainee (as defined in paragraph (4) of section 1886(j) of the Social Security Act, as added by subsection (a)) who reports that the hospital operating the medical residency training program for which the trainee is enrolled is in violation of the requirements of such section.

(2) GRIEVANCE RIGHTS.—A postgraduate trainee may file a complaint with the Secretary concerning a violation of the requirements under such section 1886(j). Such a complaint may be filed anonymously. The Secretary may conduct an investigation and take such corrective action with respect to such a violation.

(3) ENFORCEMENT.—

(A) CIVIL MONEY PENALTY ENFORCEMENT.—Subject to subparagraph (B), any hospital that violates the requirements under such section 1886(j) is subject to a civil money penalty not to exceed $100,000 for each medical residency training program operated by the hospital in any 6-month period. The provisions of section 1128A of the Social Security Act (other than subsections (a) and (b)) shall apply to civil money penalties under this paragraph in the same manner as they apply to a penalty or proceeding under section 1128A(a) of such Act.

(B) CORRECTIVE ACTION PLAN.—The Secretary shall establish procedures for providing a hospital that is subject to a civil monetary penalty under subparagraph (A) with an opportunity to avoid such penalty by submitting an appropriate corrective action plan to the Secretary.

(4) DISCLOSURE OF VIOLATIONS AND ANNUAL REPORTS.—The individual designated under paragraph (1) shall—

(A) provide for annual anonymous surveys of postgraduate trainees to determine compliance with the requirements under such section 1886(j) and for the disclosure of the results of such surveys to the public on a medical residency training program specific basis;

(B) based on such surveys, conduct appropriate on-site investigations;

(C) provide for disclosure to the public of violations of and compliance with, on a hospital and medical residency training program specific basis, such requirements; and

(D) make an annual report to Congress on the compliance of hospitals with such requirements, including providing a list of hospitals found to be in violation of such requirements.

(c) WHISTLEBLOWER PROTECTIONS.—

(1) IN GENERAL.—A hospital covered by the requirements of section 1866(j) of the Social Security Act, as added by subsection (a), shall not penalize, discriminate, or retaliate in any manner against an employee with respect to compensation, terms, conditions, or privileges of employment, who in good faith (as defined in paragraph (2)), individually or in conjunction with another person or persons—

(A) reports a violation or suspected violation of such requirements to a public regulatory agency, a private accreditation body, or management personnel of the hospital;

(B) initiates, cooperates, or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by such requirements;

(C) informs or discusses with other employees, with a representative of the employees, with patients or patient representatives, or with the public, violations or suspected violations of such requirements; or

(D) otherwise avails himself or herself of the rights set forth in such section or this subsection.

(2) GOOD FAITH DEFINED.—For purposes of this subsection, an employee is deemed to act ''in good faith'' if the employee reasonably believes—

(A) that the information reported or disclosed is true; and

(B) that a violation has occurred or may occur.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first July 1 that begins at least 1 year after the date of enactment of this Act.

SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.

There are hereby appropriated to the Secretary of Health and Human Services such amounts as may be required to provide for additional payments to hospitals for their reasonable additional, incremental costs incurred in order to comply with the requirements imposed by this Act (and the amendments made by this Act).

By Mr. SHELBY (for himself, Mr. MILLER, Mr. LOTT, Ms. LANDRIEU, Mr. SESSIONS, Mr. COCHRAN, and Mr. CHAMBLISS):

S. 954. A bill to amend the Federal Power Act to provide for the protection of electric utility customers and enhance the stability of wholesale electric markets through the clarification of State regulatory jurisdiction; to the Committee on Energy and Natural Resources.

Mr. SHELBY. Mr. President, on July 31, 2002, the Federal Energy Regulatory Commission, FERC, issued a notice of proposed rulemaking to create a one-size-fits-all template for electric markets referred to as ''standard market design,'' SMD.

The SMD rule would bring about numerous sweeping changes, the degree and consequences of which are still being assessed. The proposed rule would require customers to pay for transmission facility upgrades caused by new generators, even if the customer does not need or use the power from those generators.

FERC's proposal would also usurp State authority to obligate utilities to serve customers, set generation reserve margins, centrally control generation dispatch, and set rates for retail transmission service. FERC's proposed rulemaking will effectively eliminate a State's ability to make decisions on issues specific to their State. Such sweeping changes to the energy industry should only be made after careful consideration of all potential consequences. After hearing these concerns, FERC promised a white paper to speak to the many concerns of myself and many others.

On April 28, the Federal Energy Regulatory Commission released its long-awaited white paper on Wholesale Power Markets and Standard Market Design. I and others had hoped that the release of that paper would signal a shift in the approach that the Commission has been taking with respect to the ''federalization'' of electricity regulation and markets. Disappointingly, despite some modest changes in approach, the Commission and Chairman Pat Wood have decided to move away from a partnership with the States toward Federal domination of the electricity system and electricity regulation.

In the document, the Commission reasserts its authority to regulate the terms and conditions of retail transmission, mandates the formation of Regional Transmission Organizations, and limits State authority to protect existing native load customers from the loss of transmission rights. The paper promises more ''technical conferences'' and consultation with the States, but does not change the premise upon which the Commission's Standard Market Design, ''SMD'', Notice of Proposed Rulemaking rests—that the States and regions serve only as adjuncts to the Commission as it devises new wholesale market rules that directly impinge upon retail markets.

In light of the Commission's white paper and the Senate's intention of quickly addressing energy policy, my colleagues and I present legislation today to ensure the concerns of my constituents and the constituents of my colleagues are addressed. This crucial legislation will ensure that States maintain their jurisdiction over retail utilities, that native load customers can be assured of reliability of service, that customers are not forced to socialize the cost of new transmission developed in their area but intended for other regions, and finally the legislation will prohibit the FERC from implementing its current SMD rule nor any rule that is of similar substance.

By Mr. FEINGOLD (for himself, Mr. JEFFORDS, Mr. DAYTON, and Mr. LEAHY):

S. 956. A bill to amend the Elementary and Secondary Education Act of 1965 to permit States and local educational agencies to decide the frequency of using high quality assessments to measure and increase student academic achievement, to permit States and local educational agencies to obtain a waiver of certain testing requirements, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, as millions of public school students and teachers around the country prepare to complete their first school year under the No Child Left Behind Act, NCLB, I am introducing a bill that would help to return a measure of local control that was taken from school districts and States by its enactment last year.

I am pleased to be joined in this effort by Senators JEFFORDS, DAYTON, and LEAHY.

I have heard a lot of concern from my constituents about various aspects of the President's education bill. Following the enactment of the bill last year, the drumbeat of concern has continued to reverberate throughout my

State, and has gotten even louder, as students, teachers, parents, administrators, school counselors and social workers, and others are learning firsthand about the effect of the NCLB.

I strongly support maintaining local control over decisions affecting our children's day-to-day classroom experiences. I also believe that the Federal Government has an important role to play in supporting our State educational agencies and local school districts as they carry out their most important responsibility—the education of our children.

I voted against the President's education bill in large part because of the new annual testing mandate for students in grades 3–8. While I agree that there should be a strong accountability system in place to ensure that public school students are making progress, I strongly oppose over-testing students in our public schools. I agree that some tests are needed to ensure that our children are keeping pace, but taking time to test students has to take a back seat to taking the time to teach students in the first place.

I have heard a lot about these new annual tests from the people of Wisconsin, and their response has been almost universally negative. My constituents are concerned about this additional layer of testing for many reasons, including the cost of developing and implementing these tests, the loss of teaching time every year to prepare for and take the tests, and the extra pressure that the tests will place on students, teachers, schools, and school districts.

I share my constituents' concerns about this new Federal mandate. I find it interesting that proponents of the NCLB say that it will return more control to the States and local school districts. In my view, however, this massive new Federal testing mandate runs counter to the idea of local control.

Many States and local school districts around the country, including Wisconsin, already have comprehensive testing programs in place. The Federal Government should leave decisions about the frequency of using high quality assessments to measure and increase student academic achievement up to the States and local school districts that bear the responsibility for educating our children. Every State and every school district is different. A uniform testing policy may not be the best approach.

I have heard from many education professionals in my State that this new testing requirement is a waste of money and a waste of time. These people are dedicated professionals who are committed to educating Wisconsin's children, and they don't oppose testing. I think we can all agree that testing has its place. What they oppose is the magnitude of testing that is required by this law.

Beginning in the 2005–2006 school year, the NCLB will pile more tests on our Nation's public school students. And of course, when those tests are piled on students, they burden our teachers as well, because teachers must spend more and more time preparing students to take these exams.

This kind of teaching, sometimes called ''teaching to the test,'' is becoming more and more prevalent in our schools as testing has become increasingly common. The dedicated teachers in our classrooms will now be constrained by teaching to yet more tests, instead of being able to use their own judgment about what subject areas the class needs to spend extra time studying. This additional testing time could also reduce the opportunity for teachers to create and implement innovative learning experiences for their students.

Teachers in my State are concerned about the amount of time that they will have to spend preparing their students to take the tests and administering the tests. They are concerned that these additional tests will disrupt the flow of education in their classrooms. One teacher said the preparation for the tests Wisconsin already requires in grades 3, 4, 8, and 10 can take up to a month, and the administration of the test takes another week. That is five weeks out of the school year. And now the Federal Government is requiring teachers to take a huge chunk out of instruction time each year in grades 3–8. In my view, and in the view of the people of my state, this time can be better spent on regular classroom instruction.

The legislation that I am introducing today, the Student Testing Flexibility Act of 2003, would give States and local school districts that have demonstrated academic success the flexibility to apply to waive the new annual testing requirements in the NCLB. States and school districts with waivers would still be required to administer high quality tests to students in, at a minimum, reading or language arts and mathematics at least once in grades 3–5, 6–9, and 10–12 as required under the law.

This bill would allow States and school districts that meet the same specific accountability criteria outlined for school-level excellence under the State Academic Achievement Award Program to apply to the Secretary of Education for a waiver from the new annual reading or language arts and mathematics tests for students in grades 3–8. The waiver would be for a period of three years and would be renewable, so long as the state or school district meets the criteria.

To qualify for the waiver, the State or school district must have significantly closed the achievement gap among a number of subgroups of students as required under Title I, or must have exceeded their adequate yearly progress, AYP, goals for two or more consecutive years. The bill would require the Secretary to grant waivers to states or school districts that meet these criteria and apply for the waiver. Individual districts in states that have waivers would not be required to apply for a separate waiver.

The Federal Government should not impose an additional layer of testing on states that are succeeding in meeting or exceeding their AYP goals or on closing the achievement gap. Instead, we should allow those States that have demonstrated academic success to use their share of Federal testing money to help those schools that need it the most.

The bill I am introducing today would do just that by allowing states with waivers to retain their share of the Federal funding appropriated to develop and implement the new annual tests. These important dollars would be used for activities that these States deem appropriate for improving student achievement at individual public elementary and secondary schools that have failed to make AYP.

I am pleased that this legislation is supported by the American Association of School Administrators, the National PTA, the National Association of Elementary School Principals, the National Association of Secondary School Principals, the School Social Work Association of America, the Wisconsin Department of Public Instruction, the Wisconsin Education Association Council, the Wisconsin Association of School Boards, the Milwaukee Teachers' Education Association, and the Wisconsin School Administrators Alliance, which includes the Association of Wisconsin School Administrators, the Wisconsin Association of School District Administrators, the Wisconsin Association of School Business Officials, and the Wisconsin Council for Administrators of Special Services.

While this bill focuses on the over-testing of students in our public schools, I would like to note that my constituents have raised a number of other concerns about the NCLB that I hope will be addressed by Congress. My constituents are concerned about, among other things, the new AYP requirements, the effect that the Act will have on rural school districts, and about finding the funding necessary to implement all of these provisions of this new law. I share these concerns.

I regret that, for the second year in a row, the President's budget request did not fully fund NCLB requirements and failed to provide any funding to crucial programs such as rural education and school counseling. If we are to truly leave no child behind, we must provide adequate funding for programs such as Title I, special education and professional development in order to ensure that all students have the means to succeed. To do less sets up some of our most vulnerable students for failure.

I hope that my bill, the Student Testing Flexibility Act, will help to focus attention on the perhaps unintended consequences of the ongoing implementation of the President's education bill for states, school districts, and individual schools, teachers, and students.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 956

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 ''Student Testing Flexibility Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) State and local governments bear the majority of the cost and responsibility of educating public elementary school and secondary school students;

(2) State and local governments often struggle to find adequate funding to provide basic educational services;

(3) the Federal Government has not provided its full share of funding for numerous federally mandated elementary and secondary education programs;

(4) underfunded Federal education mandates increase existing financial pressures on States and local educational agencies;

(5) the cost to States and local educational agencies to implement the annual student academic assessments required under section 1111(b)(3)(C)(vii) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(C)(vii)) remains uncertain;

(6) public elementary school and secondary school students take numerous tests each year, from classroom quizzes and exams to standardized and other tests required by the Federal Government, State educational agencies, or local educational agencies;

(7) multiple measures of student academic achievement provide a more accurate picture of a student's strengths and weaknesses than does a single score on a high-stakes test; and

(8) the frequency of the use of high quality assessments as a tool to measure and increase student achievement should be decided by State educational agencies and local educational agencies.

SEC. 3. WAIVER AUTHORITY.

Section 1111(b)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(3)) is amended by adding at the end the following:

''(E) WAIVER AUTHORITY.—

''(i) STATES.—Upon application by a State educational agency, the Secretary shall waive the requirements of subparagraph (C)(vii) for a State if the State educational agency demonstrates that the State—

''(I) significantly closed the achievement gap among the groups of students described in paragraph (2)(C)(v); or

''(II) exceeded the State's adequate yearly progress, consistent with paragraph (2), for 2 or more consecutive years.

''(ii) LOCAL EDUCATIONAL AGENCIES.—Upon application of a local educational agency located in a State that does not receive a waiver under clause (i), the Secretary shall waive the application of the requirements of subparagraph (C)(vii) for the local educational agency if the local educational agency demonstrates that the local educational agency—

''(I) significantly closed the achievement gap among the groups of students described in paragraph (2)(C)(v); or

''(II) exceeded the local educational agency's adequate yearly progress, consistent with paragraph (2), for 2 or more consecutive years.

''(iii) PERIOD OF WAIVER.—A waiver under clause (i) or (ii) shall be for a period of 3 years and may be renewed for subsequent 3-year periods.

''(iv) UTILIZATION OF CERTAIN FEDERAL FUNDS.—

''(I) PERMISSIVE USES.—Subject to subclause (II), a State or local educational agency granted a waiver under clause (i) or (ii) shall use funds, that are awarded to the State or local educational agency, respectively, under this Act for the development and implementation of annual assessments under subparagraph (C)(vii), to carry out educational activities that the State educational agency or local educational agency, respectively, determines will improve the academic achievement of students attending public elementary schools and secondary schools in the State or local educational agency, respectively, that fail to make adequate yearly progress (as defined in paragraph (2)(C)).

''(II) NONPERMISSIVE USE OF FUNDS.—A State or local educational agency granted a waiver under clause (i) or (ii) shall not use funds, that are awarded to the State or local educational agency, respectively, under this Act for the development and implementation of annual assessments under subparagraph (C)(vii), to pay a student's cost of tuition, room, board, or fees at a private school.''.

By Mrs. BOXER:

S. 957. A bill to amend title 49, United States Code, to improve the training requirements for and require the certification of cabin crew members, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KOHL (for himself, Mr. REID, Mr. NELSON of Florida, Mr. ROCKEFELLER, Mrs. LINCOLN, Ms. LANDRIEU, Mr. BINGAMAN, Mr. MILLER, and Mr. BREAUX):

S. 958. A bill to amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs; to the Committee on Finance.

Mrs. BOXER. Mr. President, I am pleased to introduce the ''Flight Attendant Certification Act.''

Since September 11, flight attendants have become a last line of defense against terrorist attacks. As we all know, the terrorists hijacked four commercial jets—all of which were heading to California. That day forever changed air travel in this country, and in turn forever changed the security functions of flight attendants.

No one can forget that it was a flight attendant who discovered that Richard Reid was trying to ignite a bomb on his shoe. If not for the aware flight attendant, the bomb could have gone off over the Atlantic and all the passengers and crew would have been lost.

Today, I can say with certainty that air travel is more secure than it was a year and a half ago. But that does not mean that more should not be done. We must continue to take the appropriate steps to ensure that we are doing everything in our power to prevent terrorist attacks and protect the American people. That is why I am proud to offer this legislation.

This bill would make American air travel safer by requiring that flight attendants be certified by the Federal Aviation Administration, FAA. Currently, flight attendants are not required to receive formal certification even though they have the responsibility for safety, security, and emergency response.

In addition, the legislation would close the growing gap in the quality and content of training programs between airlines by creating a single training standard across the industry. This bill would require uniform training standards and establish a central approval process for certification of flight attendants at the FAA.

The FAA already recognizes the training of other airline personnel by issuing certification to pilots, mechanics, air-traffic controllers and others. Flight attendants deserve the same recognition and certification.

Mr. KOHL. Mr. President, I rise today to reintroduce the Patient Abuse Prevention Act, which will go a long way in protecting patients in long-term care from abuse and neglect. This legislation will establish a National Registry of abusive long-term care workers and require criminal background checks for potential employees. It is necessary so we can ensure that people with violent and abusive backgrounds cannot find work in nursing homes and home health and prey on our elderly relatives. After many years of refinement so that the background checks will run smoothly, and with the strong support of both patient advocates and the American Association of Homes and Services for the Aging, I sincerely hope that this is the year when we will finally take action and enact these common-sense protections.

There is absolutely no excuse for abuse or neglect of the elderly and disabled at the hands of those who are supposed to care for them. Our parents and grandparents made our country what it is today, and they deserve to live with dignity and the highest quality care.

Unfortunately, this is not always the case. We know that the majority of caregivers are dedicated, professional, and do their best under difficult circumstances. But it only takes a few abusive staff to cast a dark shadow over what should be a healing environment.

Current State and national safeguards are inadequate to screen out abusive workers. All States are required to maintain registries of abusive nurse aides. But nurse aides are not the only workers involved in abuse, and other workers are not tracked at all. Even worse, there is no system to coordinate information about abusive nurse aides between States. A known abuser in Iowa would have little trouble moving to Wisconsin and continuing to work with patients there.

In addition, there is no Federal requirement that long-term care facilities conduct criminal background checks on prospective employees. People with violent criminal backgrounds—people who have already been

convicted of murder, rape, and assault—could easily get a job in a nursing home or other health care setting without their past ever being discovered.

Our legislation will go a long way toward solving this problem. First, it will create a National Registry of abusive long-term care employees. States will be required to submit information from their current State registries to the National Registry. Facilities will be required to check the National Registry before hiring a prospective worker. Any worker with a substantiated finding of patient abuse will be prohibited from working in long-term care.

Second, the bill provides a second line of defense to protect patients from violent criminals. If the National Registry does not contain information about a prospective worker, the facility is then required to initiate an FBI background check. Any conviction for patient abuse or a relevant violent crime would bar that applicant from working with patients.

A disturbing number of cases have been reported where workers with criminal backgrounds have been cleared to work in direct patient care, and have subsequently abused patients in their care. Unfortunately, these news reports have tragically become commonplace over the years. In 1997, the Milwaukee Journal-Sentinel ran a series of articles describing this problem, including a Green Bay employee who was convicted of sexually assaulting a disabled woman, an Oshkosh employee who physically and emotionally abused nursing home residents, and a Milwaukee employee who charged more than $2,000 on a home health client's credit card. All had prior criminal convictions. A 1999 Bergen Record study of home health workers found that in nearly every county, criminals were working in the homes of the elderly and infirm. Many aides had committed offenses against patients in their care, but they were still listed as certified and eligible for work in State records. Most recently, the Chicago Sun-Times ran an article on November 1, 2002, in which a home care aide beat his disabled client to death with a hammer. That caregiver had previously been convicted of shooting a man in the face.

In 1998, at my request, the Senate Special Committee on Aging held a hearing that focused on how easy it is for known abusers to find work in long-term care and continue to prey on patients. At that hearing, the HHS Inspector General presented a report which found that, in the two States they studied, between 5 to 10 percent of employees currently working in nursing homes had serious criminal convictions in their past. They also found that among aides who had abused patients, 15 to 20 percent of them had at least one conviction in their past.

In 1998, I offered an amendment which became law that allowed long-term care providers to voluntarily use the FBI system for background checks. So far, 7 percent of those checks have come back with criminal convictions, including rape and kidnapping.

And on July 30, 2001, the House Government Reform Committee's Special Investigations Division of the Minority staff issued a report which found that in the past two years, over 30 percent of nursing homes in the U.S. were cited for a physical, sexual, or verbal abuse violation that had the potential to harm residents. Even more striking, the report found that nearly 10 percent of nursing homes had violations that caused actual harm to residents.

Let me say again that despite this evidence, I know that the vast majority of caregivers in nursing homes and home health care do an excellent job and have their patients' best interests at heart. But clearly, a national background check system is a critical tool that all long-term care providers should have—after all, they don't want abusive caregivers working for them any more than families do. I am pleased that the nursing home industry has worked with me over the years to refine this legislation, and I greatly appreciate their continued support of the bill. This bill reflects their input and will help ensure a smooth transition to an efficient, accurate background check system. This is a common-sense, cost-effective step we can and should take to protect patients by helping long-term care providers thoroughly screen potential caregivers.

I realize that this legislation will not solve all instances of abuse. We still need to do more to stop abuse from occurring in the first place. But this bill will ensure that those who have already abused an elderly or disabled patient, and those who have committed violent crimes against people in the past, are kept away from vulnerable patients.

I want to repeat again that I strongly believe that most long-term care providers and their staff work hard to deliver the highest quality care. However, it is imperative that Congress act immediately to get rid of those that don't.

This bill is the product of collaboration and input from the health care industry, patient and employee advocates—who all have the same goal I do: protecting patients in long-term care. I look forward to continuing to work with my colleagues, the Administration, and the health care industry in this effort. Protecting our nation's seniors and disabled deserves our full attention.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 958

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 ''Patient Abuse Prevention Act''.

SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE OF NURSING FACILITY RESIDENTS.

(a) SCREENING OF SKILLED NURSING FACILITY AND NURSING FACILITY EMPLOYEE APPLICANTS.—

(1) MEDICARE PROGRAM.—Section 1819(b) of the Social Security Act (42 U.S.C. 1395i–3(b)) is amended by adding at the end the following:

''(8) SCREENING OF SKILLED NURSING FACILITY WORKERS.—

''(A) BACKGROUND CHECKS ON APPLICANTS.—Subject to subparagraph (B)(ii), before hiring a skilled nursing facility worker, a skilled nursing facility shall—

''(i) give the worker written notice that the facility is required to perform background checks with respect to applicants;

''(ii) require, as a condition of employment, that such worker—

''(I) provide a written statement disclosing any conviction for a relevant crime or finding of patient or resident abuse;

''(II) provide a statement signed by the worker authorizing the facility to request the search and exchange of criminal records;

''(III) provide in person to the facility a copy of the worker's fingerprints or thumb print, depending upon available technology; and

''(IV) provide any other identification information the Secretary may specify in regulation;

''(iii) initiate a check of the data collection system established under section 1128E in accordance with regulations promulgated by the Secretary to determine whether such system contains any disqualifying information with respect to such worker; and

''(iv) if that system does not contain any such disqualifying information—

''(I) request through the appropriate State agency that the State initiate a State and national criminal background check on such worker in accordance with the provisions of subsection (e)(6); and

''(II) submit to such State agency the information described in subclauses (II) through (IV) of clause (ii) not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after completion of the check against the system initiated under clause (iii).

''(B) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

''(i) IN GENERAL.—A skilled nursing facility may not knowingly employ any skilled nursing facility worker who has any conviction for a relevant crime or with respect to whom a finding of patient or resident abuse has been made.

''(ii) PROVISIONAL EMPLOYMENT.—After complying with the requirements of clauses (i), (ii), and (iii) of subparagraph (A), a skilled nursing facility may provide for a provisional period of employment for a skilled nursing facility worker pending completion of the check against the data collection system described under subparagraph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct supervision of the covered individual during the worker's provisional period of employment.

''(C) REPORTING REQUIREMENTS.—A skilled nursing facility shall report to the State any instance in which the facility determines that a skilled nursing facility worker has committed an act of resident neglect or abuse or misappropriation of resident property in the course of employment by the facility.

''(D) USE OF INFORMATION.—

''(i) IN GENERAL.—A skilled nursing facility that obtains information about a skilled nursing facility worker pursuant to clauses

(iii) and (iv) of subparagraph (A) may use such information only for the purpose of determining the suitability of the worker for employment.

''(ii) IMMUNITY FROM LIABILITY.—A skilled nursing facility that, in denying employment for an applicant (including during the period described in subparagraph (B)(ii)), reasonably relies upon information about such applicant provided by the State pursuant to subsection (e)(6) or section 1128E shall not be liable in any action brought by such applicant based on the employment determination resulting from the information.

''(iii) CRIMINAL PENALTY.—Whoever knowingly violates the provisions of clause (i) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

''(E) CIVIL PENALTY.—

''(i) IN GENERAL.—A skilled nursing facility that violates the provisions of this paragraph shall be subject to a civil penalty in an amount not to exceed—

''(I) for the first such violation, $2,000; and

''(II) for the second and each subsequent violation within any 5-year period, $5,000.

''(ii) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under clause (i), a skilled nursing facility that—

''(I) knowingly continues to employ a skilled nursing facility worker in violation of subparagraph (A) or (B); or

''(II) knowingly fails to report a skilled nursing facility worker under subparagraph (C),

shall be subject to a civil penalty in an amount not to exceed $5,000 for the first such violation, and $10,000 for the second and each subsequent violation within any 5-year period.

''(F) DEFINITIONS.—In this paragraph:

''(i) CONVICTION FOR A RELEVANT CRIME.—The term 'conviction for a relevant crime' means any Federal or State criminal conviction for—

''(I) any offense described in paragraphs (1) through (4) of section 1128(a); and

''(II) such other types of offenses as the Secretary may specify in regulations, taking into account the severity and relevance of such offenses, and after consultation with representatives of long-term care providers, representatives of long-term care employees, consumer advocates, and appropriate Federal and State officials.

''(ii) DISQUALIFYING INFORMATION.—The term 'disqualifying information' means information about a conviction for a relevant crime or a finding of patient or resident abuse.

''(iii) FINDING OF PATIENT OR RESIDENT ABUSE.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under subsection (g)(1)(C) or a Federal agency that a skilled nursing facility worker has committed—

''(I) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

''(II) such other types of acts as the Secretary may specify in regulations.

''(iv) SKILLED NURSING FACILITY WORKER.—The term 'skilled nursing facility worker' means any individual (other than a volunteer) that has access to a patient of a skilled nursing facility under an employment or other contract, or both, with such facility. Such term includes individuals who are licensed or certified by the State to provide such services, and nonlicensed individuals providing such services, as defined by the Secretary, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants.''.

(2) MEDICAID PROGRAM.—Section 1919(b) of the Social Security Act (42 U.S.C. 1396r(b)) is amended by adding at the end the following new paragraph:

''(8) SCREENING OF NURSING FACILITY WORKERS.—

''(A) BACKGROUND CHECKS ON APPLICANTS.—Subject to subparagraph (B)(ii), before hiring a nursing facility worker, a nursing facility shall—

''(i) give the worker written notice that the facility is required to perform background checks with respect to applicants;

''(ii) require, as a condition of employment, that such worker—

''(I) provide a written statement disclosing any conviction for a relevant crime or finding of patient or resident abuse;

''(II) provide a statement signed by the worker authorizing the facility to request the search and exchange of criminal records;

''(III) provide in person to the facility a copy of the worker's fingerprints or thumb print, depending upon available technology; and

''(IV) provide any other identification information the Secretary may specify in regulation;

''(iii) initiate a check of the data collection system established under section 1128E in accordance with regulations promulgated by the Secretary to determine whether such system contains any disqualifying information with respect to such worker; and

''(iv) if that system does not contain any such disqualifying information—

''(I) request through the appropriate State agency that the State initiate a State and national criminal background check on such worker in accordance with the provisions of subsection (e)(8); and

''(II) submit to such State agency the information described in subclauses (II) through (IV) of clause (ii) not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after completion of the check against the system initiated under clause (iii).

''(B) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

''(i) IN GENERAL.—A nursing facility may not knowingly employ any nursing facility worker who has any conviction for a relevant crime or with respect to whom a finding of patient or resident abuse has been made.

''(ii) PROVISIONAL EMPLOYMENT.—After complying with the requirements of clauses (i), (ii), and (iii) of subparagraph (A), a nursing facility may provide for a provisional period of employment for a nursing facility worker pending completion of the check against the data collection system described under subparagraph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct supervision of the worker during the worker's provisional period of employment.

''(C) REPORTING REQUIREMENTS.—A nursing facility shall report to the State any instance in which the facility determines that a nursing facility worker has committed an act of resident neglect or abuse or misappropriation of resident property in the course of employment by the facility.

''(D) USE OF INFORMATION.—

''(i) IN GENERAL.—A nursing facility that obtains information about a nursing facility worker pursuant to clauses (iii) and (iv) of subparagraph (A) may use such information only for the purpose of determining the suitability of the worker for employment.

''(ii) IMMUNITY FROM LIABILITY.—A nursing facility that, in denying employment for an applicant (including during the period described in subparagraph (B)(ii)), reasonably relies upon information about such applicant provided by the State pursuant to subsection (e)(8) or section 1128E shall not be liable in any action brought by such applicant based on the employment determination resulting from the information.

''(iii) CRIMINAL PENALTY.—Whoever knowingly violates the provisions of clause (i) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

''(E) CIVIL PENALTY.—

''(i) IN GENERAL.—A nursing facility that violates the provisions of this paragraph shall be subject to a civil penalty in an amount not to exceed—

''(I) for the first such violation, $2,000; and

''(II) for the second and each subsequent violation within any 5-year period, $5,000.

''(ii) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under clause (i), a nursing facility that—

''(I) knowingly continues to employ a nursing facility worker in violation of subparagraph (A) or (B); or

''(II) knowingly fails to report a nursing facility worker under subparagraph (C),

shall be subject to a civil penalty in an amount not to exceed $5,000 for the first such violation, and $10,000 for the second and each subsequent violation within any 5-year period.

''(F) DEFINITIONS.—In this paragraph:

''(i) CONVICTION FOR A RELEVANT CRIME.—The term 'conviction for a relevant crime' means any Federal or State criminal conviction for—

''(I) any offense described in paragraphs (1) through (4) of section 1128(a); and

''(II) such other types of offenses as the Secretary may specify in regulations, taking into account the severity and relevance of such offenses, and after consultation with representatives of long-term care providers, representatives of long-term care employees, consumer advocates, and appropriate Federal and State officials.

''(ii) DISQUALIFYING INFORMATION.—The term 'disqualifying information' means information about a conviction for a relevant crime or a finding of patient or resident abuse.

''(iii) FINDING OF PATIENT OR RESIDENT ABUSE.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under subsection (g)(1)(C) or a Federal agency that a nursing facility worker has committed—

''(I) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

''(II) such other types of acts as the Secretary may specify in regulations.

''(iv) NURSING FACILITY WORKER.—The term 'nursing facility worker' means any individual (other than a volunteer) that has access to a patient of a nursing facility under an employment or other contract, or both, with such facility. Such term includes individuals who are licensed or certified by the State to provide such services, and nonlicensed individuals providing such services, as defined by the Secretary, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants.''.

(3) FEDERAL RESPONSIBILITIES.—

(A) DEVELOPMENT OF STANDARD FEDERAL AND STATE BACKGROUND CHECK FORM.—The Secretary of Health and Human Services, in consultation with the Attorney General and representatives of appropriate State agencies, shall develop a model form that an applicant for employment at a nursing facility may complete and Federal and State agencies may use to conduct the criminal background checks required under sections 1819(b)(8) and 1919(b)(8) of the Social Security Act (42 U.S.C. 1395i–3(b), 1396r(b)) (as added by this section).

(B) PERIODIC EVALUATION.—The Secretary of Health and Human Services, in consultation with the Attorney General, periodically shall evaluate the background check system imposed under sections 1819(b)(8) and 1919(b)(8) of the Social Security Act (42 U.S.C. 1395i–3(b), 1396r(b)) (as added by this section) and shall implement changes, as necessary, based on available technology, to make the background check system more efficient and able to provide a more immediate response to long-term care providers using the system.

(4) NO PREEMPTION OF STRICTER STATE LAWS.—Nothing in section 1819(b)(8) or 1919(b)(8) of the Social Security Act (42 U.S.C. 1395i–3(b)(8), 1396r(b)(8)) (as so added) shall be construed to supersede any provision of State law that—

(A) specifies a relevant crime for purposes of prohibiting the employment of an individual at a long-term care facility (as defined in section 1128E(g)(6) of the Social Security Act (as added by section 3(f) of this Act) that is not included in the list of such crimes specified in such sections or in regulations promulgated by the Secretary of Health and Human Services to carry out such sections; or

(B) requires a long-term care facility (as so defined) to conduct a background check prior to employing an individual in an employment position that is not included in the positions for which a background check is required under such sections.

(5) TECHNICAL AMENDMENTS.—Effective as if included in the enactment of section 941 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–585), as enacted into law by section 1(a)(6) of Public Law 106–554, sections 1819(b) and 1919(b) of the Social Security Act (42 U.S.C. 1395i–3(b), 1396r(b)), as amended by such section 941 (as so enacted into law) are each amended by redesignating the paragraph (8) added by such section as paragraph (9).

(b) FEDERAL AND STATE REQUIREMENTS CONCERNING BACKGROUND CHECKS.—

(1) MEDICARE.—Section 1819(e) of the Social Security Act (42 U.S.C. 1395i–3(e)) is amended by adding at the end the following:

''(6) FEDERAL AND STATE REQUIREMENTS CONCERNING CRIMINAL BACKGROUND CHECKS ON SKILLED NURSING FACILITY EMPLOYEES.—

''(A) IN GENERAL.—Upon receipt of a request by a skilled nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall immediately submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

''(B) SEARCH AND EXCHANGE OF RECORDS BY ATTORNEY GENERAL.—Upon receipt of a submission pursuant to subparagraph (A), the Attorney General shall direct a search of the records of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints and other positive identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the State.

''(C) STATE REPORTING OF INFORMATION TO SKILLED NURSING FACILITY.—Upon receipt of the information provided by the Attorney General pursuant to subparagraph (B), the State shall—

''(i) review the information to determine whether the individual has any conviction for a relevant crime (as defined in subsection (b)(8)(F)(i));

''(ii) immediately report to the skilled nursing facility in writing the results of such review; and

''(iii) in the case of an individual with a conviction for a relevant crime, report the existence of such conviction of such individual to the database established under section 1128E.

''(D) FEES FOR PERFORMANCE OF CRIMINAL BACKGROUND CHECKS.—

''(i) AUTHORITY TO CHARGE FEES.—

''(I) ATTORNEY GENERAL.—The Attorney General may charge a fee to any State requesting a search and exchange of records pursuant to this paragraph and subsection (b)(8) for conducting the search and providing the records. The amount of such fee shall not exceed the lesser of the actual cost of such activities or $50. Such fees shall be available to the Attorney General, or, in the Attorney General's discretion, to the Federal Bureau of Investigation until expended.

''(II) STATE.—A State may charge a skilled nursing facility a fee for initiating the criminal background check under this paragraph and subsection (b)(8), including fees charged by the Attorney General, and for performing the review and report required by subparagraph (C). The amount of such fee shall not exceed the actual cost of such activities.

''(ii) PROHIBITION ON CHARGING APPLICANTS OR EMPLOYEES.—An entity may not impose on an applicant for employment or an employee any charges relating to the performance of a background check under this paragraph.

''(E) REGULATIONS.—

''(i) IN GENERAL.—In addition to the Secretary's authority to promulgate regulations under this title, the Attorney General, in consultation with the Secretary, may promulgate such regulations as are necessary to carry out the Attorney General's responsibilities under this paragraph and subsection (b)(9), including regulations regarding the security confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, and the imposition of fees.

''(ii) APPEAL PROCEDURES.—The Attorney General, in consultation with the Secretary, shall promulgate such regulations as are necessary to establish procedures by which an applicant or employee may appeal or dispute the accuracy of the information obtained in a background check conducted under this paragraph. Appeals shall be limited to instances in which an applicant or employee is incorrectly identified as the subject of the background check, or when information about the applicant or employee has not been updated to reflect changes in the applicant's or employee's criminal record.

''(F) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Attorney General shall submit a report to Congress on—

''(i) the number of requests for searches and exchanges of records made under this section;

''(ii) the disposition of such requests; and

''(iii) the cost of responding to such requests.''.

(2) MEDICAID.—Section 1919(e) of the Social Security Act (42 U.S.C. 1396r(e)) is amended by adding at the end the following:

''(8) FEDERAL AND STATE REQUIREMENTS CONCERNING CRIMINAL BACKGROUND CHECKS ON NURSING FACILITY EMPLOYEES.—

''(A) IN GENERAL.—Upon receipt of a request by a nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall immediately submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

''(B) SEARCH AND EXCHANGE OF RECORDS BY ATTORNEY GENERAL.—Upon receipt of a submission pursuant to subparagraph (A), the Attorney General shall direct a search of the records of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints and other positive identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the State.

''(C) STATE REPORTING OF INFORMATION TO NURSING FACILITY.—Upon receipt of the information provided by the Attorney General pursuant to subparagraph (B), the State shall—

''(i) review the information to determine whether the individual has any conviction for a relevant crime (as defined in subsection (b)(8)(F)(i));

''(ii) immediately report to the nursing facility in writing the results of such review; and

''(iii) in the case of an individual with a conviction for a relevant crime, report the existence of such conviction of such individual to the database established under section 1128E.

''(D) FEES FOR PERFORMANCE OF CRIMINAL BACKGROUND CHECKS.—

''(i) AUTHORITY TO CHARGE FEES.—

''(I) ATTORNEY GENERAL.—The Attorney General may charge a fee to any State requesting a search and exchange of records pursuant to this paragraph and subsection (b)(8) for conducting the search and providing the records. The amount of such fee shall not exceed the lesser of the actual cost of such activities or $50. Such fees shall be available to the Attorney General, or, in the Attorney General's discretion, to the Federal Bureau of Investigation, until expended.

''(II) STATE.—A State may charge a nursing facility a fee for initiating the criminal background check under this paragraph and subsection (b)(8), including fees charged by the Attorney General, and for performing the review and report required by subparagraph (C). The amount of such fee shall not exceed the actual cost of such activities.

''(ii) PROHIBITION ON CHARGING APPLICANTS OR EMPLOYEES.—An entity may not impose on an applicant for employment or an employee any charges relating to the performance of a background check under this paragraph.

''(E) REGULATIONS.—

''(i) IN GENERAL.—In addition to the Secretary's authority to promulgate regulations under this title, the Attorney General, in consultation with the Secretary, may promulgate such regulations as are necessary to carry out the Attorney General's responsibilities under this paragraph and subsection (b)(8), including regulations regarding the security, confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, and the imposition of fees.

''(ii) APPEAL PROCEDURES.—The Attorney General, in consultation with the Secretary, shall promulgate such regulations as are necessary to establish procedures by which an applicant or employee may appeal or dispute the accuracy of the information obtained in a background check conducted under this paragraph. Appeals shall be limited to instances in which an applicant or

employee is incorrectly identified as the subject of the background check, or when information about the applicant or employee has not been updated to reflect changes in the applicant's or employee's criminal record.

''(F) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Attorney General shall submit a report to Congress on—

''(i) the number of requests for searches and exchanges of records made under this section;

''(ii) the disposition of such requests; and

''(iii) the cost of responding to such requests.''.

(c) APPLICATION TO OTHER ENTITIES PROVIDING HOME HEALTH OR LONG-TERM CARE SERVICES.—

(1) MEDICARE.—Part D of title XVIII of the Social Security Act (42 U.S.C. 1395x et seq.) is amended by adding at the end the following:

''APPLICATION OF SKILLED NURSING FACILITY PREVENTIVE ABUSE PROVISIONS TO ANY PROVIDER OF SERVICES OR OTHER ENTITY PROVIDING HOME HEALTH OR LONG-TERM CARE SERVICES

''SEC. 1897. (a) IN GENERAL.—The requirements of subsections (b)(8) and (e)(6) of section 1819 shall apply to any provider of services or any other entity that is eligible to be paid under this title for providing home health services, hospice care (including routine home care and other services included in hospice care under this title), or long-term care services to an individual entitled to benefits under part A or enrolled under part B, including an individual provided with a Medicare+Choice plan offered by a Medicare+Choice organization under part C (in this section referred to as a 'medicare beneficiary').

''(b) SUPERVISION OF PROVISIONAL EMPLOYEES.—

''(1) IN GENERAL.—With respect to an entity that provides home health services, such entity shall be considered to have satisfied the requirements of section 1819(b)(8)(B)(ii) or 1919(b)(8)(B)(ii) if the entity meets such requirements for supervision of provisional employees of the entity as the Secretary shall, by regulation, specify in accordance with paragraph (2).

''(2) REQUIREMENTS.—The regulations required under paragraph (1) shall provide the following:

''(A) Supervision of a provisional employee shall consist of ongoing, good faith, verifiable efforts by the supervisor of the provisional employee to conduct monitoring and oversight activities to ensure the safety of a medicare beneficiary.

''(B) For purposes of subparagraph (A), monitoring and oversight activities may include (but are not limited to) the following:

''(i) Follow-up telephone calls to the medicare beneficiary.

''(ii) Unannounced visits to the medicare beneficiary's home while the provisional employee is serving the medicare beneficiary.

''(iii) To the extent practicable, limiting the provisional employee's duties to serving only those medicare beneficiaries in a home or setting where another family member or resident of the home or setting of the medicare beneficiary is present.''.

(2) MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in paragraph (64), by striking ''and'' at the end;

(B) in paragraph (65), by striking the period and inserting ''; and''; and

(C) by inserting after paragraph (65) the following:

''(66) provide that any entity that is eligible to be paid under the State plan for providing home health services, hospice care (including routine home care and other services included in hospice care under title XVIII), or long-term care services for which medical assistance is available under the State plan to individuals requiring long-term care complies with the requirements of subsections (b)(8) and (e)(8) of section 1919 and section 1897(b) (in the same manner as such section applies to a medicare beneficiary).''.

(3) EXPANSION OF STATE NURSE AIDE REGISTRY.—

(A) MEDICARE.—Section 1819 of the Social Security Act (42 U.S.C. 1395i–3) is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking ''NURSE AIDE REGISTRY'' and inserting ''EMPLOYEE REGISTRY'';

(II) in subparagraph (A)—

(aa) by striking ''By not later than January 1, 1989, the'' and inserting ''The'';

(bb) by striking ''a registry of all individuals'' and inserting ''a registry of (i) all individuals''; and

(cc) by inserting before the period the following: '', (ii) all other skilled nursing facility employees with respect to whom the State has made a finding described in subparagraph (B), and (iii) any employee of any provider of services or any other entity that is eligible to be paid under this title for providing home health services, hospice care (including routine home care and other services included in hospice care under this title), or long-term care services and with respect to whom the entity has reported to the State a finding of patient neglect or abuse or a misappropriation of patient property''; and

(III) in subparagraph (C), by striking ''a nurse aide'' and inserting ''an individual''; and

(ii) in subsection (g)(1)—

(I) by striking the first sentence of subparagraph (C) and inserting the following: ''The State shall provide, through the agency responsible for surveys and certification of skilled nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide or a skilled nursing facility employee of a resident in a skilled nursing facility, by another individual used by the facility in providing services to such a resident, or by an individual described in subsection (e)(2)(A)(iii).'';

(II) in the fourth sentence of subparagraph (C), by inserting ''or described in subsection (e)(2)(A)(iii)'' after ''used by the facility'';

(III) in subparagraph (D)—

(aa) in the subparagraph heading, by striking ''NURSE AIDE'';

(bb) in clause (i), in the matter preceding subclause (I), by striking ''a nurse aide'' and inserting ''an individual''; and

(cc) in clause (i)(I), by striking ''nurse aide'' and inserting ''individual''.

(B) MEDICAID.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking ''NURSE AIDE REGISTRY'' and inserting ''EMPLOYEE REGISTRY'';

(II) in subparagraph (A)—

(aa) by striking ''By not later than January 1, 1989, the'' and inserting ''The'';

(bb) by striking ''a registry of all individuals'' and inserting ''a registry of (i) all individuals''; and

(cc) by inserting before the period the following: '', (ii) all other nursing facility employees with respect to whom the State has made a finding described in subparagraph (B), and (iii) any employee of an entity that is eligible to be paid under the State plan for providing home health services, hospice care (including routine home care and other services included in hospice care under title XVIII), or long-term care services and with respect to whom the entity has reported to the State a finding of patient neglect or abuse or a misappropriation of patient property''; and

(III) in subparagraph (C), by striking ''a nurse aide'' and inserting ''an individual''; and

(ii) in subsection (g)(1)—

(I) by striking the first sentence of subparagraph (C) and inserting the following: ''The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide or a nursing facility employee of a resident in a nursing facility, by another individual used by the facility in providing services to such a resident, or by an individual described in subsection (e)(2)(A)(iii).''; and

(II) in the fourth sentence of subparagraph (C), by inserting ''or described in subsection (e)(2)(A)(iii)'' after ''used by the facility''; and

(III) in subparagraph (D)—

(aa) in the subparagraph heading, by striking ''NURSE AIDE''; and

(bb) in clause (i), in the matter preceding subclause (I), by striking ''a nurse aide'' and inserting ''an individual''; and

(cc) in clause (i)(I), by striking ''nurse aide'' and inserting ''individual''.

(d) REIMBURSEMENT OF COSTS FOR BACKGROUND CHECKS.—The Secretary of Health and Human Services shall reimburse nursing facilities, skilled nursing facilities, and other entities for costs incurred by the facilities and entities in order to comply with the requirements imposed under sections 1819(b)(8) and 1919(b)(8) of such Act (42 U.S.C. 1395i–3(b)(8), 1396r(b)(8)), as added by this section.

SEC. 3. INCLUSION OF ABUSIVE WORKERS IN THE DATABASE ESTABLISHED AS PART OF NATIONAL HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-TERM CARE FACILITY OR PROVIDER.—Section 1128E(g)(1)(A) of the Social Security Act (42 U.S.C. 1320a–7e(g)(1)(A)) is amended—

(1) by redesignating clause (v) as clause (vi); and

(2) by inserting after clause (iv), the following:

''(v) A finding of abuse or neglect of a patient or a resident of a long-term care facility, or misappropriation of such a patient's or resident's property.''.

(b) COVERAGE OF LONG-TERM CARE FACILITY OR PROVIDER EMPLOYEES.—Section 1128E(g)(2) of the Social Security Act (42 U.S.C. 1320a–7e(g)(2)) is amended by inserting '', and includes any individual of a long-term care facility or provider (other than any volunteer) that has access to a patient or resident of such a facility under an employment or other contract, or both, with the facility or provider (including individuals who are licensed or certified by the State to provide services at the facility or through the provider, and nonlicensed individuals, as defined by the Secretary, providing services at the facility or through the provider, including nurse assistants, nurse aides, home health aides, individuals who provide home care, and personal care workers and attendants)'' before the period.

(c) REPORTING BY LONG-TERM CARE FACILITIES OR PROVIDERS.—

(1) IN GENERAL.—Section 1128E(b)(1) of the Social Security Act (42 U.S.C. 1320a–7e(b)(1)) is amended by striking ''and health plan'' and inserting '', health plan, and long-term care facility or provider''.

(2) CORRECTION OF INFORMATION.—Section 1128E(c)(2) of the Social Security Act (42 U.S.C. 1320a–7e(c)(2)) is amended by striking ''and health plan'' and inserting '', health plan, and long-term care facility or provider''.

(d) ACCESS TO REPORTED INFORMATION.—Section 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a–7e(d)(1)) is amended by striking ''and health plans'' and inserting '', health plans, and long-term care facilities or providers''.

(e) MANDATORY CHECK OF DATABASE BY LONG-TERM CARE FACILITIES OR PROVIDERS.—Section 1128E(d) of the Social Security Act (42 U.S.C. 1320a–7e(d)) is amended by adding at the end the following:

''(3) MANDATORY CHECK OF DATABASE BY LONG-TERM CARE FACILITIES OR PROVIDERS.—A long-term care facility or provider shall check the database maintained under this section prior to hiring under an employment or other contract, or both, any individual as an employee of such a facility or provider who will have access to a patient or resident of the facility or provider (including individuals who are licensed or certified by the State to provide services at the facility or through the provider, and nonlicensed individuals, as defined by the Secretary, that will provide services at the facility or through the provider, including nurse assistants, nurse aides, home health aides, individuals who provide home care, and personal care workers and attendants).''.

(f) DEFINITION OF LONG-TERM CARE FACILITY OR PROVIDER.—Section 1128E(g) of the Social Security Act (42 U.S.C. 1320a–7e(g)) is amended by adding at the end the following:

''(6) LONG-TERM CARE FACILITY OR PROVIDER.—The term 'long-term care facility or provider' means a skilled nursing facility (as defined in section 1819(a)), a nursing facility (as defined in section 1919(a)), a home health agency, a provider of hospice care (as defined in section 1861(dd)(1)), a long-term care hospital (as described in section 1886(d)(1)(B)(iv)), an intermediate care facility for the mentally retarded (as defined in section 1905(d)), or any other facility or entity that provides, or is a provider of, long-term care services, home health services, or hospice care (including routine home care and other services included in hospice care under title XVIII), and receives payment for such services under the medicare program under title XVIII or the medicaid program under title XIX.''.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the amendments made by this section, $10,200,000 for fiscal year 2003.

SEC. 4. PREVENTION AND TRAINING DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration program to provide grants to develop information on best practices in patient abuse prevention training (including behavior training and interventions) for managers and staff of hospital and health care facilities.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall be a public or private nonprofit entity and prepare and submit to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received under a grant under this section shall be used to—

(1) examine ways to improve collaboration between State health care survey and provider certification agencies, long-term care ombudsman programs, the long-term care industry, and local community members;

(2) examine patient care issues relating to regulatory oversight, community involvement, and facility staffing and management with a focus on staff training, staff stress management, and staff supervision;

(3) examine the use of patient abuse prevention training programs by long-term care entities, including the training program developed by the National Association of Attorneys General, and the extent to which such programs are used; and

(4) identify and disseminate best practices for preventing and reducing patient abuse.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by the Act shall take effect on the date that is 6 months after the effective date of final regulations promulgated to carry out this Act and such amendments.

By Mr. INHOFE (for himself, Mr. KYL, Mr. BURNS, Mr. THOMAS, and Mr. GRASSLEY):

S. 959. A bill to limit the age restrictions imposed by the Administrator of the Federal Aviation Administration for the issuance or renewal of certain airman certificates, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INHOFE. Mr. President, as the Senate's only commercially licensed pilot, I rise today, along with my colleagues, Senator KYL, Senator BURNS, Senator THOMAS and Senator GRASSLEY, to introduce a bill that will help end age discrimination among airline pilots.

This bill will abolish the Federal Aviation Administration's, FAA, Age 60 Rule—the regulation that for 43 years has forced the retirement of airline pilots the day they turn 60—and replace it with a rational plan that raises the retirement age to 63 immediately and then incrementally increases the age limit to 65.

Most nations have abolished mandatory age 60 retirement rules. The United States is one of only two countries in the Joint Aviation Authorities that requires its commercial pilots to retire at the age of 60. Some countries, including Canada, Australia, and New Zealand have no upper age limit at all.

The Age 60 Rule has no basis in science or safety and never did. FAA data shows that pilots over age 60 are as safe as, and in some cases safer than, their younger colleagues. In 1981, the National Institute of Aging stated that ''the Age 60 Rule appears indefensible on medical grounds'' and ''there is no convincing medical evidence to support age 60, or any other specific age, for mandatory pilot retirement.''

This bill will allow our most experienced pilots—demonstrably healthy, and fit for duty—to retain their jobs, a step that will benefit pilots, the financially burdened airlines, and most importantly, passengers. Now, more than ever before, we need to keep our best pilots flying.

Again, there is no scientific justification for requiring pilots to retire at age 60. Our pilots, our airlines, and our passengers deserve our consideration. I urge the rest of my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 959

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

SECTION 1. LIMITATION ON AGE RESTRICTIONS.

Section 44703 of title 49, United States Code, is amended by adding at the end the following:

''(k) LIMITATION ON AGE RESTRICTIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may not, solely by reason of a person's age, if such person is 65 years of age or younger—

''(A) refuse to issue to, or renew for, such person an airman certificate for the operation of aircraft engaged in operations under part 121 or part 135 of title 14, Code of Federal Regulations; or

''(B) require an air carrier to terminate the employment of, or refuse to employ, such person as a pilot on such an aircraft owned or operated by the air carrier.

''(2) APPLICABILITY.—Paragraph (1) shall only apply to persons who have not reached the age of 64 as of the date of enactment of this subsection.''.

By Mr. AKAKA:

S. 960. A bill to amend the reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii and to amend the Hawaii Water Resources Act of 2000 to modify the water resources study; to the Committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, I rise today to introduce legislation to authorize three important water reclamation projects in the State of Hawaii. In addition, this bill increases the amount authorized for the Federal share of the activities under P.L. 106–566, the Hawaii Water Resources Act of 2000.

The Hawaii Water Resources Act of 2000 was an important first step in addressing Hawaii's irrigation and water delivery systems. It allowed the Bureau of Reclamation to survey irrigation and water delivery systems in Hawaii. It also instructed the Bureau to identify new opportunities for reclamation and reuse of water and wastewater for agriculture and non-agricultural purposes. In addition, the Act included Hawaii in the Bureau of Reclamation's wastewater reclamation program and extended drought relief programs to Hawaii. While this was an important beginning, more needs to be done, particularly since the Honolulu Board of Water Supply predicts that even with improved conservation methods, the island of Oahu will run out of potable water by 2018. This means that the use rate exceeds the recharge rate and Oahu residents and visitors will be ''mining'' for water. Even more disconcerting is the fact that Oahu will run out of fresh water by 2018. It is vitally important for the State of Hawaii to begin working on water reclamation projects.

This legislation authorizes three water reclamation projects. The first project, in Honolulu, will provide reliable potable water through resource diversification to meet existing and future demands, particularly in the Ewa area of Oahu where water demands are outpacing the availability of drinking water. The second project, in North Kona, will address the issue of effluent being discharged into a temporary disposal sump from the Kealakehe Wastewater Treatment Plant. The third project, in Lahaina, will reduce the use of potable water by extending the County of Maui's main recycled water pipeline. The legislation also authorizes an additional $1.7 million for the Bureau of Reclamation to complete its study of Hawaii's irrigation and water delivery systems. This is a challenging task as the Bureau is reviewing the water systems in the State.

I urge my colleagues to support this legislation which is vital to the people of Hawaii.

By Ms. MURKOWSKI:

S. 961. A bill to expand the scope of the HUBzone program to include difficult development areas; to the Committee on Small Business and Entrepreneurship.

Ms. MURKOWSKI. Mr. President, I rise today to introduce legislation to correct an inequity in the HUBzone contracting program administered by the Small Business Administration, SBA. This bill amends the criteria by which areas are designated as HUBzone under the Small Business Act by adding a new category designated as ''Difficult Development Areas.'' These ''Difficult Development Areas'' are already recognized by the Internal Revenue Service and the Department of Housing and Urban Development. For reasons I will explain, the businesses and people in the community of Ketchikan, AK have been wrongly denied participation in the HUBzone program. This bill will take care of that problem.

The current HUBzone qualifications have two tiers. The first is that the county in which a business seeking to participate in the program must not be located in a Metropolitan Statistical Area, MSA. The second level has three separate criteria. If an area meets any one of the second level criteria, it qualifies as a HUBzone area. One of the criteria simply relates to whether a business is located in an Indian Reservation. The other two are correlated to the characteristics of the resident population.

The first of the characteristic is that the area is not located in a metropolitan statistical area at the time of the most recent census. the second criterion is that the unemployment rate in the area is not less than 140 percent of the statewide average unemployment. In the case of Ketchikan, the community is not located in a metropolitan statistical area. In February of this year the Alaska statewide unemployment rate was 7.1 percent almost 2 percent higher than the national average. But Ketchian's preliminary unemployment rate for February is 11 percent and the reviewed rate for January was 11.9 percent. The Ketchikan figure currently exceeds the requirement. In June of 2002 the rate was 8.6 percent in the Ketchikan Gateway Borough in comparison to 7.4 percent statewide at that same time. But because of the timing of the compiling of the information by the Census Bureau, Ketchikan has been denied participation in the program although it routinely exceeds the statewide rate. The anomaly is that for a few short months in the summer Ketchikan does not exceed 140 percent of the statewide average due to the influx of workers from the area related to the tourism industry.

The SBA has the best intentions and understands the problems. However, the SBA has stated to me that nothing short of a legislative change can fix the problem. Part of the problem as I understand it is that the SBA's current use of the median income and unemployment rate criteria makes the assumption that the populations are relatively immobile. Further, the SBA criterion assumes that the area in question has a fully developed labor market. The criteria assume a community model more closely aligned to the traditional urban areas.

In Alaska, our largest community, Anchorage is rightfully not considered a HUBzone area. But the SBA's criteria based on the use of the Census Bureau statistics fails to accurately reflect the true unemployment and labor market in one place in particular in Alaska—Ketchikan. The program now uses a Qualified Census Tract.

Ketchikan is a small coastal community that was highly dependent on the timber industry which has been shut down as a result of changes in Federal policies and activities of the U.S. Forest Service. As a result, the population has become highly dependent on the tourism industry. Further, the labor pool is highly transient and leaves to collect unemployment after the summer tourist season is over.

The Census Bureau data taken when the summer population is higher and more fully employed does not reflect the reality of the area. As a result the Ketchikan Gateway Borough is not considered a HUBzone. There is a drydock and ship repair facility located in Ketchikan that could provide year round employment. But it cannot compete for government vessel repair contracts offered by the U.S. Coast Guard and the NOAA that have been set aside for HUBzone. These vessels operate in Alaska and could be better repaired near where they operate. Now they must leave the State and perhaps be out of service longer.

The bill adds a fourth area to qualify as a HUBzone. The Deptartment of Housing and Urban Development already has a program that recognizes not only the Qualified Census Tracts but also denotes a ''Non-metropolitan Difficult Development Area.'' The amendment simply adds this Difficult Development Area. Many of these areas already qualify as HUBzones under the prior three criteria. I have asked the SBA to advise me how much this would expand their program but in reality I expect the addition to be only a minor expansion of the HUBzone program. However small the change is, the change will be significant to the people and businesses located in Ketchikan, AK.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 961

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

SECTION 1. EXPANSION OF HUBZONE PROGRAM.

Section 3(p)(4)(B)(ii) of the Small Business Act (15 U.S.C. 632(p)(4)(B)(ii)) is amended—

(1) in subclause (I), by striking ''or'' at the end;

(2) in subclause (II), by striking the period at the end and inserting ''; or''; and

(3) by adding after subclause (II) the following:

''(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986.''.

By Mrs. LINCOLN (for herself, Mr. ROCKEFELLER, Mr. BINGAMAN, and Mr. BREAUX):

S. 962. A bill to amend the Internal Revenue Code of 1986 to accelerate the increase in the child tax credit and to expand refundability of such credit, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I am pleased to cosponsor legislation being introduced today that will dramatically improve the child tax credit. I thank my friend and colleague, Senator LINCOLN, for her hard work on behalf of our Nation's working families.

In the 6 years since the child tax credit was first enacted, it has provided important tax relief to families across the country. Income taxes can be particularly burdensome to moderate income families who are facing increased costs for food, housing, medicine, education, and other basic needs for their children. Indeed, almost half of the benefits of this credit are enjoyed by families with taxable income under $50,000 per year. This is important in States like mine; in West Virginia, almost 80 percent of the taxpayers have annual incomes below $50,000.

While the current child tax credit is excellent—it could be even better. The $600 credit, which is available only for children under the age of 17, does not truly recognize the costs that face many families raising children. Moreover, many working families do not have enough income to qualify for the credit. Make no mistake, I am talking about hard-working parents who go to

their jobs every day and take their responsibilities to their children very seriously. These parents are paying payroll taxes, but cannot provide for some of the basic needs of their children. The legislation introduced today would improve the law so that a greater portion of the child tax credit could be refunded to these admirable parents.

Specifically, this legislation includes two important improvements to the current child tax credit that will benefit all families who claim the credit. First, the legislation would increase the amount of the tax credit from $600 to $1,000 immediately. Second, the bill increases the age of children who are eligible for the credit from 16 to 18. We know that 17- and 18-year-old children are facing enormous educational expenses in order to attend college or technical school. We ought to help parents pay for this education by allowing them to continue to receive the child tax credit until their child is a legal adult. The bill also includes two important improvements to the eligibility criteria for the refundable credit. By lowering the income threshold for the refundable credit and increasing the percentage of income eligible for the refundable credit, we can ensure that more of the families most in need of assistance can benefit from this credit.

The child tax credit is one of the most important ways that Congress can demonstrate its support for America's families. And I hope that my colleagues will support this legislation which would dramatically improve the child tax credit.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 963. A bill to require the Commandant of the Coast Guard to convey the United States Coast Guard Cutter *Bramble*, upon its decommissioning, to the Port Huron Museum of Arts and History, Port Huron, Michigan, for use for education and historical display, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. STABENOW. Mr. President, I rise today to speak on behalf of a bill I am introducing to turn the historic United States Coast Guard Cutter *Bramble*, into a floating maritime museum in Port Huron, MI, after she is decommissioned later this year.

Once you hear the history of the *Bramble*, I am sure you will all agree that not only should she be preserved, but the Port Huron Museum of Arts and History will be able to provide the ideal home.

The *Bramble* has been part of many important missions since it was first launched on October 23, 1943.

But—along with her sister ships, *Spar* and *Storis*—the *Bramble* is best known for being part of the first mission by United States vessels to steam from the Pacific Ocean to the Atlantic Ocean via the Northwest Passage. Upon completing this mission, *Bramble* and her sister ships went on to become the first to circumnavigate the North American continent—a dream of sailors for more than 400 years.

The *Bramble* set out on this historic mission from Miami, Florida, on May 24, 1957. Steaming through the Panama Canal to the Pacific Ocean, the *Bramble* then headed to Seattle.

On July 1, 1957, the *Bramble* left Seattle and headed toward the Atlantic Ocean via the Bering Straights and the Arctic Ocean. Sixty-four days and 4,500 miles later, the *Bramble* and her sister ships reached the Atlantic and on December 2, 1957, she tied up again in Miami—completing the first circumnavigation of the North American continent.

For that reason alone, the *Bramble* would be worth saving as a museum of maritime history.

But over her 60 year history, the *Bramble* has seized tons of illegal drugs, saved hundreds of lives in search and rescue missions, helped train maritime police in 10 Caribbean nations, maintained buoys and other aids to navigation, performed icebreaking duties in the Great Lakes and been the recipient of numerous awards, service ribbons and commendations.

The *Bramble* also has a long history with Michigan and Port Huron and that is why I believe my State would make an excellent home once this historic ship is retired.

The *Bramble* first came to Detroit, MI, in 1962, where she performed search and rescue, icebreaking, law enforcement and navigation missions throughout the Great Lakes.

Since 1975, the *Bramble*'s homeport has been Port Huron. And that is where I think she should stay after she is decommissioned.

The Coast Guard motto is Semper Paratus—or Always Ready.

For 60 years the *Bramble* has been there—always ready to serve our country in waters close to home and far away.

And I believe that as a museum of maritime history, she can continue serving us for years to come—still Semper Paratus—still Always Ready.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 963

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

SECTION 1. CONVEYANCE OF DECOMMISSIONED COAST GUARD CUTTER BRAMBLE.

(a) IN GENERAL.—Upon the scheduled decommissioning of the United States Coast Guard Cutter BRAMBLE (WLB 406), the Commandant of the Coast Guard shall convey all right, title, and interest of the United States in and to that vessel to the Port Huron Museum of Arts and History, a nonprofit corporation organized under the laws of the State of Michigan, located in Port Huron, Michigan, without consideration, if—

(1) the Museum agrees—

(A) to use the vessel for purposes of education and historical display;

(B) not to use the vessel for commercial transportation purposes;

(C) to make the vessel available to the United States if needed for use by the Commandant in time of war or a national emergency; and

(D) to hold the United States harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls (PCBs), after conveyance of the vessel under this subsection, except for claims arising from the use by the United States under subparagraph (C);

(2) the Museum has funds available, in the form of cash, liquid assets, or a written loan commitment, in the amount of at least $700,000 that the Museum agrees to commit to operate and maintain the vessel in good working condition; and

(3) the Museum agrees to any other conditions the Commandant considers appropriate.

(b) MAINTENANCE OF VESSEL.—Prior to conveyance of the vessel under this section, the Commandant shall, to the extent practicable, and subject to other Coast Guard mission requirements, maintain the integrity of the vessel and its equipment until the delivery to the Museum.

(c) DELIVERY.—If a conveyance of the United States Coast Guard Cutter BRAMBLE is made under this section, the Commandant shall deliver the vessel at the place where the vessel is located, in its present condition, and without cost to the United States.

(d) CONVEYANCE NOT A DISTRIBUTION IN COMMERCE.—The conveyance of the vessel under this section shall not be considered a distribution in commerce for purposes of section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) OTHER EXCESS EQUIPMENT.—The Commandant may convey to the Museum any excess equipment or parts from other decommissioned Coast Guard vessels for use to enhance the operability and function of the United States Coast Guard Cutter BRAMBLE as an historical display.

By Mr. LOTT (for himself and Mr. ROCKEFELLER):

S. 964. A bill to reauthorize the essential air service program under chapter 471 of title 49, United States Code, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LOTT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 964

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 ''Small Community and Rural Air Service Revitalization Act of 2003''.

SEC. 2. REAUTHORIZATION OF ESSENTIAL AIR SERVICE PROGRAM.

Section 41742(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation to carry out the essential air service under this subchapter, $113,000,000 for each of fiscal years 2004 through 2007, $50,000,000 of which for each such year shall be derived from amounts received by the Federal Aviation Administration credited to the account established under section 45303

of this title or otherwise provided to the Administration.''.

SEC. 3. INCENTIVE PROGRAM.

(a) IN GENERAL.—Chapter 417 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER IV—MARKETING INCENTIVE PROGRAM

''Sec. 41781. Purpose.
''Sec. 41782. Marketing program.
''Sec. 41783. State marketing assistance.
''Sec. 41784. Definitions.
''Sec. 41785. Authorization of appropriations.

''§ 41781. Purposes

''The purposes of this subchapter are—

''(1) to enable essential air service communities to increase boardings and the level of passenger usage of airport facilities at an eligible place by providing technical, financial, and other marketing assistance to such communities and to States;

''(2) to reduce subsidy costs under subchapter II of this chapter as a consequence of such increased usage; and

''(3) to provide such communities with opportunities to obtain, retain, and improve transportation services.

''§ 41782. Marketing program

''(a) IN GENERAL.—The Secretary of Transportation shall establish a marketing incentive program for eligible essential air service communities receiving assistance under subchapter II under which the airport sponsor in such a community may receive a grant of not more than $50,000 to develop and implement a marketing plan to increase passenger boardings and the level of passenger usage of its airport facilities.

''(b) MATCHING REQUIREMENT; SUCCESS BONUSES——

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), not less than 25 percent of the publicly financed costs associated with the marketing plan shall come from non-Federal sources. For purposes of this paragraph—

''(A) the non-Federal portion of the publicly financed costs may be derived from contributions in kind; and

''(B) State or local matching contributions may not be derived, directly or indirectly, from Federal funds, but the use by a state or local government of proceeds from the sale of bonds to provide the matching contribution is not considered to be a contribution derived directly or indirectly from Federal funds, without regard to the Federal income tax treatment of interest paid on those bonds or the Federal income tax treatment of those bonds.

''(2) BONUS FOR 25-PERCENT INCREASE IN USAGE.—Except as provided in paragraph (3), if, after any 12-month period during which a marketing plan has been in effect, the Secretary determines that the marketing plan has increased average monthly boardings, or the level of passenger usage, at the airport facilities at the eligible place, by 25 percent or more, then only 10 percent of the publicly financed costs associated with the marketing plan shall be required to come from non-Federal sources for the following 12-month period.

''(3) BONUS FOR 50-PERCENT INCREASE IN USAGE.—If, after any 12-month period during which a marketing plan has been in effect, the Secretary determines that the marketing plan has increased average monthly boardings, or the level of passenger usage, at the airport facilities at the eligible place, by 50 percent or more, then no portion of the publicly financed costs associated with the marketing plan shall be required to come from non-Federal sources for the following 12-month period.

''§ 41783. State marketing assistance

The Secretary of Transportation may provide up to $50,000 in technical assistance to any State within which an eligible essential air service community is located for the purpose of assisting the State and such communities to develop methods to increase boardings in such communities. At least 10 percent of the costs of the activity with which the assistance is associated shall come from non-Federal sources, including contributions in kind.

''§ 41784. Definitions

''In this subchapter:

''(1) ELIGIBLE PLACE.—The term 'eligible place' has the meaning given that term in section 41731(a)(1).

''(2) ELIGIBLE ESSENTIAL AIR SERVICE COMMUNITY.—The term 'eligible essential air service community' means an eligible place that—

''(A) submits an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including a detailed marketing plan, or specifications for the development of such a plan, to increase average boardings, or the level of passenger usage, at its airport facilities; and

''(B) provides assurances, satisfactory to the Secretary, that it is able to meet the non-Federal funding requirements of section 41782(b)(1).

''(3) PASSENGER BOARDINGS.—The term 'passenger boardings' has the meaning given that term by section 47102(10).

''(4) SPONSOR.—The term 'sponsor' has the meaning given that term in section 47102(19).

''§ 41785. Authorization of appropriations

''There are authorized to be appropriated to the Secretary of Transportation $12,000,000 for each of fiscal years 2004 through 2007, not more than $200,000 per year of which may be used for administrative costs.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 417 of such title is amended by inserting after the item relating to section 41767 the following:

''SUBCHAPTER IV—MARKETING INCENTIVE PROGRAM

''41781. Purpose.
''41782. Marketing program.
''41783. State marketing assistance.
''41784. Definitions.
''41785. Authorization of appropriations.''.

SEC. 4. PILOT PROGRAMS.

(a) IN GENERAL.—Subchapter II of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

''§ 41745. Other pilot programs

''(a) IN GENERAL.—If the entire amount authorized to be appropriated to the Secretary of Transportation by section 41785 is appropriated for fiscal years 2004 through 2007, the Secretary of Transportation shall establish pilot programs that meet the requirements of this section for improving service to communities receiving essential air service assistance under this subchapter or consortia of such communities.

''(b) PROGRAMS AUTHORIZED.—

''(1) COMMUNITY FLEXIBILITY.—The Secretary shall establish a pilot program for not more than 10 communities or consortia of communities under which the airport sponsor of an airport serving the community or consortium may elect to forego any essential air service assistance under preceding sections of this subchapter for a 10-year period in exchange for a grant from the Secretary equal in value to twice the annual essential air service assistance received for the most recently ended calendar year. Under the program, and notwithstanding any provision of law to the contrary, the Secretary shall make a grant to each participating sponsor for use by the recipient for any project that—

''(A) is eligible for assistance under chapter 471;

''(B) is located on the airport property; or

''(C) will improve airport facilities in a way that would make such facilities more usable for general aviation.

''(2) EQUIPMENT CHANGES.—

''(A) IN GENERAL.—The Secretary shall establish a pilot program for not more than 10 communities or consortia of communities under which, upon receiving a petition from the sponsor of the airport serving the community or consortium, the Secretary shall authorize and request the essential air service provider for that community or consortium to use smaller equipment to provide the service and to consider increasing the frequency of service using such smaller equipment. Before granting any such petition, the Secretary shall determine that passenger safety would not be compromised by the use of such smaller equipment.

''(B) ALTERNATIVE SERVICES.—For any 3 aiport sponsors participating in the program established under subparagraph (A), the Secretary may establish a pilot program under which—

''(i) the Secretary provides 100 percent Federal funding for reasonable levels of alternative transportation services from the eligible place to the nearest hub airport or small hub airport;

''(ii) the Secretary will authorize the sponsor to use its essential air service subsidy funds provided under preceding sections of this subchapter for any airport-related project that would improve airport facilities; and

''(iii) the sponsor may make an irrevocable election to terminate its participation in the pilot program established under this paragraph after 1 year.

''(3) COST-SHARING.—The Secretary shall establish a pilot program under which the sponsors of airports serving a community or consortium of communities share the cost of providing air transportation service greater than the basic essential air service provided under this subchapter.

''(4) EAS LOCAL PARTICIPATION PROGRAM.—

''(A) IN GENERAL.—The Secretary of Transportation shall establish a pilot program under which designated essential air service communities located in proximity to hub airports are required to assume 10 percent of their essential air service subsidy costs for a 3-year period.

''(B) DESIGNATION OF COMMUNITIES.—

''(i) IN GENERAL.—The Secretary may not designate any community under this paragraph unless it is located within 100 miles by road of a hub airport and is not located in a noncontiguous State. In making the designation, the Secretary may take into consideration the total traveltime between a community and the nearest hub airport, taking into account terrain, traffic, weather, road conditions, and other relevant factors.

''(ii) ONE COMMUNITY PER STATE.—The Secretary may not designate—

''(I) more than 1 community per State under this paragraph; or

''(II) a community in a State in which another community that is eligible to participate in the essential air service program has elected not to participate in the essential air service program.

''(C) APPEAL OF DESIGNATION.—A community may appeal its designation under this section. The Secretary may withdraw the designation of a community under this paragraph based on—

''(i) the airport sponsor's ability to pay; or

''(ii) the relative lack of financial resources in a community, based on a comparison of the median income of the community with other communities in the State.

''(D) NON-FEDERAL SHARE.—

''(i) NON-FEDERAL AMOUNTS.—For purposes of this section, the non-Federal portion of the essential air service subsidy may be derived from contributions in kind, or through reduction in the amount of the essential air service subsidy through reduction of air carrier costs, increased ridership, pre-purchase of tickets, or other means. The Secretary shall provide assistance to designated communities in identifying potential means of reducing the amount of the subsidy without adversely affecting air transportation service to the community.

''(ii) APPLICATION WITH OTHER MATCHING REQUIREMENTS.—This section shall apply to the Federal share of essential air service provided this subchapter, after the application of any other non-Federal share matching requirements imposed by law.

''(E) ELIGIBILITY FOR OTHER PROGRAMS NOT AFFECTED.—Nothing in this paragraph affects the eligibility of a community or consortium of communities, an airport sponsor, or any other person to participate in any program authorized by this subchapter. A community designated under this paragraph may participate in any program (including pilot programs) authorized by this subchapter for which it is otherwise eligible—

''(i) without regard to any limitation on the number of communities that may participate in that program; and

''(ii) without reducing the number of other communities that may participate in that program.

''(F) SECRETARY TO REPORT TO CONGRESS ON IMPACT.—The Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on—

''(i) the economic condition of communities designated under this paragraph before their designation;

''(ii) the impact of designation under this paragraph on such communities at the end of each of the 3 years following their designation; and

''(iii) the impact of designation on air traffic patterns affecting air transportation to and from communities designated under this paragraph.

''(c) CODE-SHARING.—Under the pilot program established under subsection (a), the Secretary is authorized to require air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large hub airports (as defined in section 41731(a)(3)) to participate in multiple code-share arrangements consistent with normal industry practice whenever and wherever the Secretary determines that such multiple code-sharing arrangements would improve air transportation services. The Secretary may not require air carriers to participate in such arrangements under this subsection for more than 10 such communities.

''(d) TRACK SERVICE.—The Secretary shall require essential air service providers to track changes in service, including on-time arrivals and departures.

''(e) ADMINISTRATIVE PROVISIONS.—In order to participate in a pilot program established under this section, the airport sponsor for a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 417 of such title is amended by inserting after the item relating to section 41744 the following:

''41745. Other pilot programs''.

SEC. 5. EAS PROGRAM AUTHORITY CHANGES.

(a) RATE RENEGOTIATION.—If the Secretary of Transportation determines that essential air service providers are experiencing significantly increased costs of providing service under subchapter II of chapter 417 of title 49, United States Code, the Secretary of Transportation may increase the rates of compensation payable under that subchapter within 30 days after the date of enactment of this Act without regard to any agreements or requirements relating to the renegotiation of contracts. For purposes of this subsection, the term ''significantly increased costs'' means an average monthly cost increase of 10 percent or more.

(b) RETURNED FUNDS.—Notwithstanding any provision of law to the contrary, any funds made available under subchapter II of chapter 417 of title 49, United States Code, that are returned to the Secretary by an airport sponsor because of decreased subsidy needs for essential air service under that subchapter shall remain available to the Secretary and may be used by the Secretary under that subchapter to increase the frequency of flights at that airport.

(c) SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM.—Section 41743(h) of such title is amended by striking ''an airport'' and inserting ''each airport''.

Mr. ROCKEFELLER. Mr. President, the continuing economic crisis facing the U.S. airline industry also imperils the future of hundreds of small and rural communities across our country as air carriers drastically reduce service to small and rural communities. While small and rural communities have long had to cope with limited and unreliable service, these problems have been exacerbated by the weakened financial condition of most major U.S. airlines.

Faced with declining revenues brought on by the Nation's economic downturn, the events of September 11, 2001 and the war in Iraq most carriers have substantially reduced or eliminated service to many communities. In the last month, United Air Lines, US Airways and Continental Airlines announced significant service cuts to West Virginia.

Last month, this Congress provided $3.5 billion in direct and indirect benefits to the Nation's airlines. I strongly supported this package because our economy requires a strong and vibrant airline industry. In my own aviation relief package, I had provided resources to the airlines to continue to provide air service to small and rural communities. Even in the best of times, these communities face a difficult time maintaining and developing new air service options. Today, their challenge is preventing the complete loss of air service. In these difficult economic and uncertain times, I strongly believe that the Federal Government must continue to assist our most vulnerable communities stay connected to the Nation's aviation network—a network paid for by all Americans.

The reduction or elimination of air service had a devastating effect on the economy of a community. Having adequate air service is not just a matter of convenience, but a matter of economic survival. Without access to reliable air service, no business is willing to locate their operations in these areas of the country no matter how attractive the quality of life. Airports are economic engines that attract critical new development opportunities and jobs.

West Virginia has been able to attract firms from around the world because corporate executives know they can visit their operations with ease. Rural and small town America must continue to be adequately linked to the Nation's air transportation network if its people and businesses are to compete economically with larger urban areas in this country and around the world.

In the Aviation Investment and Reform Act for the 21st Century, we began to address the need to improve air service in small and rural communities. I, along with many of my colleagues, supported the creation of the Small Community Air Service Development Pilot Program, a competitive grant program to provide communities with the resources they needed to attract new air service to their communities. The program is an enormous success. Over 180 communities applied for 40 grants in the first year funds were available. The Department of Transportation has announced the next round of funding.

In West Virginia, Charleston received money under the program and has used it to successfully attract a new service connection to Houston, an important gateway to the markets of Latin America. This program gave local communities the ability and flexibility to meet local air transportation needs.

The Aviation Investment and Revitalization Vision Act, cosponsored by myself and Senator LOTT, reauthorizes the expands the successful Small Community Air Service Development Program. The bill authorizes the participation of 120 communities over 3 years.

Many of our most isolated and vulnerable communities whose only service is through the Essential Air Service Program have indicated that they would like to develop innovative and flexible programs that communities who received Small Community Air Service Development grants to improve the quality of their air service.

It is for this reason that I, along with Senator LOTT, have introduced the Small Community and Rural Air Service Revitalization Act of 2003. The legislation reauthorizes the Department of Transportation's Essential Air Service, EAS, program and creates a series of pilot programs for EAS communities to participate to stimulate passenger demand for air service in their communities.

Under the bill, communities are given the option on continuing their EAS as is or they may apply to participate in new incentive programs to help them develop new and innovative solutions to increasing local demand for air

service. The EAS Marketing and Community Flexibility Programs would provide communities new resources and tools to implement locally developed plans to improve their air service. By providing communities the ability to design their own air service proposals, a community has the ability to develop a plan that meets it locally determined needs, improves air service choices, and gives the community a greater stake in the EAS program.

Specifically, these new EAS pilot programs include authorization for the use of smaller planes to decrease cost or increase frequency, communities to cost-share for service above base EAS subsidy level, alternative service at up to 3 EAS points if a community applies, an opt out of the EAS program with a one-time infusion of funding to assist in transition out of the program, and DOT to mandate multiple code-sharing arrangements for EAS providers.

A pilot program added at the request of Senator LOTT would allow DOT to require a cost-share for up to 10 communities within 100 miles of a hub. I have significant reservations about forcing communities to pay for a service the Federal Government promised them.

In addition, the communities that participate in EAS are small and isolated and have lower than average per captia incomes than urban or suburban communities. Cash-strapped communities will have to provide anywhere between $50,000 and $120,000 in local funds to continue their EAS service. I worked with Senator LOTT to make sure DOT considers a variety of relevant factors when selecting communities, to provide communities appeal rights, and to make sure they have access to all other pro-active pilot programs. I will monitor DOT's implementation of this pilot program closely.

Small and rural communities are the first to bear the brunt of bad economic times and the last to see the benefits of good times. The general economic downturn and the dire straits of the aviation industry have placed exceptional burdens on air service to our most isolated communities. The Federal Government must provide additional resources and tools for small communities to help themselves attract adequate air service. The Federal Government must make sure that our most vulnerable towns and cities are linked to the rest of the Nation. My legislation builds on existing programs and strengthens them. If these bills are enacted, our constituents will have the tools and resources necessary to attract air service, related economic development, and most importantly expand their connections to the national and global economy.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 126—COMMENDING THE UNIVERSITY OF MINNESOTA GOLDEN GOPHERS FOR WINNING THE 2002–2003 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I NATIONAL COLLEGIATE MEN'S ICE HOCKEY CHAMPIONSHIP

Mr. COLEMAN (for himself and Mr. DAYTON) submitted the following resolution; which was considered and agreed to:

S. RES. 126

Whereas on Saturday, April 12, 2003, the defending NCAA Division I National Collegiate Men's Ice Hockey Champions, the University of Minnesota Golden Gophers, won the National Championship for the second straight year;

Whereas the University of Minnesota defeated the University of New Hampshire in the championship game by the score of 5 to 1, having defeated the University of Michigan 3 to 2 in overtime in the semifinals;

Whereas the Golden Gophers reached the 56th Annual Frozen Four by defeating Mercyhurst College 9 to 2 and Ferris State University 7 to 4;

Whereas the University of Minnesota received an automatic bid to the 2002–2003 NCAA Division I National Collegiate Men's Ice Hockey Tournament by defeating Colorado College 4 to 2 in the Western Collegiate Hockey Association Tournament Championship;

Whereas the Golden Gophers became the first repeat NCAA National Collegiate Men's Ice Hockey Champion in 31 years;

Whereas the University of Minnesota won their fifth NCAA National Collegiate Men's Ice Hockey title;

Whereas the team displayed academic excellence by maintaining an average grade point average above the university-wide average; and

Whereas all the team's players showed dedication throughout the season toward the goal of winning the National Championship: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Minnesota Golden Gophers for winning the 2002–2003 NCAA Division I National Collegiate Men's Ice Hockey Championship;

(2) recognizes the achievements of all the team's players, coaches, and support staff; and

(3) directs the Secretary of the Senate to make available enrolled copies of this resolution to the University of Minnesota for appropriate display, and to transmit an enrolled copy of this resolution to every coach and member of the 2002–2003 NCAA Division I National Collegiate Men's Ice Hockey Championship Team.

SENATE RESOLUTION 127—EXPRESSING THE SENSE OF THE SENATE THAT THE SECRETARY OF AGRICULTURE SHOULD REDUCE THE INTEREST RATE ON LOANS TO PROCESSORS OF SUGAR BEETS AND SUGARCANE BY 1 PERCENT TO A RATE EQUAL TO THE COST OF BORROWING TO CONFORM TO THE INTENT OF CONGRESS

Mr. COLEMAN submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 127

Whereas section 163 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7283) established the monthly Commodity Credit Corporation interest rate applicable to loans provided for agricultural commodities by the Corporation at 100 basis points greater than the rate determined under the applicable interest rate formula in effect on October 1, 1995;

Whereas the interest rate formula in effect on October 1, 1995, for agricultural commodity loans reflected the interest rate charged to the Commodity Credit Corporation by the Treasury for the applicable month;

Whereas the interest rate charged to the Commodity Credit Corporation by the Treasury for a month is based on the 4- to 5-week average price of 1-year constant maturity securities sold on the market by the Treasury in the previous month;

Whereas the Commodity Credit Corporation had used such cost of borrowing interest rates for all commodity loans since January 1, 1982, and this practice was understood by Congress when enacting section 163 of the Federal Agriculture Improvement and Reform Act of 1996;

Whereas section 1401(c)(2) of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) amended section 163 of the Federal Agriculture Improvement and Reform Act of 1996 to provide that raw cane sugar, refined beet sugar, and in-process sugar eligible for a loan under section 156 of that Act (7 U.S.C. 7272) shall not be considered an agricultural commodity for the purposes of section 163 of that Act;

Whereas Congress intended that loans to processors of sugar be exempted from the 100-basis point surcharge and that the loans should be subject to interest at the rate that is charged to the Commodity Credit Corporation by the Treasury for the applicable month;

Whereas, during deliberations on the Farm Security and Rural Investment Act of 2002, the Congressional Budget Office estimated the cost of eliminating the interest rate surcharge on loans to processors of sugar at $5,000,000 per year in reduced revenues and Congress enacted the amendment to section 163 of the Federal Agriculture Improvement and Reform Act of 1996 with this understanding of its purpose and effect;

Whereas the final regulations of the Commodity Credit Corporation to implement the sugar loan program recognized that the amendment of section 163 of the Federal Agriculture Improvement and Reform Act of 1996 by section 1401(c)(2) of the Farm Security and Rural Investment Act of 2002 eliminated the requirement that the Commodity Credit Corporation add 1 percentage point to the interest rate as calculated by the procedure in place prior to October 1, 1995; and

Whereas the Commodity Credit Corporation regulations require that a loan to a processor of sugar beets or sugarcane be subject to interest at rates equal to those applicable to all other agricultural commodities, including the 100-basis point surcharge, notwithstanding the clear intent of Congress in enacting section 1401(c)(2) of the Farm Security and Rural Investment Act of 2002: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Secretary of Agriculture should reduce the interest rate on loans to processors of sugar beets and sugarcane by 100 basis points to a rate equal to the cost of borrowing from the Treasury to conform to the

intent of Congress in enacting the Farm Security and Rural Investment Act of 2002 (Public Law 107–171).

SENATE RESOLUTION 128—TO COMMEND SALLY GOFFINET ON THIRTY-ONE YEARS OF SERVICE TO THE UNITED STATES SENATE

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 128

Whereas Sally Goffinet became an employee of the United States Senate in 1972, and has ably and faithfully upheld the high standards and traditions of the staff of the United States Senate;

Whereas Sally Goffinet created the position of Parliamentary Assistant in the Parliamentarian's Office in the Office of the Secretary of the Senate;

Whereas Sally Goffinet has ably assisted the last four Senate Parliamentarians in a host of clerical, administrative and substantive matters;

Whereas Sally Goffinet has faithfully discharged the difficult duties and responsibilities of Parliamentary Assistant of the United States Senate with great pride, energy, efficiency, dedication, integrity, and professionalism;

Whereas she has earned the respect, affection, and esteem of the United States Senate; and

Whereas Sally Goffinet will retire from the United States Senate on April 30, 2003, with 31 years of Service to the United States Senate: Now, therefore, be it

Resolved, That the United States Senate commends Sally Goffinet for her exemplary service to the United States Senate and the Nation, and wishes to express its deep appreciation and gratitude for her long, faithful, and outstanding service.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to Sally Goffinet.

SENATE RESOLUTION 129—RECOGNIZING AND COMMENDING THE MEMBERS OF THE NAVY AND MARINE CORPS WHO SERVED IN THE U.S.S. ''*ABRAHAM LINCOLN*'' AND WELCOMING THEM HOME FROM THEIR RECENT MISSION ABROAD

Mrs. MURRAY (for herself and Ms. CANTWELL) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 129

Whereas the U.S.S. Abraham Lincoln (CVN–72) is the fifth Nimitz-class aircraft carrier of the United States and has its homeport at Naval Station Everett in Washington;

Whereas the U.S.S. Abraham Lincoln serves as home to 5,000 brave members of the Navy and Marine Corps and carries approximately 70 combat and support aircraft;

Whereas the U.S.S. Abraham Lincoln is scheduled to return to its homeport on May 6, 2003, after nearly ten months on deployment in support of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Southern Watch;

Whereas the deployment of the U.S.S. Abraham Lincoln was the longest for a nuclear-powered aircraft carrier since 1973;

Whereas in December 2002, the U.S.S. Abraham Lincoln completed a six-month deployment in the Persian Gulf conducting operations in support of the Global War on Terrorism and was returning to its homeport when it was ordered back to the Persian Gulf in January 2003 to support what was to become Operation Iraqi Freedom;

Whereas during the nearly ten-month deployment of the U.S.S. Abraham Lincoln, there were 12,700 takeoffs and trap landings and 16,500 sorties from the U.S.S. Abraham Lincoln, 265,118 pounds of ordinance were expended from the U.S.S. Abraham Lincoln during Operation Enduring Freedom and Operation Southern Watch, and 1,600,000 pounds of ordinance were expended from U.S.S. Abraham Lincoln during Operation Iraqi Freedom;

Whereas the deployment of the U.S.S. Abraham Lincoln featured numerous firsts, including the first use of the Super Hornet and the first operational availability of the ''Man Overboard Indicator'' onboard the U.S.S. Abraham Lincoln; and

Whereas the citizens of the City of Everett, the County of Snohomish, the State of Washington, and the United States are proud of the members of the Navy and Marine Corps who serve on the U.S.S. Abraham Lincoln: Now, therefore, be it

Resolved, That the Senate recognizes and commends the members of the Navy and Marine Corps who serve on the U.S.S. Abraham Lincoln (CVN–72) and welcomes them home from their recent mission abroad.

SENATE CONCURRENT RESOLUTION 40—DESIGNATING AUGUST 7, 2003, AS ''NATIONAL PURPLE HEART RECOGNITION DAY''

Mrs. CLINTON (for herself and Mr. HAGEL) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 40

Whereas the Order of the Purple Heart for Military Merit, commonly known as the Purple Heart, is the oldest military decoration in the world in present use;

Whereas the Purple Heart is awarded in the name of the President of the United States to members of the Armed Forces who are wounded in conflict with an enemy force, or while held by an enemy force as a prisoner of war, and posthumously to the next of kin of members of the Armed Forces who are killed in conflict with an enemy force, or who die of a wound received in conflict with an enemy force;

Whereas the Purple Heart was established on August 7, 1782, during the Revolutionary War, when General George Washington issued an order establishing the Honorary Badge of Distinction, otherwise known as the Badge of Military Merit, or the Decoration of the Purple Heart;

Whereas the award of the Purple Heart ceased with the end of the Revolutionary war, but was revived out of respect for the memory and military achievements of George Washington in 1932, the 200th anniversary of his birth; and

Whereas the designation of August 7, 2003, as ''National Purple Heart Recognition Day'' is a fitting tribute to General Washington, and to the over 1,535,000 recipients of the Purple Heart Medal, approximately 550,000 of whom are still living: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) designates August 7, 2003, as ''National Purple Heart Recognition Day'';

(2) encourages all Americans to learn about the history of the Order of the Purple Heart for Military Merit and to honor its recipients; and

(3) requests that the President issue a proclamation calling on the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate support for the Order of the Purple Heart for Military Merit.

SENATE CONCURRENT RESOLUTION 41—DIRECTING CONGRESS TO ENACT LEGISLATION BY OCTOBER 2005 THAT PROVIDES ACCESS TO COMPREHENSIVE HEALTH CARE FOR ALL AMERICANS

Mr. KENNEDY (for himself, Mr. CORZINE, and Mr. FEINGOLD) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 41

Whereas the United States has the most expensive health care system in the world in terms of absolute costs, per capita costs, and percentage of gross domestic product (GDP);

Whereas despite being first in spending, the World Health Organization has ranked the United States 37th among all nations in terms of meeting the needs of its people;

Whereas 42,000,000 Americans, including 8,000,000 children, are uninsured;

Whereas tens of millions more Americans are inadequately insured, including medicare beneficiaries who lack access to prescription drug coverage and long term care coverage;

Whereas racial, income, and ethnic disparities in access to care threaten communities across the country, particularly communities of color;

Whereas health care costs continue to increase, jeopardizing the health security of working families and small businesses;

Whereas dollars that could be spent on health care are being used for administrative costs instead of patient needs;

Whereas the current health care system too often puts the bottom line ahead of patient care and threatens safety net providers who treat the uninsured and poorly insured; and

Whereas any health care reform must ensure that health care providers and practitioners are able to provide patients with the quality care they need: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress shall enact legislation by October 2005 to guarantee that every person in the United States, regardless of income, age, or employment or health status, has access to health care that—

(1) is affordable to individuals and families, businesses and taxpayers and that removes financial barriers to needed care;

(2) is as cost efficient as possible, spending the maximum amount of dollars on direct patient care;

(3) provides comprehensive benefits, including benefits for mental health and long term care services;

(4) promotes prevention and early intervention;

(5) includes parity for mental health and other services;

(6) eliminates disparities in access to quality health care;

(7) addresses the needs of people with special health care needs and underserved populations in rural and urban areas;

(8) promotes quality and better health outcomes;

(9) addresses the need to have adequate numbers of qualified health care caregivers, practitioners, and providers to guarantee timely access to quality care;

(10) provides adequate and timely payments in order to guarantee access to providers;

(11) fosters a strong network of health care facilities, including safety net providers;

(12) ensures continuity of coverage and continuity of care;

(13) maximizes consumer choice of health care providers and practitioners; and

(14) is easy for patients, providers and practitioners to use and reduces paperwork.

Mr. KENNEDY. Mr. President, I submit this measure today to call attention to one of the most serious injustices in our country. 42 million Americans lack access to quality, affordable health care because they have no health insurance. Most of these Americans work in full-time jobs, but still cannot afford the high cost of health care. As a result, hospital emergency rooms are their only doctor. They face impossible choices in paying for the medicine they need on top of paying the rent, or putting food on the table. As a result, they die younger. Yet, the richest and most powerful Nation in the world looks the other way.

For half a century, the United States has led the world in scientific and medical advances. We have more Nobel Prize winners in medicine than any other Nation. We were the first to successfully decode the entire human genome. And yet, we cannot see that every American child gets vaccinated against deadly and disabling diseases. We fail to guarantee that all Americans can obtain the medical treatments that could save their lives.

Every year, 8 million uninsured Americans fail to take their medications because they can't afford to pay for their prescriptions. 300,000 children with asthma never get treated by a doctor. Uninsured women diagnosed with breast cancer are 50 percent more likely to die from the disease, because their cancer is diagnosed too late. 32,000 Americans with heart disease go without life-saving bypass surgery or other treatments.

And the problem is getting worse. For most of the past 16 years, the number of people without health insurance has increased. Now, when our economy is weak, health care costs are rising at double-digit rates. People are losing jobs and their health insurance too. States are cutting back on Medicaid care for the poor. If we do nothing, the number of uninsured could reach more than 52 million by 2010. Clearly, the time to act is now.

We must pass legislation to ensure that every man, woman, and child in the United States has access to high quality, affordable health care. And we must do it soon.

Some say we cannot afford the cost of covering the uninsured. But as a country, we are already paying the much higher costs of failing to provide good care for all. We pay for it when we fail to detect cancer early by using the preventive screening that we know is effective. We pay for it in every person with diabetes who becomes blind because of a disease we know how to control. We pay for it by failing to give every child the same opportunity for good health and a productive life.

We know that the battle for affordable health care has never been easy. But to solve this problem, we must commit to working together to find a solution. That is why I am submitting this resolution. This measure does not endorse a specific plan to cover the uninsured, but it does state unequivocally that universal health care is our goal, and it sets a time for Congress to get the job done.

A similar resolution has already been submitted in the House of Representatives and has received the strong support of our 470 organizations, including many groups representing patients, health providers, and faith-based organizations.

Democrats are leading the charge in Congress in the fight for quality health care for all Americans—and, as Congressman GEPHARDT has shown with his recent proposal, Democrats are prepared to take this issue to the White House as well.

I urge my colleagues to join in supporting this resolution to enact bipartisan legislation to provide health care for all Americans by the end of the year 2005. Perhaps we can do it earlier, but at least we are setting a realistic goal—the end of the first session of the Congress elected in 2004. The time is long overdue for the United States of America to join the rest of the industrial world in recognizing this fundamental right.

AMENDMENTS SUBMITTED & PROPOSED

SA 532. Mr. ALLEN (for himself, Mr. HOLLINGS, and Mr. MCCAIN) proposed an amendment to the bill S. 196, to establish a digital and wireless network technology program, and for other purposes.

TEXT OF AMENDMENTS

SA 532. Mr. ALLEN (for himself, Mr. HOLLINGS, and Mr. MCCAIN) proposed an amendment to the bill S. 196, to establish a digital and wireless network technology program, and for other purposes; as follows:

On page 2, strike lines 2 and 3, and insert the following:

This Act may be cited as the ''Minority Serving Institution Digital and Wireless Technology Opportunity Act of 2003''.

On page 2, line 6, insert ''Minority Serving Institution'' before ''Digital''.

On page 2, line 7, strike ''Network''.

On page 3, strike lines 1 through 5, and insert the following:

(2) to develop and provide educational services, including faculty development, related to science, mathematics, engineering, or technology;

On page 3, line 18, after ''development'' insert ''in science, mathematics, engineering, or technology''.

On page 4, line 18, after ''accept'' insert ''and review''.

On page 4, line 24, strike ''section 3.'' and insert ''section 3, and for reviewing and evaluating proposals submitted to the program.''.

On page 5, line 7, after ''issues.'' insert ''Any panel assembled to review a proposal submitted to the program shall include members from minority serving institutions. Program review criteria shall include consideration of—

(1) demonstrated need for assistance under this Act; and

(2) diversity among the types of institutions receiving assistance under this Act.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. TALENT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, April 30, 2003, at 9:30 a.m., on the Fire Research Act in SR–253

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. TALENT. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, April 30, 2003, at 10 a.m., to consider comprehensive energy legislation.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. TALENT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, April 30, 2003, at 10 a.m., to hold a business meeting.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. TALENT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, April 30, 2003, at 2:30 p.m., to hold a hearing on ''U.S. Energy Security: Russia and the Caspian.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. TALENT. Mr. President, I ask unanimous consent thta the Committee on Indian affairs be authorized to meet on Wednesday, April 30, 2003, at 2 p.m., in room 485 of the Russell Senate Office Building to conduct a hearing on S. 519, the Native American Capital Formation and Economic Development Act of 2003.

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

COMMITTEE ON THE JUDICIARY

Mr. TALENT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a nominations hearing on Wednesday, April 30, 2003, at 10 a.m., in the Dirksen Senate Office Building Room 226.

Panel I: [Senators].

Panel II: John G. Roberts, Jr., to be United States Circuit Judge for the District of Columbia Circuit.

Panel III: David G. Campbell to be United States District Judge for the District of Arizona, and S. Maurice Hicks, Jr., to be United States District Judge for the Western District of Louisiana.

Panel IV: William Emil Moschella to be Assistant Attorney General, Office of Legislative Affairs, United States Department of Justice.

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. TALENT. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate for a roundtable entitled ''SBA Re-Authorization: Credit Program, Part I,'' and other matters on Wednesday, April 30, 2003, beginning at 9:30 a.m., in Room 428A of the Russell Senate Office Building.

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

PRIVILEGE OF THE FLOOR

Mr. DAYTON. Mr. President, I ask unanimous consent that Katie Pass of my staff be permitted the privilege of the floor during my remarks.

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

COMMENDING SALLY GOFFINET

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 128 which was submitted earlier today by majority leader FRIST and minority leader DASCHLE.

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

The legislative clerk read as follows:

A resolution (S. Res. 128) to commend Sally Goffinet on Thirty-One Years of Service to the United States Senate.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 128) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 128

Whereas Sally Goffinet became an employee of the United States Senate in 1972, and has ably and faithfully upheld the high standards and traditions of the staff of the United States Senate;

Whereas Sally Goffinet created the position of Parliamentary Assistant in the Parliamentarian's Office in the Office of the Secretary of the Senate;

Whereas Sally Goffinet has ably assisted the last four Senate Parliamentarians in a host of clerical, administrative and substantive matters;

Whereas Sally Goffinet has faithfully discharged the difficult duties and responsibilities of Parliamentary Assistant of the United States Senate with great pride, energy, efficiency, dedication, integrity, and professionalism;

Whereas she has earned the respect, affection, and esteem of the United States Senate; and

Whereas Sally Goffinet will retire from the United States Senate on April 30, 2003, with 31 years of Service to the United States Senate: Now, therefore, be it

Resolved, That the United States Senate commends Sally Goffinet for her exemplary service to the United States Senate and the Nation, and wishes to express its deep appreciation and gratitude for her long, faithful, and outstanding service.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to Sally Goffinet.

COMMENDING UNIVERSITY OF MINNESOTA GOLDEN GOPHERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 126 which was submitted earlier today by Senators COLEMAN and DAYTON.

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

The legislative clerk read as follows:

A resolution (S. Res. 126) commending the University of Minnesota Golden Gophers for winning the 2002–2003 National Collegiate Athletic Association Division I National Collegiate Men's Ice Hockey Championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 126) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 126

Whereas on Saturday, April 12, 2003, the defending NCAA Division I National Collegiate Men's Ice Hockey Champions, the University of Minnesota Golden Gophers, won the National Championship for the second straight year;

Whereas the University of Minnesota defeated the University of New Hampshire in the championship game by the score of 5 to 1, having defeated the University of Michigan 3 to 2 in overtime in the semifinals;

Whereas the Golden Gophers reached the 56th Annual Frozen Four by defeating Mercyhurst College 9 to 2 and Ferris State University 7 to 4;

Whereas the University of Minnesota received an automatic bid to the 2002–2003 NCAA Division I National Collegiate Men's Ice Hockey Tournament by defeating Colorado College 4 to 2 in the Western Collegiate Hockey Association Tournament Championship;

Whereas the Golden Gophers became the first repeat NCAA National Collegiate Men's Ice Hockey Champion in 31 years;

Whereas the University of Minnesota won their fifth NCAA National Collegiate Men's Ice Hockey title;

Whereas the team displayed academic excellence by maintaining an average grade point average above the university-wide average; and

Whereas all the team's players showed dedication throughout the season toward the goal of winning the National Championship: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Minnesota Golden Gophers for winning the 2002–2003 NCAA Division I National Collegiate Men's Ice Hockey Championship;

(2) recognizes the achievements of all the team's players, coaches, and support staff, and invites them to the United States Capitol Building to be honored; and

(3) directs the Secretary of the Senate to make available enrolled copies of this resolution to the University of Minnesota for appropriate display, and to transmit an enrolled copy of this resolution to every coach and member of the 2002–2003 NCAA Division I National Collegiate Men's Ice Hockey Championship Team.

CONGRATULATING THE U.S. CAPITOL POLICE ON THE OCCASION OF ITS 175TH ANNIVERSARY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 156.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 156) extending congratulations to the United States Capitol Police on the occasion of its 175th anniversary and expressing gratitude to the men and women of the United States Capitol Police and their families for their devotion to duty and service in safeguarding the freedoms of the American people.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The resolution (H. Con. Res. 156) was agreed to.

The preamble was agreed to.

Mr. REID. Mr. President, I believe I am the only former Capitol Policeman serving in the Senate. I am quite sure that is true. I didn't serve 175 years ago, although it seems like it. I have great affection and a real soft spot in my heart for the Capitol Police, having been a former Capitol Policeman.

The men and women of the Capitol Police today are different than during the years I served. Now they do very extraordinary things in protecting this beautiful Capitol, the employees here, the tourists, and the Members of the Senate. When I was a Capitol Policeman, the most dangerous thing I did was direct traffic. I didn't have their qualifications, but I am certainly just as proud as I think they are, having been a Capitol Policeman.

Mr. FRIST. Mr. President, there is not an hour that goes by that we don't either pass in the hallway or on the Capitol grounds our Capitol Police. On the occasion of this 175th anniversary, it gives us this formal opportunity to express our gratitude to the men and women of the Capitol Police. It is nice to be able to put H. Con. Res 156 forward because we have a lot to be thankful for each and every day for their tremendous work.

MEASURE READ THE FIRST TIME—S. 14

Mr. FRIST. Mr. President, I understand that S. 14, introduced earlier today, is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Mr. FRIST. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will remain at the desk.

MEASURE READ THE FIRST TIME—H. J. RES. 51

Mr. FRIST. Mr. President, I understand that H.J. Res. 51 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the joint resolution for the first time.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 51) increasing the statutory limit on the public debt.

Mr. FRIST. Mr. President, I ask for its second reading and object to further proceeding on this matter.

The PRESIDING OFFICER. Objection is heard. The joint resolution will remain at the desk.

MEASURE INDEFINITELY POSTPONED—S. 760

Mr. FRIST. Mr. President, I ask unanimous consent that Calendar No. 62, S. 760, be indefinitely postponed.

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

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT 108–5 AND TREATY DOCUMENT 108–6

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaties transmitted to the Senate on April 30, 2003, by the President of the United States: Amendments to Constitution and Convention of International Telecommunication Union, Geneva 1992, Treaty Document No. 108–5, and Protocol of Amendment to International Convention on Simplification and Harmonization of Customs Procedures, Treaty Document 108–6.

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

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

The messages of the President are as follows:

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification, the amendments to the Constitution and Convention of the International Telecommunication Union (ITU) (Geneva 1992), as amended by the Plenipotentiary Conference (Kyoto 1994), together with declarations and reservations by the United States as contained in the Final Acts of the Plenipotentiary Conference (Minneapolis 1998). I transmit also, for the information of the Senate, the report of the Department of State concerning these amendments.

Prior to 1992, and as a matter of general practice, previous Conventions of the ITU were routinely replaced at successive Plenipotentiary Conferences held every 5 to 10 years. In 1992, the ITU adopted a permanent Constitution and Convention. The Constitution contains fundamental provisions on the organization and structure of the ITU, as well as substantive rules applicable to international telecommunications matters. The ITU Convention contains provisions concerning the functioning of the ITU and its constituent organs.

Faced with a rapidly changing telecommunication environment, the ITU in 1994 adopted a few amendments to the 1992 Constitution and Convention. These amendments were designed to enable the ITU to respond effectively to new challenges posed.

The pace at which the telecommunication market continues to evolve has not eased. States participating in the 1998 ITU Plenipotentiary Conference held in Minneapolis submitted numerous proposals to amend the Constitution and Convention. As discussed in the attached report of the Department of State concerning the amendments, key proposals included the following: amendments to clarify the rights and obligations of Member States and Sector Members; amendments to increase private sector participation in the ITU with the understanding that the ITU is to remain an intergovernmental organization; amendments to strengthen the finances of the ITU; and amendments to provide for alternative procedures for the adoption and approval of questions and recommendations.

Consistent with longstanding practice in the ITU, the United States, in signing the 1998 amendments, made certain declarations and reservations. These declarations and reservations are discussed in the report of the Department of State, which is attached hereto.

The 1992 Constitution and Convention and the 1994 amendments thereto entered into force for the United States on October 26, 1997. The 1998 amendments to the 1992 Constitution and Convention as amended in 1994 entered into force on January 1, 2000, for those states, which, by that date, had notified the Secretary General of the ITU of their approval thereof. As of the beginning of this year, 26 states had notified the Secretary General of the ITU of their approval of the 1998 amendments.

Subject to the U.S. declarations and reservations mentioned above, I believe the United States should ratify the 1998 amendments to the ITU Constitution and Convention. They will contribute to the ITU's ability to adapt to a rapidly changing telecommunication environment and, in doing so, will serve the needs of the United States Government and U.S. industry.

I recommend that the Senate give early and favorable consideration to these amendments and that the Senate give its advice and consent to ratification.

GEORGE W. BUSH.
THE WHITE HOUSE, *April 30, 2003.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to accession, the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures done at Brussels on June 26, 1999. The Protocol amends the International Convention on the Simplification and Harmonization of Customs Procedures done at Kyoto on May 18, 1973, and replaces the Annexes to the 1973 Convention with a General Annex and 10 Specific Annexes (together, the ''Amended Convention''). I am also transmitting, for the information of the Senate, the report of the Department of State on the Amended Convention.

The Amended Convention seeks to meet the needs of international trade and customs services through the simplification and harmonization of customs procedures. It responds to modernization in business and administrative methods and techniques and to the growth of international trade, without compromising standards of customs control. Accession by the United States would further the U.S. interest in reducing non-tariff barriers to international trade.

By acceding to the Protocol, a state consents to be bound by the amended 1973 Convention and the new General Annex. At the same time, or anytime thereafter, Parties have the option of accepting any of the Specific Annexes (or Chapters thereof), and may at that time enter reservations with respect to any Recommended Practices contained in the Specific Annexes. In accordance with these terms, I propose that the United States accept seven of the Specific Annexes in their entirety and all

the Chapters, but one of each of two other Specific Annexes (A–E, G, and H, as well as Chapters 1, 2, and 3 of F, and Chapters 1, 3, 4, and 5 of J), and enter the reservations proposed by the Bureau of Customs and Border Protection as set forth in the enclosure to the report of the Department of State. The provisions for which reservation is recommended conflict with current U.S. legislation or regulations. With these proposed reservations, no new implementing legislation is necessary in order to comply with the Amended Convention.

Accession to the Protocol by the United States would contribute to important U.S. interests. First, accession by the United States would benefit the United States and U.S. businesses by facilitating greater economic growth, increasing foreign investment, and stimulating U.S. exports through more predictable, standard, and harmonized customs procedures governing cross-border trade transactions. Setting forth standardized and simplified methods for conducting customs business is important for U.S. trade interests in light of the demands of increased trade flows, as is the use of modernized technology and techniques for customs facilitation. These achievements can best be pursued by the United States as a Party to the Amended Convention. Second, through early accession, the United States can continue to take a leadership role in the areas of customs and international trade facilitation as the U.S. accession would encourage other nations, particularly developing nations, to accede as well.

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

GEORGE W. BUSH.
THE WHITE HOUSE, *April 30, 2003.*

ORDERS FOR THURSDAY, MAY 1, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:15 a.m., Thursday, May 1. I further ask that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day, and there then be 1 hour for debate equally divided in the usual form prior to the vote on cloture on the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. I further ask unanimous consent that if cloture is not invoked, the Senate immediately proceed to the consideration of Executive Calendar No. 105, the nomination of Edward Prado to be a circuit judge for the Fifth Circuit.

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

PROGRAM

Mr. FRIST. For the information of all Senators, the Senate will vote on the motion to invoke cloture on the nomination of Priscilla Owen at 10:15 tomorrow. If cloture is not invoked, the Senate will begin consideration of the nomination of Edward Prado to be a circuit judge for the Fifth Circuit. It is my hope that we can reach a short time agreement, with the vote on the nomination to occur by early afternoon. I also hope the Senate can vote on the Cook nomination during tomorrow's session.

In addition to those executive matters, the Senate may also consider the FISA legislation, the State Department authorization bill, the bioshield legislation, or additional judicial nominations during tomorrow's session. Therefore, Senators should expect roll-call votes throughout the day.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:09 p.m., adjourned until Thursday, May 1, 2003, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate April 30, 2003:

DEPARTMENT OF STATE

ROBERT W. FITTS, OF NEW HAMPSHIRE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO PAPUA NEW GUINEA, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SOLOMON ISLANDS AND AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF VANUATU.

JOHN E. HERBST, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO UKRAINE.

WILLIAM B. WOOD, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COLOMBIA.

HARRY K. THOMAS, JR., OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PEOPLE'S REPUBLIC OF BANGLADESH.

TRACEY ANN JACOBSON, OF THE DISTRICT OF COLUMBIA, A FOREIGN SERVICE OFFICER OF CLASS ONE, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO TURKMENISTAN.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

LISA GENEVIEVE NASON, OF ALASKA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING OCTOBER 18, 2004, VICE THOMAS A. THOMPSON, TERM EXPIRED.

GEORGIANNA E. IGNACE, OF WISCONSIN, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING OCTOBER 18, 2004, VICE KENNETH BLANKENSHIP, TERM EXPIRED.

JOHN RICHARD GRIMES, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING MAY 19, 2006, VICE JAYNE G. FAWCETT.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. BEN F. GAUMER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

MICHAEL U. RUMP, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

WILLIAM A. DAVIES, 0000
GARY S. TOLLERENE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

DOUGLAS W. FENSKE, 0000
MICHAEL J. KAUTZ, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

BRIAN H. MILLER, 0000
DAVID N. RIDLEY, 0000
PERRY T. TUEY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

GERALD W. CLUSEN, 0000
KAREN J. HARD, 0000
CHERYL A. LOCKE, 0000
VICTORIA E. MAZZARELLA, 0000
DANIEL L. SCHAFER, 0000
MARK A. WILSON, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

KENNETH J. BRAITHWAITE, 0000
GORDON J. DELCAMBRE JR., 0000
MARY E. HANSON, 0000
TERRI KAISH, 0000
PHILLIP B. MCGUINN, 0000
FRANK A. MERRIMAN, 0000
ANDREW H. WILSON, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

CHRISTOPHER M. BALLISTER, 0000
THOMAS BARANEK, 0000
JAMES J. BILLMAN, 0000
JEFFREY G. CANCLINI, 0000
CHRISTOPHER L. CROSS, 0000
JEANNE E. FRAZIER, 0000
CARL M. M. LEE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

JEFFREY D. ADAMSON, 0000
JOSEPH F. AHLSTROM, 0000
CHRISTOPHER S. BEGLEY, 0000
WARREN J. BRAGG, 0000
EUGENE M. DAWYDIAK, 0000
MICHAEL B. JEWELL, 0000
PAUL A. LONDYNSKY, 0000
MARCUS K. NEESON, 0000