



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, TUESDAY, JUNE 10, 2003

No. 84

Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Dr. Keith Wright, executive director of the National Center for Leadership.

PRAYER

The guest Chaplain offered the following prayer:

Gracious God, we are grateful for this day and all the possibilities it holds. Throughout this day, we determine to live with joy, gratitude, integrity, and purpose. We are elated to live in the United States of America which offers so many freedoms, opportunities, and riches. We humbly acknowledge that our many blessings are gifts of Your grace.

We affirm with the Scriptures that You are more concerned with the condition of our inner lives than our position, accomplishments, or reputations. "The Lord does not look at the things people look at. People look at the outward appearance, but the Lord looks at the heart." Help us to see life from Your perspective and to walk in Your ways. May our hearts find joy in the things that bring You joy, and be broken by the things that break Your heart.

Enable each Senator to hear Your call, instill within them the character to match their high calling. Grant them true wisdom at each decision-making moment.

May these Senators be molded by Your authority, inspire people with a sense of purpose, practice servant leadership, and model good stewardship of Your creation. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Repub-

lic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of S. 14, the Energy bill. Under the order from last night, Senator DORGAN's amendment regarding hydrogen fuel cells will be debated under a 30-minute time limit. A vote will occur in relation to that amendment at sometime this morning before the recess for the policy luncheons. The Senate will recess for the policy meetings from 12:30 to 2:15 today. Other Energy amendments will be debated during today's session, and therefore Senators can expect votes throughout the day.

Again, I will state that each day we continue to work towards a filing deadline or a list of amendments to the Energy bill. I will be consulting with the Democratic leadership to see when we might lock in a list of amendments to this bill. I am very hopeful we can do that as soon as possible. It is also our hope to reach a consent agreement to allow the Senate to consider the Burma sanctions bill introduced by the distinguished Senator from Kentucky, the majority whip. He will want to speak on this issue shortly. We will continue to press for a consent agreement on this measure.

At this juncture, I will withhold a few of the comments I want to make on an issue we will be addressing in 2 weeks on Medicare and strengthening Medicare, but at this juncture I will yield to the assistant minority leader for comments and then the Senator from Kentucky.

Mr. REID. Mr. President, responding to the majority leader, we are

hotlining later today a time tomorrow people would have to give us a list of their amendments, that we would have a finite list. As I indicated, Senator MCCONNELL and I and the two managers of the bill would immediately begin working through that to see what we can do to expedite passage of the Energy bill. We are on track to do that sometime tomorrow. We have the ranking member of the Finance Committee here today to deal with the matter about which Senator MCCONNELL is going to shortly make a unanimous consent request.

The PRESIDENT pro tempore. The Senator from Kentucky.

UNANIMOUS CONSENT REQUEST— S. 182

Mr. MCCONNELL. Mr. President, I will take very little time.

To underscore where we are on the Burma sanctions issue, I tried to get this bill cleared for this morning for an hour equally divided and a rollcall vote, but there was an objection on the other side with the suggestion that we modify the bill to have the sanctions end in 1 year. Of course, that is exactly the wrong message to send to the military junta in Burma. That is not acceptable to this side.

The Washington Post, in this morning's editorial, gets it right by saying: Senators supportive of democracy in Burma should vote for the bill without condition for expiration dates. That is the way the bill ought to pass. That is the way the bill was introduced. That is the way I hope we will be able to reach consent to take it up in the near future.

In that regard, I ask unanimous consent that the Foreign Relations Committee be discharged from further action of S. 182, the Burma sanctions legislation; that the Senate proceed to its immediate consideration; further that there be 1 hour of debate equally divided in the usual form and that no

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



Printed on recycled paper.

S7561

amendments be in order; that upon the use or yielding back of time, the bill be read the third time, and the Senate proceed to a vote in relation to the measure, with no intervening action or debate.

The PRESIDENT pro tempore. Is there objection?

Mr. BAUCUS. Mr. President, reserving the right to object, this is obviously a very important matter, and we should address this in a very careful and appropriate way. I might say to Senators, this matter has not been referred to the Senate Finance Committee. The committee has jurisdiction on it. Rather, it is coming straight to the floor with a request that there be no amendments, which I think is a little bit bizarre.

I might also point out that in other sanctions areas, for example, China, we had a long, deep, involved debate a few years ago and agreed to how we should address sanctions, particularly trade sanctions against China.

I might also inform Senators, I have been in consultation with the chairman of the Finance Committee who agrees with me that it would be inappropriate to proceed at this time, certainly in the manner suggested by the Senator from Kentucky.

I might ask the Senator if he will agree to modify his request in a way I think is much more appropriate, particularly even stronger than the resolution suggested by the Senator. And that would be for similar, as was the case with China MFN, annual extensions or annual sanctions, but that the President would suggest that the sanctions be continued and that would be the case unless there is a motion of disapproval passed by both Houses of Congress. I believe the executive branch should be part of this. This is not just a legislative branch issue. When it comes to sanctions, clearly the executive branch should play a very important role.

I might ask the Senator if he would agree to modify his request in the nature of an annual request. If the President wants to continue, he certainly could make an annual request, and that would be subject to disapproval by both Houses of Congress.

Is the Senator agreeable to make that change?

Mr. MCCONNELL. I would say to my friend from Montana, there is already a sunset provision in the bill. It occurs as soon as democracy is restored in Burma. There was a legitimate election there in 1990. Aung San Suu Kyi and her party won 80 percent of the vote. She has been under house arrest now for 14 years. The sanctions would terminate under the bill that I hope we will pass just as soon as she is allowed to take power. Such a provision is already in the bill. I am happy to continue the discussions with my friend from Montana.

The reason the Finance Committee didn't get the bill is because the Parliamentarian sent it to the Foreign Re-

lations Committee and both the chairman of the Foreign Relations Committee and the ranking member support the bill, as do the majority and minority leaders of the Senate.

I know the majority leader is waiting to speak on another issue. If I could, I will proceed to try to get this on the calendar. I understand S. 1215 is at the desk and is due for its second reading.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, I know the deepness of the feelings of the Senator from Kentucky. I want the record to reflect that this is bipartisan legislation. One of the chief cosponsors is the Senator from California. This was not an objection made on the other side; it was an objection made by the chairman and ranking member of the Finance Committee. I hope this most important issue can be resolved along the lines suggested by the ranking member and the chairman of the Finance Committee, that this resolution will be passed and that each year it would stay in effect until both Houses of Congress say it should stay in effect. I think that would be a reasonable resolution of this most important issue. I, therefore, object.

The PRESIDENT pro tempore. Objection is heard. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that Senator HARKIN be added as a cosponsor.

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

MEASURE PLACED ON CALENDAR—S. 1215

Mr. MCCONNELL. Mr. President, I understand that S. 1215 is at the desk and due for its second reading; is that correct?

The PRESIDENT pro tempore. The Senator is correct.

Mr. MCCONNELL. I ask unanimous consent that it be in order to read the title of the measure.

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

The clerk will read the title of the bill for the second time.

A bill (S. 1215) to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

Mr. MCCONNELL. I ask that the Senate proceed to the measure and object to further proceeding.

The PRESIDENT pro tempore. Objection is heard. The item will be placed on the calendar under rule XIV.

Mr. MCCONNELL. Mr. President, this measure has broad bipartisan support. It was referred to the Foreign Relations Committee, not the Finance Committee. Both the chairman of the Foreign Relations Committee and the ranking member support this measure, as do the majority and minority leaders of the Senate.

It is time to act. Aung San Suu Kyi, we hope, is still alive. There is some urgency about this. This is an unusual situation. The U.S. needs to send a message about this now and lead the rest of the world into a policy of multilateral sanctions that truly squeeze this regime. I hope we can continue our discussion and get this bill up for a vote no later than sometime today.

I thank the majority leader.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, I wish to make a few comments on Medicare and the importance of strengthening and improving Medicare. We are addressing this in the Finance Committee currently and will have it on the floor of the Senate. I want to take this opportunity first to comment on the exchange that we heard on the floor.

As my friend and distinguished colleague from Kentucky stated, both the majority leader and the minority leader are sponsors and strongly support the legislation on Burma. Burma's brutal military regime is perpetrating a wave of crackdowns, including incarcerating the Nobel Prize winner, Aung San Suu Kyi. That is why there is this sense of immediacy and why we feel very strongly that this bill should be addressed on the floor of the Senate. I am very hopeful, in spite of the reaction to the unanimous consent request we just heard on the floor, that over the course of the morning we can work out what is necessary to bring this legislation to the floor and have a vote on it today.

I do join my colleagues in supporting this and the Burmese Freedom and Democracy Act of 2003, introduced by Senator MCCONNELL and cosponsored by a bipartisan group of Senators, including Senators FEINSTEIN, MCCAIN, LEAHY, SPECTER, KENNEDY, MIKULSKI, KYL, DASCHLE, and many others who will be added over the course of the morning.

The legislation, importantly, among other things, would impose a U.S. import ban on goods manufactured in Burma and those made by what is called the State Peace and Development Council, SPDC, and companies that are owned by the SPDC. It would also freeze the assets of the regime itself that are held in the U.S. and require the U.S. to oppose and vote against loans or other assistance proposed for Burma by international financial institutions.

Why? Because the situation in Burma indeed is severe. After what apparently was an assassination attempt of Aung San Suu Kyi, who won a landslide victory in Burma's last election, authorities now hold, as we all know, this duly elected leader and numerous other activists—we don't know exactly how many—incommunicado. Reports indicate that Suu Kyi is being held in a military camp about 40 kilometers outside of Rangoon. It is believed that she does suffer from some injuries and lacerations of her face and an injured

shoulder. This is all current news. Again, there is a sense of urgency for us as a government to act and demonstrate our focus on this issue.

Meanwhile, it is reported that the military regime has raided the offices of Suu Kyi's political party, the National League for Democracy, tearing down party flags and padlocking doors all across the country. Reportedly, military intelligence agents are posted outside the offices, preventing any entry at the offices in Rangoon and Mandalay. The regime has placed numerous democracy movement leaders under house arrest, surrounding their homes and severing telephone lines. I mention this again to explain why we are attempting to bring this legislation directly to the floor.

I commend my colleagues for their efforts on behalf of the Burmese people. As the strongest and most free nation in the world, I do believe we have a profound duty to support that struggle for freedom. Again, I am hopeful that we can address it this morning and over the course of the day.

Mr. REID. Will the majority leader yield for a unanimous consent request?

Mr. FRIST. Yes.

Mr. REID. Mr. President, I ask unanimous consent that I be added as a cosponsor of this resolution on Burma with my friend from Kentucky.

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

MEDICARE

Mr. FRIST. Mr. President, let me take a few minutes to comment on what is taking place today in the release of some initial working documents on Medicare modernization by members of the Finance Committee.

Prefacing that, I will say that we have a lot of work to do over the next 3 weeks in order to address an issue that is important to every single American, and that is giving our seniors and individuals with disabilities health care security.

Today there are about 35 million seniors on Medicare and about 5 million individuals with disabilities. We are also speaking to and acting for those soon-to-be seniors in future generations.

I commend my colleagues who have done yeoman's work—Senator BAUCUS and Senator GRASSLEY—and for their commitment to advancing Medicare modernization, strengthening and moving Medicare down the field so we can deliver that health care security to our seniors. The goal is twofold: to strengthen and improve Medicare and, at the same time, provide meaningful prescription drug benefits to seniors and Americans with disabilities.

I recognize it is a huge challenge to address this very complex program but it is one that I know this body is up to, one we have been working very hard on for years, and it is one that I believe we can accomplish in the next 3 weeks in the Senate.

There were a couple of concerns raised in the last several days that I briefly want to mention. First, where are we and why act now? Why can we not wait and put this off? It is driven very much by the demographics of the aging population, where, over the next 30 years, we will have a doubling in the number of seniors; but in terms of workers actually paying into the program itself, that will be falling off continually over time. Thus, we need to take this opportunity while we are adding this prescription drug benefit to modernize the program so seniors and individuals with disabilities will continue to get good care and hopefully improve that care in this environment where we have to address the issues of solvency and sustainability.

The Finance Committee has held over 30 hearings on Medicare over the past 4 years, at least 7 devoted to prescription drug coverage alone. Last Friday, now 4 days ago, the Finance Committee had another hearing to focus very specifically on the proposal put forth by Chairman GRASSLEY and Senator BAUCUS. That was the third committee hearing this year on Medicare.

On Thursday of this week, the day after tomorrow, the Finance Committee will meet in executive session to amend and vote on the Grassley-Baucus proposal. And then the following week, on that Monday, that bill will be brought to the floor of the Senate and will be debated and likely amended in some shape or form over a 2-week period.

We are approaching this issue in a systematic way, in an orderly way, in a way that is reasonable, and in a way that is thoughtful.

Some concerns people are talking about are that Medicare denies some seniors coverage. Let me be clear, we will make sure this coverage is available to every senior everywhere. We will specifically be working to ensure access in rural areas. We will be creating public-private partnerships that will offer choice—again, it is voluntary—but will be offering choice for all seniors in every corner of America.

Secondly, many seniors want the certainty of knowing nothing is going to be taken away from them. Seniors might ask: Do I have to give up what I have now? Are you forcing me into some new system? The answer is no. This is a voluntary program. All of us will be able to look every senior in their eyes and say: You can keep exactly what you have now if that is what you want, if that is what you desire. We will be able for the first time to say there are options that include choices you may not have today in Medicare, such as preventive care, such as chronic disease management.

The fact is the current program is fragmented. It does not provide adequate coverage. I know as a physician and I strongly believe as a policymaker it does not adequately cover preventive care. It does not cover disease manage-

ment or chronic disease management. As we all know, it does not cover outpatient prescription drugs. I do believe good health depends on giving seniors good options, the opportunity to choose the plan that best meets their needs.

I have also heard about Medicare reform proposals relating to HMOs, forcing people into HMOs. This plan does not do that. Simply, this plan does not force anybody into an HMO. It is a voluntary proposal. Some HMOs have performed very well. But the better comparison, instead of looking at HMOs, is the Federal Employee Health Benefits Program. Seniors will have the option to get a plan similar to what we have as Senators, Members of the House, and other Federal employees have. I should add, this program has a longer history than Medicare. We have learned how to improve it, modify it, and make it a better program over the last 40 years.

I close by saying I believe seniors deserve the options that Federal employees have. We know Federal employees are very satisfied with the quality of care they receive. Seniors deserve this opportunity to choose. They deserve the opportunity to obtain care that is more flexible, that is less bureaucratic, and that has less paperwork.

Seniors deserve care that keeps them healthy by incorporating those preventive measures. Seniors deserve care that protects them from catastrophic out-of-pocket expenses. America's seniors should have the ability to see the doctor they choose, even if that doctor is outside the network. America's seniors deserve a system that focuses on their needs to keep them healthy and not just to respond to acute episodic illness.

Since 1965, Medicare has admirably served a generation of America's seniors. We owe tomorrow's seniors no less. That will take a response in this body to give seniors access to the care they truly deserve. I look forward to working with my colleagues to strengthen and improve Medicare over the next few weeks.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Mr. President, we have conferred with floor staff. Senator MIKULSKI is in the Chamber, and she has a statement regarding prescription drugs. I ask unanimous consent that she have an opportunity to respond to the statement of the Senator from Tennessee and that she be given 7½ minutes to do that. Following that, it is my understanding the leader is looking to vote around 11 o'clock on the Dorgan amendment and that the time after the statement by Senator MIKULSKI will basically be evenly divided. I am not asking unanimous consent. The time will basically be divided between the Senator from North Dakota and whoever opposes his amendment.

My unanimous consent request at this time is that Senator MIKULSKI be recognized for 7½ minutes as in morning business.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Maryland.

PRESCRIPTION DRUGS

Ms. MIKULSKI. I thank the Chair, and, Mr. President, I thank my colleagues for their courtesy, particularly Senator DORGAN. I am very appreciative.

Mr. President, seniors are facing a crisis, and it is caused by the high cost of prescription drugs. For so many years, Congress has talked about prescription drugs in Medicare.

Let me tell you what my seniors say: Talk, talk, talk. They are fed up with our talk, and they want us to take action. They tell me: You can't talk yourself out of high cholesterol; you need Lipitor. You can't talk your way out of diabetes; you need insulin.

The problem with the Senate, they say, is when all gets said and done, more gets said than gets done. The time for talking is over, and we need to listen to the seniors, to business, and we need to act.

I have been in communities all over Maryland, from diners to boardrooms, listening to seniors who are desperate, listening to their families who want to help their parents and listening to employers in boardrooms who really want to help their retirees but are wondering if they can afford to do so.

Here is what they tell me: Congress must do something about the prescription drug benefit, and they want us to do it now to help our seniors, our families, business, and our economy.

There are several different plans floating around, and a lot of them have wonderful new language: Medicare Choice, Medicare Advantage, et cetera. I am not sure what will happen, but what I know is, we must have a meaningful prescription drug benefit, not just slogans and sound bites, not just something out of the Heritage Foundation, not something out of a think tank, but something that enables seniors to afford the prescription drugs, which they paid for the research to develop.

I have five principles for a prescription drug benefit. These principles are the yardstick by which I am going to measure any proposal.

First, the cornerstone of any prescription drug benefit must be Medicare. It must be in Medicare. It must stay in Medicare. Medicare must be the cornerstone. I am absolutely opposed to the privatization of Medicare either overtly or covertly. Let me repeat, I am absolutely opposed to the privatization of Medicare.

Any prescription drug benefit that has a private insurance component to it must be in addition to a Medicare benefit, not in lieu of a Medicare benefit. It must keep a traditional Medi-

care component to it. Any private insurance program must be an option, and it must not be mandatory.

That goes to my second principle: voluntary. No one should be coerced or forced into a private program or forced to give up coverage if they already have it.

It must be affordable. Benefits must be affordable to business and affordable to seniors. That means a definite premium and a reasonable copayment.

It must be accessible, available to all seniors regardless of where they live, and it must be portable so they can take it with them if they visit their grandchildren in another State.

It must be meaningful and genuine. It must cover the drugs that doctors say they need, not what insurance executive gatekeepers say they are willing to give them.

Let's talk about the meaningful benefit. Congress cannot leave this up to the insurance companies.

We have been down that road in Maryland, and it was a rocky road, not only filled with potholes but with landmines. We had something called Medicare+Choice that turned out to be nothing more than a racket for seniors to be gouged and abandoned in my own State. I am not going to support any more rackets or gimmicks under the illusion of being able to help our seniors. Insurance companies came in. Seniors were going to have choice. They ended up with no choice and no coverage. The companies came in. They took the money from our seniors. Then they said, oh, it is too expensive to do this, and they left town. They left over 100,000 Maryland seniors without coverage. We are not going to go that way.

So I do not trust the insurance companies to be there for the seniors. Getting rid of Medicare by forcing them into this is not going to be the way we go. Medicare is the answer. Medicare is not the problem.

I believe honor thy mother and father is not just a good commandment to live by, it is good public policy to govern by. That is why I feel so strongly about Medicare. Congress created Medicare to provide a safety net for seniors. In 1965, seniors' biggest fear was the cost of hospital care. One heart attack could put a family into bankruptcy. That is what Medicare Part A is all about. Then Congress added Medicare Part B to help seniors pay for doctor visits, an important step to keep seniors healthy and financially secure.

New advances in medicine mean seniors are living longer. New treatments and therapies such as prescription drugs prolong life and maintain quality of life. These costs were not envisioned in 1965.

So as we look at this problem, we need to know that Medicare has served the Nation well. Now we know it is time to expand it to a prescription drug benefit. We have covered hospitalization. We have covered doctor visits. Yet because of the advances in medical science in this country, pre-

scription drugs and medical devices save lives and help manage chronic conditions such as high blood pressure and diabetes. This is what we need to be focusing on. Let's focus on the American people for a change and not on the so-called hollow opportunities of structural reform. It is a problem for middle class families. Families worry about their jobs and the weak economy. They do not know how they are going to take care of their children and their elderly parents.

American businesses are wondering about things such as legacy costs, and small business is wondering how they can afford health insurance as well. A lot of companies want to do the right thing for their employees and retirees. They want to offer comprehensive health care benefits, but they are struggling under the cost. That is why I fought for tax incentives for small businesses to provide health coverage for their employees. But those who supported the tax bill care more about special breaks for Joe Billionaire than about basic health care for families.

Our businesses do not get any help, but their competitors sure do. The playing field is not level. When competitors in other countries do not have to pay for prescription drug coverage because they have a national health care system, in my own State of Maryland this means people are losing jobs in the automobile industry and the steel industry. That is why I fought for tax incentives for small businesses to provide health coverage for their employees, but those who supported the tax bill care more about special breaks for Joe Billionaire than about basic health care for families.

We have to get real, and the first place we have to get real is to have a real prescription drug benefit. The Nation cannot afford to do nothing. Prescription drugs are lifelines to millions of Americans. They enable seniors to prevent and manage disease. Without access to medication, seniors are going to end up with trips to the hospital, longer hospital stays, more visits to emergency rooms.

All the great research done at NIH is meaningless if people cannot afford the cures. It is time to make prescription drug coverage a national priority so we can help our seniors, families, American business, and our economy.

When we stand up for America, we stand up for what America stands for, which is a safety net for our seniors and really helping our families be able to help themselves.

By passing a real prescription drug benefit, Congress will deliver real security to America's seniors. Retirement security means more pension security. Seniors need healthcare security to be at ease in their retirements. In today's world, we cannot have healthcare security without prescription drug coverage. Congress must keep this promise to America's seniors.

I now yield the floor, but if they come in with some more gimmicks, I will not yield the floor in this debate.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Under the previous order, the leadership time is reserved.

ENERGY POLICY ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 14, which the clerk will report.

The legislative clerk read as follows:

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

Pending:

Campbell/Domenici amendment No. 864, to replace "tribal consortia" with "tribal energy resource development organizations".

Dorgan amendment No. 865, to require that the hydrogen commercialization plan of the Department of Energy include a description of activities to support certain hydrogen technology deployment goals.

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes equally divided for debate in relationship to the Dorgan amendment No. 865.

The Senator from North Dakota.

AMENDMENT NO. 865

Mr. DORGAN. Mr. President, the amendment I have offered is an amendment we will vote on this morning. I was disappointed yesterday to discover that there was opposition to the amendment. This is an amendment that passed without opposition in the last Congress. So surprisingly now I am discovering that some have changed their mind.

I will describe why, if this Congress has any gumption at all to decide that we ought to change course and move in a new direction and be bold and big when we think about our energy future, they will support this amendment.

President Bush said the following about our dependence on foreign oil in his State of the Union Address: America's energy security is threatened by our dependence on foreign oil. He said: We import 55 percent of the oil we consume. That is expected to grow to 68 percent by 2025. Nearly all of our cars and trucks run on gasoline. They are the main reason America imports so much oil—that, from President Bush—two-thirds of the 20 million barrels of oil we use each day for transportation.

Fuel cell vehicles offer the best hope of reducing our dependence on foreign oil. The President said that because he was proposing a new direction for America's energy supply: Hydrogen and fuel cells.

Following his State of the Union Address in which he proposed that, he had a gathering at the Building Museum in Washington, DC. He invited all of the industry leaders throughout the country to come. He gave a great speech. I was there with my colleague Senator DOMENICI. We were invited to be a part of it. He talked again about striking out in this new direction and talked

about developing hydrogen and fuel cells as part of our future. That made sense to me.

I have spoken often of the first old car I had when I was a young kid. I bought a Model T Ford and restored it as an old antique. The way you gas up this 1924 Model T Ford is you pull up to a pump, stick a hose in the tank, and pump it full of gas. And what do you do with a 2003 Ford? Exactly the same thing. Nothing has changed in almost a century. We are still running gasoline through those carburetors.

What the President says—and I agree with him—is let's decide to change that and reduce our dependence on foreign oil because that is where the growth in energy use is coming; that is, on America's roads and America's vehicles. Do we want to be at a point where we have over one-half of our oil coming from off our shores, much of it from very troubled parts of the world? Do we want to be at the point where we have 68 percent of it coming from other parts of the world, where if, God forbid, some morning we woke up and discovered terrorists had interrupted the supply of oil and this American economy would be flat on its back? Is that how what we want to be held hostage? I do not think so.

So the President says let's strike out in a new direction. He proposed \$1.2 billion on a hydrogen program. It is exactly the right thing to do. I commend him for it. But \$1.2 billion is timid; it is not enough. Nonetheless, it is moving in the right direction, and for this American President to put his administration on the line to move in that direction is not insignificant at all; it is very significant.

I have pushed and pushed, and now this Energy bill has almost tripled the amount the President recommended for a new hydrogen-based economy and fuel cell future.

I proposed \$6.5 billion over 5 years, an Apollo-type program. President Kennedy said: Let's put a man on the Moon by the end of the decade. He set a goal. And we did. I said: Let's have an Apollo program, decide we are going to move toward a hydrogen fuel cell future for our vehicles.

Do my colleagues know that a vehicle is twice as efficient using a fuel cell as it is using gasoline through a carburetor? It is double the efficiency getting power to the wheel. And what do you get out the back end of a vehicle that uses hydrogen in a fuel cell? Water vapor. You are not driving around town belching black smoke. You get water vapor. It is good for the environment, good for this country's energy security, and good for this country's economy. The fact is, this is moving in exactly the right direction. So I commend President Bush.

We also made progress in the Energy Committee, saying let's increase that which the President recommended, but it is still short of where we ought to be, No. 1. No. 2, it does not include targets and timetables. I do not suggest they

be mandatory, but I do say this: Let's decide where we are headed, and when we give the Department of Energy and others \$3 billion plus, let's say here is where we would like to go, here is our destination, here is our map. I say let's aspire to have 100,000 vehicles on the road in the year 2010 that are hydrogen-powered fuel cell vehicles and 2½ million vehicles by 2020.

My colleague yesterday said, well, we think maybe it is a mandate. I said, no, it is not a mandate at all. Just ask the Department of Energy to develop a strategy that says here is what we would like to do. We cannot force that to happen, but at least a goal is established.

Japan has goals and strategies with respect to hydrogen and fuel cells. They are moving very quickly. Europe is moving very quickly. Japan wants 50,000 by 2010 and 5 million vehicles by 2020. General Motors has a goal of having 1 million vehicles by 2010—Ford, Nissan, DaimlerChrysler. The fact is, the industry is moving very quickly as well.

I just do not happen to think we ought to throw a bunch of money at Energy and say: Do what you can with it and report back. I guarantee, if \$3 billion or \$3.5 billion is put into a bureaucratic envelope and sent down to an agency and they are told to report to us when they have half a notion and tell us what they have done, we are not going to make much progress.

What I believe this Congress ought to do is say: Here is what we aspire to achieve. This is a big, bold plan, and we want to make progress. We would like by the year 2010 on the streets in this country 100,000 automobiles that are powered by hydrogen and use fuel cells. We would like 2½ million by the year 2020.

Why do I say we need some targets and timetables? Because this is not easy to do. This is not something that one company can do or one industry can do. This requires a combination of private sector investment and initiative, and it requires public policy that accommodates this conversion.

First of all, we have to deal in a whole range of areas. How do you produce hydrogen? Hydrogen is everywhere. It comes from everything. It can come from natural gas, from coal, you can take hydrogen from water. You can use a wind turbine and produce electricity from the air and use that electricity to separate oxygen and hydrogen in water, store the hydrogen, use it in a fuel cell, and double the efficiency of how you power an automobile and have water vapor coming out of the tail pipe of the automobile. How wonderful this country's future. But it will not happen unless the Congress and the President decide we are going to move to a different future.

The first antique car I bought and restored when I was a kid was 75 years old. I put gas in it the same way I put gas in a car today. It is never going to

change unless in public policy we accommodate the private sector's investment and the initiative that comes from both the private sector and public policy, to say here is where our country aspires to be. Here is where we want our country to move with respect to an energy bill.

There is a lot to this Energy Bill. Any energy bill worth anything, in my judgment, has to incentivize additional production. It has to provide for significant amounts of conservation because we are wasting a great deal of energy. It has to provide for new efficiencies with respect to all the appliances we use. Most importantly, in my judgment, the fourth title of an energy bill has to be limitless renewable sources of energy. Yes, that is ethanol, which we debated last week; it is biodiesel; but most importantly, it is trying to move toward a new energy future with respect to our vehicle fleet. That is hydrogen and fuel cells.

I am not talking during this conversation about stationary engines, although that is another application for fuel cells, and we have fuel cells that are deployed and being used in this country. We also have fuel cells and vehicles using hydrogen. I have driven one. We have had a fuel cell vehicle drive from California to New York. It is not as if this technology does not exist. It does. Like all other new technologies, it is originally very expensive. As the research and development into the new models and prototypes are done, it is very expensive. But those costs come down, down, way down, as our country embraces the notion that we want a different future for our vehicle fleet; we want a hydrogen fuel cell future that relieves this country of being held hostage by sources of oil that come from out of our country.

If we just think for a moment about that, this American economy is the strongest economic engine in the entire world by far. There is nothing close to it. Yet some catastrophic event could happen that could shut off this supply of oil to this country because over half of it comes from outside of our shores. Something could happen to shut off the supply and this economy would grind to a halt. It would be flat on its back. And everybody knows it. When it happens, if it happens, and God forbid it happens, but if it happens everyone will say, We told you so. That is why this President wants to move to a different path, go to a different place, to embrace hydrogen and fuel cells, and has stated so in a State of the Union Address. He is dead right. We have to do that.

I don't understand why establishing an aspired-to target and timetables engenders opposition. A year and a half ago when I offered this amendment it was accepted by voice vote. I have no idea why all of a sudden some people say, this is radical. What a bunch of nonsense. Radical? Yesterday, I was told, what we are talking about are wild guesses: 100,000 vehicles by 2010, 2.5

million by 2020. Do you think General Motors has an aspiration of putting 1 million cars on the road by producing 1 million fuel cell cars by 2010? Do you think they go to the board of directors and say, We have a wild guess to talk to you about. These are not wild guesses. This is public policy, from our standpoint, of stating our goals.

I find it fascinating; although this is not a mandate at all, it is trying to establish some benchmarks. Instead of just giving money to bureaucrats or a Federal agency and saying report back when you get half a notion and let us know how you are doing—the report will show not much is going on. Instead of mandates, I put some targets in and say, aspire to achieve these. We ask the Department of Energy to give us a strategy on how they will achieve these.

Some who would not want to put this kind of a strategy or this sort of a target in law will come to the Senate and say, on national missile defense, we are going to spend \$9 billion this year on national missile defense and we demand you deploy a system. It does not matter whether it is not ready or whether the technology does not exist, and it does not matter if you cannot hit a bullet with another speeding bullet; we demand you deploy that system by 2004. So the mandated targets are fine with respect to a national missile defense system for which you want to spend \$9 billion.

All of a sudden, when the President says, do a hydrogen fuel cell initiative for America's energy security and you put in a rather weak, in my judgment, set of targets, just so you have targets rather than no targets and timetables, they say, gosh, what on Earth are you doing here? Why would you suggest that?

I suggest this, because I think if we are going to spend money, we ought to spend it effectively. If you are going to go on a journey, you might want to get a map. If you want to take a trip to go to a different kind of energy future, you might want to have a spot in mind about your different nation. Those who want to take the taxpayers' money and throw it at a problem and send it to an agency and say, do the best you can, I say, God bless you, but I will show you how not to make progress. Just do that, keep doing that, and you will never, ever, make progress.

If we want a different energy future, then we have to be driving the train. We have to decide this is what we aspire to achieve; these are the goals we set for our country. If you do not want to set goals, do not tell me you support an energy future different from today. Don't tell me you want to withdraw and disconnect from 55 percent dependence on foreign energy—55 percent going to 68 percent. This is a habit that is destructive to this country. It is destructive to our future, and it is destructive to our security. It is a habit we must end. This President has supported an approach to do that.

I have worked on hydrogen for some while, as have others in the Congress, Republicans and Democrats. But working on hydrogen and fuel cells to try to move to a different energy future, while a worthwhile enterprise, is not going to move us down the road unless this Congress decides to be bold and decides to have big dreams and big goals. The fact is, we try to incrementalize everything. We talk big and think little. If we want to do something, this amendment should be attached to this Energy Bill. As I said before, this amendment was accepted by voice vote 2 years ago. I don't have the foggiest understanding of why someone would oppose this. It is not a mandate. It is not a wild guess. It is not radical. In fact, in many ways it is the most conservative of approaches to say, let's not spend money unless we know what we are going to do with it, unless we have a strategy, unless we aspire to achieve certain goals good for this country and that fit with what the President intends to have happen with respect to a hydrogen and fuel cell future.

I ask unanimous consent Senator FEINSTEIN be added as a cosponsor to my amendment No. 865 to Senate Bill S. 14.

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

Mr. DORGAN. Mr. President, I understand my time has expired.

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. I ask unanimous consent for 5 additional minutes and the other side will be added 5 additional minutes to the closing side.

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

Mr. DORGAN. Mr. President, let me show a couple of photographs that might be helpful for people to understand what this issue is about. This is a DaimlerChrysler fuel cell bus introduced in Germany in 1997 that runs on fuel cells. I rode on a fuel cell bus in California. For anyone who thinks this technology does not exist, it does. We have fuel cells. We use hydrogen.

Let me give another example of what is happening in the private sector: The Ford Focus fuel cell vehicle, 2002.

This is a Nissan Xterra, fueled by compressed hydrogen that was tested on a California road beginning in 2001.

This General Motors Hy-Wire fuel cell concept car was unveiled in August of 2002.

Let me make a point about all of this. You can't convert a vehicle fleet in this country from a fleet that pulls up to the gas pump and you take the cap off and you stick a hose in and pump away—you can't convert a vehicle fleet from a gasoline-powered vehicle fleet to a hydrogen-powered fleet without substantial public policy initiatives that complement where the private sector wants to go. One cannot do it without the other.

That is why, even as all these companies are working very hard on these

issues, they need public sector and public policy support. This is a picture of a hydrogen fueling station at Power TechLabs. So if you had a car with a fuel cell that uses hydrogen, where would you go to fuel that car? Where would you go to power it? Where would you find a supply of hydrogen? So you have a whole series of questions.

As I mentioned earlier, you have to develop the question of how do you produce hydrogen in large quantities. It is not terribly difficult. You can produce it in many ways, but what would be the predominant method of production? How do you store it? Where do you store it? How do you transport it? All of those are important issues that the private sector and public policy will answer, in my judgment.

Then, what kind of infrastructure can develop and how do you incentivize its development so those who are purchasing the new fuel cell vehicles powered by hydrogen have a place to come where they can fuel those vehicles?

We have plans for many areas of public policy, whether it is Social Security or Medicare—a whole series of issues. We have all these studies and plans of where we aspire to be and what we aspire to do. The goals in this amendment, while not mandates, are very simple. In my judgment they are reasonable goals and ones that ought not frighten anyone in this Chamber into believing they are mandates.

We know California's Clean Air Act requirements will ensure there will be many fuel cell vehicles on the road in California in the future. By this year, 2003, 2 percent of California's vehicles have to be zero emission vehicles, and around 10 percent must be zero emission by 2018. California will have nearly 40,000 to 50,000 fuel cell vehicles on the road by the end of the next decade.

One of the other considerations in public policy is Federal fleet purchase. We can be the first purchaser of these technologies and put thousands, tens of thousands of vehicles on the road through the Federal fleet purchase. Those are the kinds of activities I think can make a big difference.

Let me finish as I started. I am very disappointed. I hope perhaps a good night's sleep will have persuaded those who came yesterday, who were a little cranky about this amendment and wanted to see if they shouldn't maybe oppose this amendment—I am hoping maybe a good night's sleep would have provided some sort of epiphany to those who would have otherwise opposed it and they will decide that they should support what the Senate unanimously supported 2 years ago. This is not anything other than a step in exactly the right direction.

If you want to be big, you want to be bold, you want to agree with President Bush that we ought to move to a new energy future, if you want to do all that and believe hydrogen and fuel cells, as the President says, are the future—and I do—if you believe all that, then let's do this the right way: Set

timetables and targets and goals. If you want to spend money, then let's make those who are going to receive the money give us the strategies that relate to where we want our country to move. Or do we just want to throw money in the air and sort of mill around and thumb our suspenders and smoke our cigars and say we did a great job; we spent \$3 billion on hydrogen, and boy, we hope something comes of that. That is not the way you do business. The way you do business is you have a plan. You decide where you want to go for the future of this country and what you want to do and how you want to achieve it. That is what this amendment does. It just sets out those goals. I am hoping when we have this vote it will have a very sizable victory here in the Senate later this morning.

Mr. President, I yield the floor, and I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that the pending amendment be set aside and the Senator from Louisiana be allowed to offer her amendment.

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

The Senator from Louisiana.

AMENDMENT NO. 871

Ms. LANDRIEU. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] for herself, Mr. SPECTER, Mr. BINGAMAN, and Ms. COLLINS, proposes an amendment numbered 871.

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

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

The amendment is as follows:

(Purpose: To reduce the dependence of the United States on imported petroleum)

On page 238, between lines 2 and 3, insert the following:

Subtitle E—Measures to Conserve Petroleum **SEC. —. REDUCTION OF DEPENDENCE ON IMPORTED PETROLEUM.**

(a) REPORT.—

(1) IN GENERAL.—Not later than February 1, 2004, and annually thereafter, the President shall submit to Congress a report, based on the most recent edition of the Annual Energy Outlook published by the Energy Information Administration, assessing the progress made by the United States toward the goal of reducing dependence on imported petroleum sources by 2013.

(2) CONTENTS.—The report under subsection (a) shall—

(A) include a description of the implementation, during the previous fiscal year, of

provisions under this Act relating to domestic crude petroleum production;

(B) assess the effectiveness of those provisions in meeting the goal described in paragraph (1); and

(C) describe the progress in developing and implementing measures under subsection (b).

(b) MEASURES TO REDUCE IMPORT DEPENDENCE THROUGH INCREASED DOMESTIC PETROLEUM CONSERVATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President shall develop and implement measures to conserve petroleum in end-uses throughout the economy of the United States sufficient to reduce total demand for petroleum in the United States by 1,000,000 barrels per day from the amount projected for calendar year 2013 in the reference case contained in the report of the Energy Information Administration entitled "Annual Energy Outlook 2003".

(2) CONTENTS.—The measures under paragraph (1) shall be designed to ensure continued reliable and affordable energy for consumers.

(3) IMPLEMENTATION.—The measures under paragraph (1) shall be implemented under existing authorities of appropriate Federal executive agencies identified by the President.

Ms. LANDRIEU. Mr. President, we are today continuing a very important debate on fashioning an energy policy for our Nation. We will be voting on many key amendments as we attempt to move this very important bill off the Senate floor, to conference with the House, and to the President's desk for signature.

It is crucial that we increase domestic production of oil and gas.

It is crucial that we invest more money in research and technologies for alternate fuels that are more environmentally friendly. It is crucial that we reduce our consumption, particularly of oil, as well as have a revitalization, in my opinion, in the appropriate ways, of our nuclear industry—they are all important aspects of this bill—as well as have the deregulation components of electricity and the expanding of the electric grid, in the appropriate ways, which is quite difficult because there are regions of the country that come at that issue from a variety of different standpoints, and it has been very difficult to negotiate those particular aspects of the bill.

But I compliment the chairman from New Mexico and our ranking member from New Mexico who have worked beautifully together trying to fashion a bill that is balanced and is actually possible to pass and not get logjammed in ideological battles; it is something that will help our country move toward more energy efficiency and security; increasing our national security and improving efficiency in our economy, hopefully putting people to work in developing these new technologies. So I commend them for their patience and persistence and their guidance.

I believe the amendment I offer today will go a long way to minimizing the consumption of oil in this country. We are a nation that has only 3 percent of the world's known oil reserves. Yet we consume more oil than any country per capita or in any way you might

want to arrive at that conclusion. It is simply essential that we reduce our consumption of oil.

You might say to me, Mr. President: That is strange, Senator, since you are from a State that produces oil. We are a proud producer, as you know, of oil and gas. We believe we contribute to the wealth and security of this Nation. We believe and know that these oil and gas wells have brought jobs and wealth and opportunity and prosperity to our State. Yes, it has come at some environmental cost, particularly 40 and 50 years ago, where the science was not where it is today, the technology was not where it is today, the safety measures were not where they are today. We made mistakes, but we are quickly learning from our experience, as any smart individual or enterprise does. We are now engaged in new technologies that minimize the footprint. We are engaged in making tremendous improvements in environmental restoration projects.

So I hope people will not think it is strange that a Senator from Louisiana would be offering what I consider a very reasonable amendment to reduce oil consumption in this Nation because even our oil and gas producers themselves are willing, and know, in the long run it is in everyone's interests, including theirs, to diversify our source of supply, to minimize our consumption and our dependence on foreign oil by improving and increasing domestic production of oil and gas, which is a centerpiece of this bill which I am proud to support.

So, therefore, I offer this amendment which will save, if adopted—and I am pleased to offer this amendment with the Senator from Pennsylvania, Mr. SPECTER, as the lead cosponsor; Senator LAMAR ALEXANDER, from the great State of Tennessee; as well as Senator COLLINS from Maine—so we offer this as a bipartisan amendment to save the taxpayers and the businesses and the consumers in this Nation 1 million barrels of oil a day. That is the essence of this amendment.

Before I explain the details of the amendment, let me just talk a moment about the importance of reducing our dependence on fossil fuels. As I said, we need to develop alternative fuel sources. One of the reasons is because oil provides nearly 40 percent of U.S. energy consumption. Sixty percent of the oil we consume today is imported, and that number is set to rise. Unless this amendment and others like it are adopted, that trend will continue to go up, putting at risk our national security and putting at risk our international economic competitiveness.

Because oil is truly an international commodity, and the United States is the world's largest consumer of oil, it is particularly vulnerable to any event that would affect supply and demand. As I said earlier, our daily consumption of oil is almost four times the next two largest oil consumers, Japan and China. Let me repeat: Our daily con-

sumption of oil is four times the next two largest oil consumers, Japan and China.

The price of oil in our country is at the mercy of world events, and not just in the Middle East, which we see played out on television every day, but in Venezuela, which might be off the front pages but, believe me, it is not off the front pages of the business journals in this country where they see their prices and their businesses jeopardized because of the turmoil in Venezuela and Nigeria.

We owe it to ourselves to try to minimize the volatility of oil prices. We do that in two ways: increasing domestic production, which obviously Louisiana would support; and also by reducing our consumption, which people in Louisiana—average families, businesses large and small—all would agree to.

I continue to advocate for responsible and robust domestic oil production, as I said, but we need to do more to reduce consumption. Oil is a critical component of nearly everything that affects our daily lives: from transportation, to food production, to heating. And rising oil prices actually act like a tax by foreign oil exporters on the average American. We have spent a great deal of time trying to reduce taxes on the floor of the Senate. We have done that sometimes in a bipartisan way. Sometimes the majority has pushed through tax relief. We can debate that issue at another time. But there is no disagreement that when we can reduce taxes in a responsible manner, we most certainly should do so.

This amendment, which asks the President to reduce the consumption of oil in this Nation by 1 million barrels a day—we are consuming about 19 million barrels a day, so this would require and basically meet his goals, as outlined in his State of the Union speech—gives him broad latitude as to how to do that. It would be like a tax reduction because currently middle-class families pay about 5 percent of aftertax income for energy needs. As the price of oil increases, family aftertax income continues to decline.

When businesses pay higher taxes, pay for higher oil prices and disruptions in oil supply, this increases inflation and reduces profits, production, investment, and employment. Let me repeat: It increases inflation, reduces profits, reduces production, reduces investment, and reduces employment. We need to be increasing production, investment, and employment. My amendment will help us to do just that.

Consumers are spending \$50 billion more in annual energy bills than a year ago. If we could reduce our consumption by the amount that our amendment suggests, we would begin to save consumers money they could spend on other most needed and necessary things for themselves, their children, their grandchildren, or their businesses.

The amendment I offer today, as I said, would direct the President to de-

velop and implement a plan to reduce oil consumption by 1 million barrels a day by the year 2013.

I show you a chart I have in the Chamber because this amendment would actually put into law—I am hoping we can get a broad bipartisan vote on this amendment—it would actually put into law the words the President himself spoke in his State of the Union speech when he said U.S. oil consumption would be about 1.8 million barrels per day lower in 2020.

So what my amendment says is, instead of saying there would be a 1.8 million reduction by 2020, let's try to shoot for a 1-million-barrel-per-day reduction by 2013, which is just about the equivalent—a little different goal but you could argue an equivalent goal. The benefit and beauty of this amendment is that it does not tie the President's hands, but it gives him great flexibility in how to achieve the goal he has outlined.

There are any number of reasonable and simple measures the President could adopt that would help us to consume a less significant amount of oil and reduce taxes on the American people, increase our national security, improve our environment, and create jobs. It almost sounds too good to be true, but it is true.

We are not mandating a specific approach, which is the beauty of it, because the approach some have argued for I have actually disagreed with and want to give the President great flexibility but hold to this important goal.

There are any number of ways we could do that. The President could consider renewable fuels standards. A different approach could save 175,000 barrels of oil per day by 2013. Weatherizing of homes under credit enhancements or encouragement or new techniques that some local and State governments have found very helpful could save 80,000 barrels per day. Air traffic improvements, just simple improvements in the way and timing of our airplanes taking off and landing, which can be increased effectively by additional technologies, could save 50,000 barrels of oil per day. As to reducing truck idling, there are several new technologies being developed, employing scientists and engineers and putting Americans to work developing these new kinds of technologies which make the engines more efficient. They don't have to idle or, at the idling stage, don't use as much oil. That could save 50,000 barrels of oil a day. Just replacing tires, using our tires and keeping them filled with air as opposed to flat, new technology regarding the tires could save money.

The point of this list—and I could go on because I could speak about 30, 40, or 50 known actions that could be taken by the President in this realm without dictating exactly how the savings would occur—is to illustrate the plethora of choices where he could go to achieve these savings.

The amendment I offer today with Senators ALEXANDER, BINGAMAN, SPENCER, and COLLINS is a clear and reasonable objective for oil savings. It will reduce our dependence on oil.

Let me show a couple of examples of the way the President could achieve these goals, some of which we have already passed on the Senate floor. Ethanol is now a part of this bill. There were some Members who disagreed with the ethanol fuels standard. I actually supported, along with Senator DASCHLE, Republicans and Democrats, that new standard. This will save oil consumption in the country. The President would have that option. In addition, I talked about the tire savings, replacement tires with the appropriate rules and regulations could save us 270,000 barrels of oil. And finally, the idling engines, this is a visual to show that with some new technologies to keep our airplanes flying and spending less time on the ground and more time in the air, which passengers would appreciate—believe me, as a frequent flier myself, if we could just keep our airplanes flying and keep them from idling; there are new technologies helping to do this—we could save oil.

In the past, we have focused the debate on just one way of saving oil which was directed at our transportation sector. My amendment does not direct these savings at the transportation sector, although I acknowledge that the transportation sector is the largest user of oil. This amendment provides flexibility. It sets a realistic goal that matches the President's, basically the equivalent of the President's own goals. And I think it would create, if adopted, a tremendous balance in the bill because again we have increased opportunities for production. We have given incentives for more domestic production. But that has to be coupled with Senator BINGAMAN's leadership on energy efficiency and savings to reduce our consumption of oil as we promote in the appropriate ways over the appropriate timeframe the use of other alternative sources of energy.

I offer the amendment in good faith. There will be Members who will speak hopefully for the amendment. Hopefully we can pass it by a good margin to show we are indeed serious about a balanced energy policy which promotes in the right ways domestic production but also oil savings.

I will ask unanimous consent to print in the RECORD a Business Week article that had a great impact with me as I read it, "Taming the Oil Beast." It is time, since the business community realizes we can and should get smart about oil, that we do so. I think this is a very good amendment about getting smart about oil because it sets a goal of reduction, but it gives the President and his departments flexibility as to how this would work.

I would like to submit that for the RECORD because it would serve as a basis for the offering of the amendment today.

I would also like to reference an article by the Concerned Scientists Association, over 2,000 scientists who have written a paper, very illustrative, encouraging action on this subject. I say that because some of our brightest minds, some of the best scientists in the country are thinking along these lines and fully support this amendment to save 1 million barrels of oil. Perhaps we can save more. I would actually be open to saving more. If someone wants to offer an additional amendment, I would consider voting for it. But I am certain this is something we can accomplish. The President himself outlined this as a goal. The President's own budget that he laid down cited as a goal the equivalent, basic goal of what I am offering.

We have voted any number of times in the Senate and have come very close to reaching this goal. So while some may argue that we should try to save more, I think this is an amendment that can pass, that can get us moving in the right direction. I submit both of these from a business perspective, from an environmental perspective for the RECORD, to substantiate the value of the amendment.

I see my colleague from Tennessee on the floor who has probably come to add his good words as a cosponsor of the amendment.

I ask unanimous consent to print the document I referenced.

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

[From BusinessWeek, Feb. 24, 2003]

TAMING THE OIL BEAST

A SENSIBLE, STEP-BY-STEP ENERGY POLICY IS WITHIN OUR REACH—HERE'S WHAT TO DO

American troops are massing outside of Iraq, preparing to strike against Saddam Hussein. And as war jitters rattle the world, there's one inevitable effect: a rise in the price of oil. Crude is up more than 33 percent over the past three months, climbing to \$35 per barrel in the U.S. Economic models predict that if the price stays high for three months, it will cut U.S. gross domestic product by \$50 billion for the quarter. If the war goes badly, with Saddam destroying oil fields in Iraq and elsewhere, or if disaster or unrest chokes off oil flowing from other countries, the whole world's economy is in for a major shock.

There's no escaping the consequences of our thirst for oil. It fuels a vast engine of commerce, carrying our goods around the nation, taking mom and dad to work, and carting the kids to soccer practice. As long as the U.S. imports more than 11 million barrels a day—55 percent of our total consumption—anything from a strike in Venezuela to unrest in the Persian Gulf hits us hard in the pocketbook. "We are vulnerable to any event, anyplace, that affects the supply and demand of oil," says Robert E. Ebel, director of the energy program at the Center for Strategic & International Studies (CSIS). In a Feb. 6. speech, President Bush put it bluntly: "It jeopardizes our national security to be dependent on sources of energy from countries that don't care for America, what we stand for, what we love."

It wasn't supposed to be this way. Remember how Richard Nixon insisted in 1973 that the nation's future "will depend on maintaining and achieving self-sufficiency in en-

ergy"? Or how Jimmy Carter proclaimed in 1979 that "beginning this moment, this nation will never again use more foreign oil than we did in 1977—never." Even Ronald Reagan said in 1982 that "we will ensure that our people and our economy are never again held hostage by the whim of any country or cartel."

How empty those vows seem now, when one nation, Saudi Arabia, is sitting on the world's largest proved reserves—265 billion barrels, or 25 percent of the known supplies—and can send global prices soaring or falling simply by opening or closing the spigot. For now, the Saudis are our friends. They are boosting production to keep prices from spiking too high. But what if Saudi Arabia's internal politics change? "The entire world economy is built on a bet of how long the House of Saud can continue," says Philip E. Clapp, president of the National Environmental Trust.

The good news is that we can make a safer bet. And it doesn't entail a vain rush for energy independence or emancipation from Middle East oil. Based on interviews with dozens of economists, oil analysts, environmentalists, and other energy experts, BusinessWeek has crafted guidelines for a sensible and achievable energy policy. These measures build on the positive trends of the past. If implemented, they would reduce the world's vulnerability to wars in the Middle East, production snafus in Russia, turmoil around the Caspian Sea, and other potential disruptions. The plan has the added benefit of tackling global warming, which many scientists consider the greatest economic threat of this century.

The energy policy BusinessWeek advocates comes down to six essential steps. To deal with oil supplies, the U.S. should diversify purchases around the world and make better use of strategic petroleum reserves. It must also boost energy efficiency across the economy, including making dramatic improvements in the fuel efficiency of cars and trucks. How do we accomplish this? Nurture new technologies and alternative energy sources with research dollars and tax incentives, and consider higher taxes on energy to more accurately reflect the true costs of using fossil fuels. Projecting the precise effects of these policies is impossible, economists warn. But BusinessWeek estimates that, at a cost of \$120 billion to \$200 billion over 10 years—less than the cost to the economy of a major prolonged oil price rise—it should be possible to raise energy efficiency in the economy by up to 50 percent and reduce U.S. oil consumption by more than 3 million barrels a day.

These steps draw on the lessons of history and help highlight what not to do. Meaningful progress has long been held up by myths and misconceptions—and by the scores of bad ideas pushed in the name of energy independence. Remember "synfuels" in the 1970s? Today's misguided notions include trying to turn perfectly good corn into ethanol and rushing to drill in the Arctic National Wildlife refuge. Indeed, looking over the past couple of decades, "my reaction is, thank God we didn't have an energy policy," says David G. Victor, director of Stanford University's Program on Energy Sustainable Development. "The last one had quotas and rationing, causing lines at the gas pumps and incredible inefficiencies in the economy."

One false notion is that making the U.S. self-sufficient—or doing without Middle Eastern oil—would protect us from supply cutoffs and price spikes. In fact, oil has become a fungible world commodity. Even if we cut the umbilical cord with the Persian Gulf by buying more oil from Canada, Mexico, or Russia, or by producing more at home, other nations will simply switch over

to buy the Middle eastern oil we're shunning. The world oil price, and the potential for spikes in that price, remains the same. As long as there are no real oil monopolies, it doesn't matter so much where we get oil. What really matters is how much we use. Reducing oil use brings two huge benefits: Individual countries have less leverage over us, and, since oil costs are a smaller percentage of the economy, any price shocks that do occur have a less dramatic effect.

Yet reducing oil use has to be done judiciously. A drastic or abrupt drop in demand could even be counterproductive. Why? Because even a very small change in capacity or demand "can bring big swings in price," explains Rajeev Dhawan, director of the Economic Forecasting Center at Georgia State University's Robinson College of business. For instance, the slowdown in Asia in the mid-1990s reduced demand only by about 1.5 million barrels a day, but it caused oil prices to plunge to near \$10 a barrel. So today, if the U.S. succeeded in abruptly curbing demand for oil, prices would plummet. Higher-cost producers such as Russia and the U.S. would either have to sell oil at a big loss or stand on the sidelines. The effect would be to concentrate power—you guessed it—in the hands of Middle Eastern nations, the lowest-cost producers and holders of two-thirds of the known oil reserves. That's why flawed energy policies, such as trying to override market forces by rushing to expand supplies or mandating big fuel efficiency gains, could do harm.

The truth is, the post-1970s de facto policy of just letting the markets work hasn't been all bad. Painful oil shocks brought recessions. But they also touched off a remarkable increase in the energy efficiency of the U.S. economy. From the 1930s to the 1970s, America produced about \$750 worth of output per barrel of oil. That number doubled, to \$1,500, by the end of the 1980s. But the progress largely stopped in the past decade. Now we need policies to continue those fuel-efficiency gains, without the pain of sudden oil shocks.

The critical balancing act is reducing oil use without hurting the economy—or without allowing energy prices to fall so low that companies and individuals abandon all efforts to conserve. Successfully walking this tightrope can bring big gains. The next time we are hit with a spike in the price of oil, or even of natural gas or electricity, we may be able to avoid the billions in lost GDP that would otherwise result. Here are the details:

1. Diversify Oil Supplies

The answer to the supply question is a delicate combination of technology, market forces, and diplomacy. New tools for drilling in waters nearly two miles deep, for instance, are opening up untapped sources in the Atlantic Basin, Canada, the Caribbean, Brazil, and the entire western coast of Africa.

That's helping to tip the balance of power among oil producers. In 1973, the Middle East produced nearly 38 percent of the world's oil. Now, that percentage has dropped below 30 percent. "Our policy has been to encourage oil companies to search for oil outside the U.S. but away from the Persian Gulf," explains CSIS's Ebel. "It's been rather successful."

There's plenty of oil to be tapped. While there are now about 1 trillion barrels of proved reserves, estimates of potential reserves keep rising, from 2 trillion barrels in the early 1980s to more than 3 trillion barrels today.

The Caspian Sea area, for instance, promises proved reserves of 20 billion barrels to 35 billion barrels—but could have more than 200 billion barrels. Skeptics argue that this Cas-

pian resource, surrounded as it is by Iran, Kazakhstan, Russia, Azerbaijan, and Georgia, is a bastion of instability and could easily become the backdrop for a future war linked to oil. But history shows that even bad guys are eager to sell their oil.

If energy policy were only about economics, we might argue that the world should take advantage of the ample supplies and relatively cheap prices and just keep consuming at a rapid rate. But there are additional costs of oil not included now in the price (step 6). And we have other important goals, such as doing more to protect the environment and reducing the political leverage of the Middle East. Says ExxonMobil Corp. (XOM) Chairman and CEO Lee R. Raymond: "The key to security will be found in diversity of supply." In other words, whimsical though it may seem, we should strive to maintain a Goldilocks price for oil: It should be high enough to keep companies and countries investing in oil fields but not so high that it sends the world into a recessionary tailspin.

2. Use Strategic Reserves

The nation now has 599.3 million barrels stored in underground salt caverns along the Texas and Louisiana Gulf Coast. That's enough to replace Iraq's oil production for at least six months. Yet this stockpile isn't being used correctly, and it never has been, many experts believe. In the 1991 Persian Gulf War, "oil prices were back to the normal level by the time the U.S. got around to releasing the strategic petroleum reserve," says energy economist W. David Montgomery of Charles River Associates, Inc. We shouldn't make that mistake again. With oil prices already up, "we should release the stockpile immediately," he says.

Other experts argue that the reserve should be used as a regular hedging tool rather than being saved for extreme emergencies, which so far have never materialized. One idea: Allow companies to contract with the government to take out barrels of oil when they want to—as long as they agree to replace it later, along with a bit extra. That way, this big store of oil would smooth out glitches in supply and demand while also taking away some of OPEC's power to manipulate the market. There are similar reserves in Europe, Japan, and South Korea—for a total of 4 billion barrels, including the U.S.—that should be used in this way as well. And by making the reserves bigger, we gain more leverage to dampen the shocks.

3. Boost Industrial Efficiency

After decades of concern over energy prices and the big improvement in the overall energy efficiency of America's economy, you would think that U.S. companies would be hard-pressed to find new gains. "In my experience, the facts are otherwise," says Judith Bayer, director of environmental government affairs at United Technologies Corp. (UTX) UT discovered savings of \$100,000 in just one facility by turning off computer monitors at night. "People talk about low-hanging fruit—picking up a dollar on the floor in savings here and there," Bayer says. "We picked up thousands off the ground. It's embarrassing that we didn't do it earlier."

Just last year, Salisbury (N.C.)-based Food Lion cut its energy consumption by 5 percent by using sensors to turn off lights in bathrooms and loading-dock areas and by installing better-insulating freezer doors. "The project saves millions a year," says Food Lion's energy-efficiency expert, Rick Heithold.

Even companies with strong efficiency track records are doing more. 3M Corp. (MMM) has cut use of energy per unit of output by 60 percent since the Arab oil embargo—but is still improving at about 4 percent

a year. One recent innovation: adjustable-speed factory motors that don't require energy-sapping brakes. The efficiency gains "help us reduce our operating costs and our emissions—and the impact that sudden price increases have on our businesses," says 3M energy manager Steven Schultz.

Last year, the New York Power Authority put in a digitally controlled power electronics system—essentially, a large garage packed with semiconductor switches and computers—in a substation that handles electric power coming in from Canada and northern and western New York. Along with conventional improvements, this vastly improved the system's ability to manage power. The state now has the capacity to transfer 192 more megawatts of available electricity, or enough to power about 192,000 homes.

The nation's entire antiquated electricity grid should be refashioned into a smart, responsive, flexible, and digitally controlled network. That would reduce the amount of energy required to produce \$1 of GDP by 30 percent and save the country \$100 billion a year, estimates Kurt E. Yeager, CEO of the Electric Power Research Institute (EPRI). It would eliminate the need to build dozens of power plants, cut carbon emissions, and slash the cost of power disruptions, which run about \$120 billion a year. Such a network would also break down existing barriers to hooking up new sources of power to the grid, from solar roofs on thousands of houses to small, efficient heat and power generators at businesses. And soon, it will be possible to rack up big efficiency gains by switching to industrial and home lights made from light-emitting diodes (LEDs), which can use less than one-tenth the energy of incandescent bulbs.

These are exciting developments, but what do they have to do with oil? The answer lies in the idea of fungible energy: Eliminate the need for a power plant running on natural gas, and that fuel becomes available for everything from home heating to a source of hydrogen for fuel-cell vehicles. A subset of the nation's energy policy, therefore, should be doubling Federal R&D dollars over the next five years to explore technologies that can boost energy efficiency, provide new sources of power, and, at the same time, address the problem of global warming.

4. Raise Car and Truck MPG

To make a real dent in oil consumption, the U.S. must tackle transportation. The numbers here dwarf everything else, accounting for a full two-thirds of the 20 million barrels of oil of oil the U.S. uses each day. And after rising from 15 miles per gallon in 1975 to 25.9 mpg in 1988, the average fuel economy of our vehicles has slipped to 24 mpg, dragged down by gas-guzzling SUVs and pickup trucks. Boost that to 40 mpg, and oil savings will top 2 million barrels a day within 10 years.

Detroit says that's too high a goal. But the technology already exists to get there. In early January, General Motors Corp. (GM) rolled out "hybrid" SUVs that use a combination of gas-engine and electric motors to bump fuel economy by 15 percent to 50 percent. That same technology is already on the road. Honda Motor Co.'s (HMC) hybrid Civic and Toyota Motor Corp.'s (TM) Prius, both big enough to carry four adults and their cargo, each top 45 mpg in combined city and highway driving.

Adding batteries and an electric motor to vehicles is just one of many ways to increase gas mileage. Researchers can also improve the efficiency of combustion, squeezing more power out of a given amount of fuel. In an approach called variable valve timing, they can adjust the opening and closing of an engine's intake and exhaust valves. Such engines, made by Honda, BMW, and others, are

more efficient without sacrificing power. Researchers are now working on digitally controlled valves whose timing can be adjusted even more precisely. The gains? Well over 10 percent in many cases.

More improvement comes from reducing the power sapped by transmissions. So-called continuously variable transmissions eliminate individual gears so that engines can spend more time running at their most efficient speed. And auto makers can build clean-burning diesel engines, which are 20 percent to 40 percent more efficient than their gas counterparts.

Estimates vary widely on what it would cost to raise gas mileage to 40 mpg or higher for the entire U.S. fleet of cars. Assuming a combination of technologies, we figure the tab could be \$1,000 to \$2,000 per car, or \$80 billion to \$160 billion over 10 years. That's less than fuel savings alone over the life of the new vehicles. Carmakers already have the technology. What we need now are policies, ranging from higher gasoline prices to tougher fuel-economy standards, that will give manufacturers and consumers incentives to make and buy these vehicles.

The ultimate gas-saving technology would be a switch to a completely different fuel, such as hydrogen. Toyota, Honda, and GM already are testing cars that use fuel cells to power electric motors. Such vehicles are quiet, create no air pollution, and emit none of the carbon dioxide linked with global warming. They also are expensive, and 10 to 20 years away from the mass market.

There's one other problem: Where would the hydrogen come from? The element must now be extracted from gas, water, or other substances at relatively high cost. But there are intriguing ideas for lowering the tab, such as genetically engineering bacteria to make the gas or devising more efficient ways to get it from coal. We need a strong research program to explore these ideas, plus incentives to test fuel-cell technology in power plants and vehicles. President Bush's \$1.2 billion hydrogen initiative is just a start.

5. Nurture Renewable Energy

Tim Griesves shares a vision with a growing number of energy giants: harnessing the wind to generate cheap, clean power. The superintendent of schools in Spirit Lake, Iowa, Griesves has overseen the installation of two wind turbines that hum away in a field not far from his office. They generate enough juice to allow Spirit Lake to proudly call itself the only electrically self-sufficient school district in the nation. "We're not dependent on the Middle East," says Griesves. "This is just smarter."

Although less than 0.5 percent of our power now comes from wind, it's the cheapest and fastest-growing source of green energy. The American Wind Energy Assn. believes the U.S. could easily catch up with Northern Europe, where wind supplies up to 20 percent of power. In the U.S., that's the equivalent of 100,000 megawatts of capacity—or more than 100 large fossil-fueled plants. The Great Plains could become the Middle East of wind.

Without tax credits and other incentives, wind power couldn't flourish, but oil and other fossil fuels also have big subsidies. So we should either eliminate those or provide reasonable incentives for alternatives such as wind, solar, and hydrogen. Even if the new sources still cost more than today's power, continued innovation, spurred by the incentives, will lower the price. Moreover, having some electricity produced by wind turbines and solar panels helps insulate us from spikes in natural-gas prices. Some states now require that a percentage of power come from renewable sources. We should consider

this nationwide, with a target of perhaps 15 percent, up from the current 6 percent.

6. Phase in Fuel Taxes

The main reason fuel-efficiency gains in the U.S. slowed in the 1990s is that the cost of oil—and energy in general—was so low. "Yes, we are energy hogs, but we became energy hogs because the price is cheap," says Georgia State's Dhawan.

Even though it seems like the market is working in this regard, it really isn't. There's widespread agreement that the current price of oil doesn't reflect its true cost to the economy. "What Americans need to know is that the cost of gasoline is much more than \$1.50 a gallon," says Gal Luft of the Institute for the Analysis of Global Security. But the invisible hand could work its magic if we include costs of so-called externalities, such as pollution or the tab for fighting wars in the Middle East. That would raise the price, stimulating new energy-efficiency measures and the use of renewable fuels.

The tricky part is pricing these externalities. Some economists peg it at 5 cents to 10 cents a gallon of gas. Others see the true cost as double or triple the current price. Just by adding in the more than \$100 billion cost of having troops and fighting wars in the Persian Gulf, California State University economist Darwin C. Hall figures that oil should cost at least \$13 per barrel more. "That is an absolutely rock-bottom, lowball estimate," he says. More dollars come from adding in numbers for the costs of air pollution, oil spills, and global warming.

Imagine, though, that in an ideal world, we could settle on the size of the externalities—maybe \$10 per barrel. We obviously don't want to suddenly slap a \$10 tax on oil. Doing so would slice more than \$50 billion out of GDP and send the economy into a recession, forecasters calculate.

But phasing it in slowly, over 10 years, would give the economy time to adopt fuel-efficiency measures at the lowest costs. We should also consider additional taxes on gasoline, since a \$10-per-barrel price rise amounts to only about 25 cents per gallon of gas—not enough to make a big change in buying habits. This approach works even better if the revenue from these taxes is returned to the economy in a way that stimulates growth and productivity—by lowering payroll taxes, for example. Plus, there are big environmental benefits from reduced pollution.

There's a fierce debate about whether the economy gains or loses from such tax-shifting. Many economists agree, however, that the bad effects would be relatively small. "There may not be a free lunch, but there is almost certainly a lunch worth paying for," says Stanford economist Lawrence H. Goulder.

If energy taxes prove politically impossible, there's another way to achieve realistic fossil-fuel prices: through the back door of climate-change policy. Already, Europe is toying with carbon taxes to fight global warming and multinationals are experimenting with carbon-trading schemes to get a jump on any future restrictions. Even Republicans such as Senator John McCain (R-Ariz.) are pushing curbs on carbon dioxide. If the U.S. put its weight behind efforts to fight climate change, it could help push the entire world toward lower emissions—and moderately higher oil prices. The best approach: a combination of carbon taxes and a cap-and-trade system, wherein companies can trade the right to emit. That way, the market helps find the greatest reductions at the lowest cost. Economists figure that a \$100-per-ton tax on carbon emissions, for example, would equal a rise of 30 cents in the cost of a gallon of gas.

Under the Bush Administration, this too, may be difficult to enact. What's left are regulations and mandates. There may be just enough political will to boost CAFE (corporate average fuel efficiency) standards for vehicles—and to remove the loopholes that hold SUVs to a lower standard. But we need a smarter rule than the current one.

One good idea: give companies whose cars and trucks do better than the fuel-economy target credits that they could sell to an auto maker whose fleet isn't efficient enough. That way, "good" companies such as Honda are strongly motivated to keep improving technology. By being smarter about regulations and mandates, "we could do a lot better than what we are doing now," explains Stanford professor James L. Sweeney.

If we implement these policies, here's what we'll get: A reduction in projected levels of oil consumption equal to 3 million barrels a day or more within 10 years. That means we could choose not to import from unfriendly countries (although they will happily sell their oil to others). In addition, oil-price shocks should be fewer and smaller, allowing us to avoid some of those \$50 billion (or more) hits to GDP. A more fuel-efficient economy will free up oil for countries such as China and India, notes Platts Global Director of Oil John Kingston. And the technologies we develop will help those economies become more efficient.

Economists will argue about the costs of these measures. But the benefits of greater energy efficiency and reduced vulnerability should, over the long run, outweigh the \$120 billion (or more) cost of getting there. Painful though they were, the oil shocks of the 1970s sent the U.S. down the road toward a more energy-efficient—and less vulnerable—economy. Our task now is to find a smoother path to continue that journey.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. The Senator from Iowa has been waiting for a while. I would like to set the vote for the Dorgan amendment if I may, and then I would be glad to yield to the Senator from Iowa to let him make his remarks. Then I would like as a cosponsor to speak in support of the amendment of the Senator from Louisiana.

Mr. REID. I ask unanimous consent that that be the case, that Senator HARKIN be recognized followed by the Senator from Tennessee.

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

Mr. ALEXANDER. Mr. President, pursuant to the order of last night, I ask unanimous consent that the vote in relation to the Dorgan amendment No. 865 occur at 11:30 today with two minutes equally divided prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, I will not object, I would hope that we could also line up the Senator from Louisiana to have her vote in a reasonably short period of time. She has indicated she thinks there may be a number of others who wish to speak in favor of the amendment. We would hope we could move on to that. We want to get to the Wyden amendment. There is an order in effect that would set up 2 hours on that amendment. Senator WYDEN will be ready immediately after the caucus. He would have

been ready this morning. He would be ready after the caucus to move on that. I hope we can get do that amendment right after the caucus and dispose of this even prior to that.

The PRESIDING OFFICER. Is there objection?

The PRESIDING OFFICER (Mr. ENZI). The Senator from Louisiana is recognized.

Ms. LANDRIEU. Reserving the right to object, I have a question. Does the Senator think it would be possible to do that before lunch? I think my colleague would probably only need 30 minutes for our debate, equally divided between the Senator from Tennessee and the Senator from Maine.

Mr. REID. I hope that will be the case. Until Senator DOMENICI gets here, we cannot agree to that.

Mr. HARKIN. Mr. President, will the Chair please state the unanimous consent now before us.

The PRESIDING OFFICER. The vote in relation to the Dorgan amendment will take place at 11:30, with 2 minutes of debate.

Is there objection?

Without objection, it is so ordered.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, first, briefly, the Dorgan amendment to put 100,000 hydrogen-powered vehicles on the road by 2010 and 2.5 million by 2020, with the requisite fueling infrastructure, is one that is going to help grow our economy, make our economy stronger. The amendment by Senator LANDRIEU and others to cut down on the use of oil by a million barrels a day also is going to help improve our economy by making us focus on things such as ethanol, for example, alternative fuels, renewable energy and, of course, along with the Dorgan amendment, fuel cell vehicles. It all has to do with making us more energy independent, and that has to do with growing our economy. The more we continue to send our hard-earned dollars out of the country for the energy we need, the less dollars we are going to have to rebuild our economy here at home.

Yesterday, I attended a hearing Senator DORGAN had that was devoted to the question of our economy. The question was: Will the Bush economic plan create jobs?

Well, I think throughout the hearing what became clear was that the Bush economic plan will not create jobs, unfortunately. The plan advocated by the majority rewards their friends and supporters with large tax cuts but will do very little to create jobs. Many respected economists warned of this months ago, but Republicans and the administration paid them no heed.

Unfortunately, it is not only experts who believe this prediction; history gives the same warning. These trickle-down economic policies have been tried before, and they have failed before. In 1981, Congress passed massive tax cuts for the rich, just like we did here. Then Director of OMB David Stockman called it a "riverboat gamble."

Well, it was a gamble. Within 2 years, following the 1981 supply side, trickle-down tax bill, we lost 1.4 million jobs. In 2001, the Bush administration tried it again. They passed the first round of massive tax cuts. And guess what. We lost 2 million jobs. As all major newspapers reported this weekend, the national unemployment rate is now at 6.1 percent, its highest level in 9 years.

Despite these two previous losing gambles, the President and the majority party in Congress decided to give it a third try last month. I think we ought to call the tax bill that was passed and sent to the President the "Bill Bennett betting bill" because it is going to have the same effect on our country that Bill Bennett's gambling addiction had on him. It cost him, as I understand it, lost millions. It is going to cost our economy lost billions.

But in the midst of it all, the wealthiest Americans will have massive tax breaks. In fact, on average, those Americans making over \$1 million a year are going to receive a tax cut of \$93,000 a year. They are going to have a great time. Unfortunately, who is going to pay the bill? Well, it will be paid by the rest of us, especially the younger generation—those now going through college, going out to make their way in life. They will be saddled with a huge, new debt.

As pointed out on the editorial pages of the Des Moines Register this weekend, these irresponsible policies will create pressure for higher State and local taxes, tuition hikes at State colleges and universities, rising health care costs to those lucky enough to have insurance, and further cuts to important initiatives.

The wealthiest in America got more than their share under this tax bill, but the folks in the middle class pay the bills. By contrast, the United States took a fiscally responsible approach in the 1990s. In 1993, Congress passed a budget to grow the economy, create jobs. In the 2 years following that passage, 6.4 million jobs were created. That plan put us on a path not only toward the lowest levels of unemployment in memory, but also to balanced budgets, the largest projected budget surpluses ever.

I find it most remarkable and disheartening that at the very time when it is obvious that economic policies should seek to stimulate demand, stimulate new jobs, the majority party opposes those things that would stimulate the economy the most, such as increasing the child credit for working families making under \$26,000 a year.

Well, the Democratic priority may yet prevail, as it did in the Senate last week. I hope it does. But further stimulus, such as putting people directly to work, building new schools, roads, and bridges, communications systems, upgrading our water and our waste water systems, making sure we weatherize homes all over America, will also save us on imported fuel. These are the things we can do now that will put peo-

ple to work now. But the majority party says no.

I also fear that their policies will lead to exploding Government debt. On the same day we passed this "Bill Bennett betting bill"—that is what I call the tax bill—the debt limit was increased by an amount equivalent to putting an additional \$3,500 on the credit card of every man, woman, and child in America—\$3,500 on the credit card of every man, woman, and child in America—to pay for this "Bill Bennett betting bill."

Most of us are aware that the real cost to the Treasury of this recent tax cut will be higher than advertised because the bill used gimmicks and tricks to stay within some nominal budget limit. The Speaker of the House was quoted as saying the real cost will be a trillion dollars, at a time when our exploding deficit is approaching \$500 billion for this year alone. Well, with typical British clarity, the Financial Times wrote on May 23, the day the tax bill passed: On the management of fiscal policy, the lunatics are now in charge of the asylum.

The result, as this administration is well aware, is that it will put pressure on Social Security and Medicare. These programs are targeted by the administration for reforms, which means privatizing Medicare and Social Security. We are going to have a debate here, I assume, in the Senate in the coming weeks on how we are going to provide prescription drug benefits under Medicare. But as I see the Medicare bill progressing and developing, it is nothing more than a shell, a subterfuge to move toward the privatization of Medicare, which, of course, has been the Republican Party's dream for many years. Don't take my word for it. Former Speaker of the House Newt Gingrich said Medicare ought to wither on the vine. The third ranking Republican in the Senate, my friend from Pennsylvania, said the Medicare benefit should be phased out.

So make no mistake, when we are debating the Medicare bill coming up, we have to get out of the weeds. What they are really talking about is taking the first step toward privatizing Medicare. The President's own press secretary was quoted in the story:

There is no question that Social Security and Medicare are going to present future generations with a crushing debt burden unless policymakers work seriously to reform those programs.

You pass a tax cut for the richest in the country that the Speaker says is going to cost us a trillion dollars, and then you say we are going to have a lot of pressure on Social Security and Medicare because the money will not be there for them, so now we have to reform them, which is their way of saying privatize them. I hope we now understand the picture: A tax cut for the wealthiest, huge debts for the rest, immense pressure on Social Security and Medicare; therefore, you have to privatize them; turn them over to Wall Street. That is where we are heading.

Exploding deficits and the debt will act like a cap on our economy. It will increase interest rates when the economy does begin to recover. It will undermine confidence. We need to create jobs in the short term, but we need to do it in a way that is fiscally responsible, to take care and protect the retirement security and health needs of seniors. We need to change course. The course set by this administration will only lead to further deficits, further debts piling up on our kids and grandkids, economic stagnation, importing more oil from abroad—which is why I am such a strong supporter of the Landrieu amendment and the Dorgan amendment.

I am afraid the administration may be opposed to these amendments, just as they are opposed to a sound rational means of getting our economy moving again. As I said, the Federal Government can be a great instrument, doing it in a fiscally responsible manner that actually provides the basis for further private sector growth in our country.

I was listening to former Congressman Jack Kemp, an old friend of mine of long standing, go on and on about how we need to make sure we have more money in the private sector for investments. I understand that, and that is a legitimate argument, but what about the need for societal investments? What about the need for investing in human capital? What about the need for investing in education? You can give all the tax breaks you want to the richest in this country and the corporations. Are they going to turn around and invest in higher teacher pay, better teacher training? Are they going to invest in rebuilding and modernizing schools all over America? There is no return on that capital, at least not in the short term and not in a way that would accrue to the bottom line of a company.

As we all know, that kind of an investment accrues to our national economy. Rebuilding our schools all over America—this is something that is estimated to be in the neighborhood of \$180 billion. Think of the jobs it would create. When you give someone an extra dollar for consumption right now in our society, they may buy a new shirt, but that shirt may be made in Malaysia, Thailand, or India. They may buy a new TV set, but that TV set sure is not made in America, or a stereo not made in America. They may buy a new car. Maybe that car is not made in America. To be sure, some of that money does fall out in this country because we have people selling those items, storing them, and shipping them. But the bulk of it could go outside the country.

If, however, you make a societal investment in building a new school, all of the workers are in America. Almost all of the materials used from the lighting to the heating to the wall-board to the sheetrock—everything, building materials—almost all, I would not say all—almost all are made in

America. Not only do you put people to work, you build something of a lasting nature that provides for a strong foundation for the private sector in America.

Take the issue of weatherization. We could save huge amounts of oil and natural gas each year simply by weatherizing homes, and I do not mean just in the North where it gets cold, but I mean in the South where it gets hot in the summertime. Guess what, these are not jobs that take a lot of training. These are jobs we could fill with unemployed people right now. We can put them to work weatherizing homes all over America.

What do we get? We get immediate job creation. We use materials basically that are made in this country. And we get something out of it that is going to help us: more fuel-efficient homes of low-income people who will not be using their money to pay high heating bills or cooling bills to pay for imported oil.

Yet, for some strange reason, we cannot seem to do that here. But, boy, we can sure give billions in tax breaks to the wealthiest in our society.

I will have more to say about this in the weeks ahead. There is another pathway—that is my point—there is another pathway to economic growth and jobs in our country, to which this administration has turned a blind eye, by investing in the veins and arteries—the roads and bridges, the highways, the sewer and water systems, the schools, the education, the scientific research, the mathematical research, the physics research, the chemistry research, the medical research—that will set the stage for future economic growth and prosperity in our country.

That will not come about by giving more tax breaks to the wealthy or business tax breaks. It comes about by us in the Congress of the United States fulfilling our responsibility to pass tax bills and energy bills that are responsible, that are commonsense, and that will lay this kind of secure foundation for the future. That is why I support the Landrieu amendment so strongly, because it will start to do that, and so will the Dorgan amendment that has been set aside. These are commonsense approaches. These are the programs we should be doing for our economy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee.

Mr. ALEXANDER. I thank the Chair. Mr. President, I stand to congratulate the Senator from Louisiana and join with her as a cosponsor of her amendment. She and I are members of the Energy and Natural Resources Committee. We are very proud of what our chairman and ranking member have done this year in taking a diverse array of opinions and coming up with a very good bill with a very good amount of bipartisan consensus.

There is consensus about supporting a diverse array of energy sources. The

Energy bill, which the Senators from New Mexico have led us to fashion, encourages hydrogen fuel cell cars in the economy. It encourages renewable energy. It encourages clean coal. It encourages oil and gas. And it encourages nuclear power.

What I think it is important we also do is make sure we encourage conservation, and to do that in a way that puts conservation high on the list of priorities. It is a low-cost way to have more energy. It is a no-pollution way to have more energy.

In my way of thinking, the Senator from Louisiana has come up with a sensible approach. It also helps to have the President involved. When the President said, let's build a hydrogen fuel cell car, he was not the first to say that, but everybody heard it when he said it and it gave a lot of impetus to the work on hydrogen that had been going on in this body from both sides of the aisle.

So the Senator's idea is to reduce our petroleum import dependence by having the President come up with a plan to conserve oil throughout our economy, not just in transportation but throughout the economy; to reduce our total demand by a million barrels per day by 2013. By my computation, that would cause us to reduce that by about 5 percent by 2013.

We ought to be able to do that. We ought to be able to go ahead with nuclear powerplants, with all the gas explorations. We ought to be able to go ahead with renewable energies and coal gasification. We ought to conserve at the same time.

Just one example. The Senator from Iowa was mentioning weatherizing homes. That is one good way, if we paid more attention to it. Another good way is idling trucks. Truckers who are so frequent on our highways often idle their trucks in order to keep their air-conditioner and all the other services going that they have in the truck. There are companies that permit the truckers now to turn off their truck and to plug in a device and by doing that enabling operation of the appliances they have but they do not pollute the air at the same time. It is such a simple idea that we would hope any one of us could have thought of that but, in fact, having the President develop a plan that will focus on reducing our consumption of oil by 2013 would include such ideas as weatherizing homes, as encouraging truckers not to idle, keeping tires properly inflated. These may seem to be small ideas but they can add up, we suggest, to a million barrels per day by the year 2013.

I congratulate the Senator from Louisiana on what I think is a commonsense, reasonable approach to add conservation to our arsenal of activities, to give it a higher profile in this bill, and I am glad to join in cosponsoring her amendment.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I, too, am pleased to join my colleagues, Senators LANDRIEU, SPECTER, BINGAMAN, and ALEXANDER, in offering this amendment to reduce our consumption of oil by a million barrels a day by the year 2013. This is a very reasonable and achievable goal, and I congratulate the Senator from Louisiana for coming up with this initiative and reaching out to those of us who share her concern that our Nation is too dependent on foreign oil.

Increasing energy efficiency is the single most effective way to reduce our reliance on foreign oil. Without a greater focus on energy-efficiency measures, the Energy legislation before us, which has many valuable provisions, will not be effective in reducing our dependence on foreign oil. As long as we continue to guzzle foreign oil, we will be at the mercy of those nations that control that oil. We are already nearly 60-percent reliant on foreign sources, and the Energy Information Administration projects that our dependence will increase to 70 percent by the year 2010 if we do not act. If we do not do more to improve the energy efficiency standards, America will only grow more dependent on foreign oil and the price of gas and home heating oil will only rise accordingly.

Our amendment would help to reduce oil consumption by a million barrels a day by the year 2013. It would do so by giving the President the flexibility to decide among any number of simple energy saving measures to achieve these savings. For example, simply weatherizing homes which use home heating oil could save 80,000 barrels of oil per day. Using energy-efficient engine oil could save another 100,000 barrels per day. Just keeping our tires on our automobiles properly inflated could save 200,000 barrels per day. In short, by taking a few easily adopted measures, we could reduce our consumption of oil by a million barrels a day.

We currently use about 19 million barrels a day. So this would make a real difference. It would result in a reduction of consumption of imported oil. Reducing our consumption by 1 million barrels per day will also help to keep energy prices down and will keep billions of American dollars at home where they belong. In fact, this proposal we have advanced could save American consumers upwards of \$20 billion each year.

I call upon my colleagues to join us today in supporting our commonsense measure to reduce our reliance on foreign oil by reducing our consumption of oil by a million barrels a day. It is right for our environment. It is right for our economy. It is right for the American consumer.

I yield the floor.

AMENDMENT NO. 865

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry: Am I correct that there will be

a vote on the Dorgan amendment at 11:30?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Mr. President, I ask to speak to that amendment until 11:30.

The PRESIDING OFFICER. We have already agreed to 2 minutes of debate equally divided at 11:28 so we can vote, but the time until 11:28 is available so the Senator has the floor.

Mr. DOMENICI. Mr. President, I have already spoken, as have Senator ALEXANDER and others, against this amendment. By being against the amendment, it does not mean we are in any way in derogation of the efforts by the distinguished Senator, Mr. DORGAN, in his efforts to pursue a hydrogen economy for the United States, in his efforts to move forward with the hydrogen cell and with the hydrogen car. I compliment him for that.

His amendment, which says we should move ahead with certain quotas, with specific amounts, with goals, with mandatory achievements, should not be done. It would not be of any benefit.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of time equally divided on the Dorgan amendment.

Who yields time? The Senator from North Dakota.

Mr. DORGAN. This amendment is very simple. It establishes timelines and targets: 100,000 vehicles on the road by 2010, 2½ million by the year 2020. It is not a mandate, it is not enforceable, but at least it sets targets that we aspire to achieve. The opposition would say, well, let's just throw money at the Department of Energy and hope something good comes of it. That is not the way to address this issue, in my judgment.

I know my colleague complimented me but the greatest compliment, of course, would be voting for my amendment. What is disappointing is that this amendment passed the Senate by unanimous voice vote a year and a half ago. This amendment has already been embraced by the Senate. I am disappointed that it will not be passed by a voice vote today because if we are, in fact, going to move toward a hydrogen fuel cell future, we need to think big and bold. Then we ought to set some targets and have some aspirations and say to the Department of Energy, here is three-plus billion dollars and, by the way, this is what we would like to see achieved with that money. We would really like to see these goals achieved—not mandates, just strategic goals.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. I compliment the Senator but I cannot vote for his amendment. This committee has added to the \$1.3 billion proposal by the President for the hydrogen car, \$1.6 billion suggested by the Senator from North Dakota and others on that side.

The issue is whether we want to add to the bill a target that we have 100,000 hydrogen fuel cell vehicles in the United States by 2010. I respectfully suggest that is a wild guess. I drove a \$2 million Ford hydrogen car around the block in Washington. I did that, I believe the Senator and several others did, and it costs \$2 million to make the car. It actually works. We drove around and got so excited we came up on the Senate floor and put into law that we ought to have 100,000 of them by the year 2010. It is not mandatory.

It reminded me, as I mentioned yesterday, my friends were guessing wrong about the facts technology. I respectfully will vote no.

The PRESIDING OFFICER. All time is expired. The question is on agreeing to the amendment of the Senator from North Dakota.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DORGAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The bill clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

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

The result was announced—yeas 67, nays 32, as follows:

[Rollcall Vote No. 212 Leg.]

YEAS—67

Akaka	Dorgan	Lugar
Baucus	Durbin	McCain
Bayh	Ensign	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham (FL)	Nelson (NE)
Breaux	Graham (SC)	Pryor
Brownback	Grassley	Reed
Burns	Harkin	Reid
Byrd	Hollings	Roberts
Campbell	Hutchison	Rockefeller
Cantwell	Inouye	Santorum
Carper	Jeffords	Sarbanes
Chafee	Johnson	Schumer
Clinton	Kennedy	Sessions
Coleman	Kerry	Smith
Collins	Kohl	Snowe
Conrad	Landrieu	Specter
Corzine	Lautenberg	Stabenow
Daschle	Leahy	Warner
Dayton	Levin	Wyden
DeWine	Lieberman	
Dodd	Lincoln	

NAYS—32

Alexander	Cochran	Fitzgerald
Allard	Cornyn	Frist
Allen	Craig	Gregg
Bennett	Crapo	Hagel
Bond	Dole	Hatch
Bunning	Domenici	Inhofe
Chambliss	Enzi	Kyl

Lott	Nickles	Talent
McConnell	Shelby	Thomas
Miller	Stevens	Voivovich
Murkowski	Sununu	

NOT VOTING—1

Edwards

The amendment (No. 865) was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 871

Mr. DOMENICI. Mr. President, I ask unanimous consent that the time until 12:15 be equally divided in the usual form for debate in relation to the Landrieu-Domenici amendment; provided, further, that at 12:15 the Senate proceed to a vote in relation to that amendment, with no second degrees in order to the amendment prior to the vote; and, finally, that following the vote the Senate stand in recess under the previous order.

Mr. SPECTER. Mr. President, reserving the right to object, I would like incorporated in the unanimous consent request 5 minutes. This amendment was offered as the Landrieu-Specter amendment.

Mr. REID. No objection.

Mr. DOMENICI. We have no objection.

Mr. President, I add 5 minutes to the time in the request, with the Senator from Pennsylvania having that 5 minutes. The vote would occur at 12:20.

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

Mr. DOMENICI. I am sorry, we did not know that, I say to the Senator. We would have asked you.

The PRESIDING OFFICER. Who yields time?

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank the chairman and the ranking member.

Mr. President, the amendment is at the desk. We will be voting shortly on the Landrieu-Domenici-Specter-Alexander-Bingaman-Collins-Schumer-Feingold oil savings amendment. It is a very reasonable approach to an extremely serious problem. That problem is, unless we make some adjustments—and the time to make those adjustments is now—to our policy regarding the consumption of oil, we will be seriously increasing, as opposed to decreasing, our dependence on foreign oil and hurting the American economy and taxing American citizens and businesses unnecessarily.

The amendment has been developed by many of us—Democrats and Republicans—and it is based on lots of good work. Two issues I pointed out earlier this morning in the debate are in a lengthy article recently published by Business Week—not a liberal magazine by any stretch, a middle-of-the-road business organization that argues that we need to get smart about oil.

As a Senator from an oil-producing State, let me say I agree 100 percent. We like to produce oil. We are proud to produce oil. But we know it is in the interest of our State in the short, intermediate, and long run to have greater supply, a diversity of supply of fuels, and not be overreliant. Why? Because it puts our economy, our industrial base at risk.

I also mentioned earlier today the statement by the Union of Concerned Scientists, over 60,000 scientists and citizens working together to come up with some proposals for reducing our dependence on oil, and they are clearly outlined in these articles and these papers.

What this amendment simply does—submitted on behalf of those I mentioned—is give the President all the flexibility he needs in his administration but to reach very specific goals. This amendment, when adopted, will save 1 million barrels of oil a day by the year 2013, which is equivalent to the President's own goals, but it will put this in law in the underlying Energy bill.

I propose this amendment to the Senate for its careful consideration and hope we will get a broad vote.

Mr. President, the Senator from Pennsylvania would like to add some remarks, as well as other cosponsors who may be in the Chamber.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am pleased to be the original, principal cosponsor, along with Senator LANDRIEU, on the Landrieu-Specter-Bingaman-Collins amendment. I am pleased to see that now the Senate is on the verge of taking a significant step, albeit a modest one, on petroleum conservation, a step long overdue in this country.

Last year, I cosponsored, along with Senator CARPER, an amendment which would have targeted reduction in oil consumption, and it was defeated on a tabling motion 57 to 42. A few days ago, I introduced S. 1169, which was a repeat of the Carper-Specter amendment. And today I am pleased to join with Senator LANDRIEU on a broader amendment which goes for reduction of oil dependency beyond transportation but calls on the President to set a standard for reduction of oil by 1 million barrels a day from a projected use of some 24 million barrels.

This is a significant step, albeit a modest one. It is a first step. But it is very important for the United States that we reduce our dependence on foreign oil for many reasons. First of all, simply stated, we use too much foreign oil. Secondly, we are dependent upon the OPEC countries, especially upon Saudi Arabia, and it has an effect on influencing our foreign policies in ways which may well be undesirable. There have been very serious charges as to the Saudis on sponsoring al-Qaida and sponsoring terrorism. There is much yet that has to be proved on that subject, but we should not be tied to or de-

pendent upon any nation, especially Saudi Arabia.

The dependence on foreign oil results in a tremendous amount of our imbalance on foreign trade, with oil imports now accounting for one-third of the Nation's trade deficit which exceeded \$400 billion in the year 2001.

There is much we could do to reduce our dependence upon foreign oil. I am pleased to report on a \$100 million grant by the Department of Energy to a plant in Pottsville, PA; a \$612 million plant which will turn sludge into high-octane fuel is now moving forward. We have tremendous coal resources in this country, some 20 billion tons of bituminous coal alone in Pennsylvania, 7 billion tons of anthracite, and coal across this country which can be turned, with clean coal technology, into reducing our dependence on foreign oil.

I am pleased to see the distinguished Senator from New Mexico, chairman of the Energy Committee, is now cosponsoring this amendment so that what you have, although slightly different than last year on a tabling at 57 to 42, is an amendment gaining very substantial momentum. That is a very good sign for conservation, a very good sign for the future of the American economy, and a very good sign for environmental protection.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am pleased to join as an original cosponsor of what we are going to call the Landrieu-Domenici amendment. I note the presence of Senator ALEXANDER who was one of the original Senators who spoke to this matter on the floor. I hope in the remaining time he gets a chance to speak. Let me say there are a lot of people who come up with new formulas, attempt to set new formulas on automobiles, on the mileage that cars will have, and the like. None of them seem to work, and none of them seem to get through this body. This is an ingenious idea of my friend from Louisiana who has been extremely helpful in getting an Energy bill passed. I think when we pass it in a few weeks, and we will, she can take a great deal of pleasure in knowing that much of it was due to her interest, enthusiasm, and support.

I hope we will vote for it unanimously, saying to our President, find ways to do this. I believe it is the best way for the Senate to handle it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. LANDRIEU. Mr. President, I am happy to yield to the Senator from Kentucky.

Ms. BUNNING. Mr. President, I ask unanimous consent to be listed as a cosponsor of the Landrieu amendment.

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

Ms. LANDRIEU. How much more time remains under the unanimous consent?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Ms. LANDRIEU. I would like to have 1 minute to close and then turn to one of the original cosponsors, the Senator from Tennessee, who may want to add. Let me again thank the chairman and ranking member for their able help because without their support, this amendment would not have been possible. We worked on many different approaches, several different drafts. Finally, we did come upon a way that sets a very clear goal.

I would agree with Senator SPECTER, it is somewhat modest, but it is a compromise. It is a clear goal. It is an attainable goal. It is a reachable goal. It gives the President and the administration the flexibility they need to do it in a way that is most helpful to this economy. It will create jobs, reduce taxes that people pay because of the price of oil and energy, and it gives the flexibility necessary to come up with a smart approach to this very serious problem.

I yield to my friend from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Louisiana. We should not pass an Energy bill that does not put conservation up on the platform along with our encouragement of nuclear power, oil exploration, and hydrogen fuel cell; all of that is important. And this amendment by the Senator and various cosponsors makes it clear to the country that common-sense ways to conserve oil are equally important in our arsenal of having an economy that is less dependent on foreign oil and in a better position to produce clean air.

I am proud to join as a cosponsor. I congratulate the Senator and congratulate our chairman for being able to move this bill forward with such a bipartisan consensus.

Ms. LANDRIEU. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New Mexico has 3 minutes remaining.

Mr. DOMENICI. Mr. President, I yield back the time I have. I might say to Senators, we tried very hard to get the vote within 15 minutes last time. I was asked by a number of Senators to please try to do that on the votes. I have no authority to say that will be the rule, but as the floor manager, we have a 15-minute rollcall vote on this amendment. It is a simple one. It is not too hard to find your way to the floor. I trust that in 15 minutes we will have disposed of this.

In the meantime, before that occurs, I ask unanimous consent that when the Senate convenes at 2:15, the pending amendment be set aside and that Senator WYDEN be recognized to offer the

nuclear commercial plant amendment under the debate limitation which was agreed to last week.

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

The question is agreeing to amendment No. 871.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 213 Leg.]

YEAS—99

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

NAYS—1

Kyl

The amendment (No. 871) was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived and passed, the Senate will stand in recess until 2:15.

Thereupon, the Senate, at 12:56 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THOMAS).

The PRESIDING OFFICER. The Senator from Alabama.

CHANGE OF VOTE

Mr. SHELBY. Mr. President, on Thursday, June 5, on rollcall vote No. 209, I voted yea. It was my intention then to vote nay. Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

AMENDMENT NO. 875

(Purpose: To strike the provision relating to deployment of new nuclear power plants)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself, Mr. SUNUNU, Mr. BINGAMAN, Mr. ENSIGN, Mr. REID, Mr. FEINGOLD, Mr. JEFFORDS, and Ms. SNOWE, proposes an amendment numbered 875.

Strike subtitle B of title IV.

Mr. WYDEN. Mr. President and colleagues, this amendment is sponsored by three Democrats, three Republicans, and one Independent. I hope this afternoon that it will have the support of Senators with varying degrees of views about the advisability of nuclear power. I am particularly pleased that the lead cosponsor, Senator SUNUNU, is with us today.

I will make a few brief remarks to begin the debate and then I am anxious to have plenty of time for colleagues.

The reason three Democrats and three Republicans and one Independent are sponsoring this amendment is that I think many of us in the Senate are neither pronuclear nor antinuclear but we are definitely protaxpayer. That is why we are on the floor this afternoon, because the loan guarantees that are in this legislation to construct nuclear power facilities are unprecedented and represent, in my view, particularly onerous and troublesome risks to the taxpayers of this country.

Frankly, people in my part of the country know a bit about this. It is not an abstraction for the people of the Pacific Northwest where we had the WPPSS debacle and 4 out of 5 facilities were never built. It was the biggest municipal bond failure in history, and it has certainly colored my thinking with respect to why we are on the floor today.

The loan guarantees—we did some research into this—are unprecedented with respect even to nuclear power. As far as I can tell, in the early days of nuclear power, there were subsidies for nuclear power but never before were the taxpayers on the hook from the get-go. That is what the Senate is confronted with now.

When it comes to the question of risk, I hope the Senate will focus on what the nonpartisan Congressional Budget Office has said on this topic. I will quote. It is at page 9 of the Congressional Budget Office analysis that we have made available to Senators. The Congressional Budget Office considered:

The risks of default on such loan guarantees to be very high, well above 50 percent.

Colleagues, first, when we are talking about risk—because nothing in life is foolproof and there are no guarantees of anything—I hope in looking at these guarantees you will first focus on the fact that the Congressional Budget Office has specifically said in their analysis that the risk of default on the

guarantees is very high. If those plants default, the exposure to taxpayers is enormous.

I will quote from the Congressional Research Service report they did with respect to these subsidies. They said:

... the potential cost to the federal government of the nuclear power plant subsidies that would be provided by [this title] would be in the range of \$14-\$16 billion in 2002 dollars.

I think it is worth noting that the Senate spent a great deal of time on the child tax credit last week. There we were focusing on something involving \$3 billion. If one or two of these plants go down, taxpayers are on the hook for a sum greater than that child tax credit.

Now, in the course of today's discussion, we will hear a number of arguments against the Wyden-Sununu amendment. One of the first will be: There are tax credits for a variety of energy sources in this legislation, for wind and solar and a variety of energy alternatives. That is correct. But those tax incentives are fundamentally different than the loan guarantees because in those instances the producer faces substantial risk.

With respect to, say, a wind facility, if the producer takes the initial risk and later on produces some wind power, they would get a credit in order to defray some of their costs. With respect to the loan guarantees for nuclear power, the producer faces no such risk. The producer has the Government, in effect, guaranteeing, right at the outset, much of the risk.

So with respect to these nuclear loan guarantees, unlike the incentives for wind or solar, what we are talking about is that the Government will socialize the losses but will let private investors pick up the gains. The losses will be socialized; the gains will be privatized. And that is unique in this legislation.

I also say to my colleagues in the Senate, the White House has never asked for these loan guarantees. These loan guarantees are not in the House bill. Senators' phones are not ringing off the hook from the Secretary of Energy or others clamoring that this must be done. This is something that, in my view, is far out of the mainstream in terms of energy policy, not because I am antinuclear—and I don't intend to talk about safety issues—but because it is such a large exposure to taxpayers.

For example, a number of reports have come out already with respect to how nuclear power stands up with respect to other costs such as natural gas or coal. One of the reasons, in my view, the Congressional Budget Office believes there is such a high risk of default is that the objective analyses show that nuclear has not been competitive with other sources such as coal.

I hope Senators will look at those two reports: a report done by the Congressional Budget Office documenting

a high likelihood of default, and a report done by the Congressional Research Service talking about exposure to taxpayers.

I would finally say to the Senate, it did not have to be this way. I know the distinguished chairman of the Energy Committee feels very strongly about this subject. He is a longtime family friend. I was very willing, and I think other Senators were as well, to have had a modest program. We had been talking, for example, about one experimental initiative to look at advanced technologies of one sort or another. I think that would have been acceptable. But here we are talking about guarantees for up to seven plants.

I will make reference to the legislation. The bill authorizes DOE to provide loan guarantees for up to 50 percent of the construction costs of new nuclear plants and, on top of that, would authorize the Department of Energy to enter into long-term contracts for the purchase of power from those plants. The Secretary could provide loan guarantees for up to seven plants.

That is not a modest experiment that would have been acceptable to this Member of the Senate, but it is a very significant exposure to the taxpayers of this country at a time when every Senator is concerned about deficits.

Mr. President, I intend to allow time for my colleagues. I see Senator SUNUNU is on the floor. Senator REID has strong views on this.

I also express my appreciation to the distinguished ranking minority member of the Energy Committee. He has worked very closely with me. He embodies the philosophy of a lot of our colleagues in that he has been supportive of nuclear power in the past but believes these subsidies are too rich.

I am hopeful that today Senators with varying degrees of views on the nuclear power issue will agree with the Congressional Budget Office, will agree with the Congressional Research Service on these issues with respect to the taxpayers, and support the Wyden-Sununu amendment.

Mr. President, I yield at this time so other colleagues who have time constraints may speak. I will have the opportunity to speak later in the debate.

The PRESIDING OFFICER. Who yields time?

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I begin by thanking my colleague from Oregon for his work on this amendment. I am pleased to join as a cosponsor. As he pointed out, this is ultimately about what kind of an energy policy we want, what kind of an economic policy makes sense, and whether we can do the right thing and protect taxpayers from being exposed to the potential liability and cost that Senator WYDEN described.

This provision we are trying to strike in this bill guarantees 50 percent of the construction costs of up to six nuclear powerplants. Those plants could cost anywhere from \$2 to \$4 billion. And any

taxpayer out there can simply do the math as to what kind of exposure this would provide.

It has been a pleasure to work with the Senator from Oregon. We are going to get into the substance of this debate and the details of this debate over the next couple of hours, but at this time I yield the floor to the Senator from Nevada, who has been a very strong voice on this and other matters having to do with energy.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from Nevada.

Mr. REID. Mr. President, I express my appreciation to the Senator from New Hampshire for allowing me to speak. I have to speak at a memorial service in just a short time, and but for his kindness and generosity I would have had to either miss the ability to debate this matter or be late to debate this matter. So I appreciate very much the comity of my friend from New Hampshire.

I express my appreciation to my longtime friend and colleague, Senator WYDEN, for this legislation. I also say the way this legislation has been approached is the way to approach legislation. This is a bipartisan amendment. This is a good debate we are having on the Senate floor.

My friend from New Mexico, the manager of this bill, believes very deeply in the renewal of nuclear power. I understand how he feels about this.

As I say, this is the way legislation should be handled. This is a good, fair, open debate. I approach this more from an environmental perspective than my friend from New Hampshire does. Even though he has been here just a short period of time, the Senator from New Hampshire is always focused on numbers, taxpayer dollars.

I rise in support of this amendment offered by my colleagues, the Senator from Oregon and the Senator from New Hampshire. I really do appreciate their efforts to bring to light the tremendous financial risks this Energy bill places on the backs of American working men and women and their families.

Let me underline and underscore, my opposition to this amendment has nothing to do with the longstanding, seemingly never-ending debate on nuclear waste. This has nothing to do with nuclear waste.

This Energy bill contains a provision, which this amendment would strike, that would make the Federal Government the guarantor of the costs of building new nuclear powerplants.

The Energy bill would allow the Secretary of Energy to enter into agreements with nuclear powerplant owners to give Federal loan guarantees for loans to construct new reactors or to enter into new contracts for guaranteed purchases of power from these reactors.

According to the Congressional Budget Office, what we refer to as CBO, this is an extremely risky financial endeavor. In fact, the CBO considers "the risk of default on such a loan guarantee to be very high—well above 50 percent."

That means the American taxpayer will be footing the bill for construction of these nuclear powerplants, the way the Senator from Oregon indicated we would have really a socialization of the costs and the nonbenefits of this legislation. If this provision remains in the bill, the Federal Government will be entering into loan guarantees and power purchase agreements that could cost at least \$14 billion.

CBO is not alone in its assessment of the financial risk of backing the new reactor construction.

We have from Standard & Poor's a document I ask unanimous consent to print in the RECORD.

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

TIME FOR A NEW START FOR U.S. NUCLEAR ENERGY?

(By Peter Rigby)

Since its beginnings, commercial nuclear energy has offered the tantalizing promise of clean, reliable, secure, safe, and cheap energy for a modern world dependent upon electricity. No one did more than Lewis Strauss, chairman of the U.S. Atomic Energy Commission, to define expectations for the industry when he declared in 1954 that nuclear energy would one day be "too cheap to meter." But the record proved far different. Nuclear energy became the most expensive form of generating electricity and the most controversial following accidents at Three Mile Island and Chernobyl. And today's electricity industry's credit problems of too much debt and too many power plants will do little to invite new interest in an advanced design nuclear power plant. Yet energy bills circulating through the U.S. Senate and House of Representatives hope to change that perception and perhaps lower the credit risk sufficient enough to attract new capital. Will Washington, D.C.'s new energy initiatives lower the barriers to new nuclear construction? Many would like to think so, but it will be an uphill battle.

The House version of the Energy Bill modestly "... sets the stage for building new nuclear reactors by reauthorizing Price-Anderson. . . ." Since 1957, the Price-Anderson Act has indemnified the private sector's liability if a major nuclear accident happens on the premise that no private insurance carriers could provide such coverage on commercial terms. Without Price-Anderson, it is difficult to envision how nuclear plants could operate commercially, now or in the future. The more ambitious Senate version of the Energy Bill seeks to jump-start new nuclear plants in the U.S. by providing measurable financial resources for new projects. According to the latest version of the Senate Energy Bill, the Secretary of Energy could provide financial assistance to supplement private sector financing if the proposed new nuclear plant contributes to energy security, fuel, or technology diversity or clean air attainment goals. The bill would limit financial assistance to 50% of the project costs with financial assistance being defined as a line of credit, secured loan, loan guarantee, purchase agreement, or some combination of these assistance plans.

In light of how well U.S. nuclear plants have generally been operating recently and with promising new technology on the horizon, nuclear energy would seem to have a future. Currently, about 20% of the nation's electricity comes from nuclear power plants. The introduction of competition and deregulation in the U.S. has helped drive the nu-

clear fleet into achieving record availabilities and load factors, as independent owners have taken ownership from utilities that divested generation. Even utilities that did not divest their nuclear plants have experienced greatly improved performance across the board. Today's nuclear power plant operation and maintenance and fuel costs are remarkably low compared with many fossil fuel plants—as low as 1.68 cents per kWh according to the Nuclear Energy Institute. Although the high-profile accidents at Three Mile Island and Chernobyl greatly raised the threshold for safer operations, operating success stories may overstate what may be achievable with new designs. Nuclear operators in the U.S. have had a few decades to work out operational problems, and with original debt paid off, more cash resources have been dedicated to improving performance. Providers of new capital for advanced, nuclear energy will want some comfort that credit and operating risks are covered. But the industry's legacy of cost growth, technology problems, cumbersome political and regulatory oversight, and the newer risks brought about by competition and terrorism concerns may keep credit risk too high for even the Senate bill to overcome.

HISTORIC RISKS WILL PERSIST

A nuclear power plant's life cycle exposes capital providers to four distinct periods of credit risk that history has shown will persist. These periods are pre-construction, construction, operations, and decommissioning. The risks tend to be asymmetrical with an enormous downside bias against credit providers and little or no upside benefits. To attract new capital, future developers will have to demonstrate that the risks no longer exist or that the provisions of the Energy Bill can effectively mitigate the risks.

During a nuclear plant's pre-construction, phase, lenders, as they do with other projects, face the risks of cost growth and delay. When nuclear engineers encountered technology problems during the planning stages in the 1960s and 1970s, solutions inevitably resulted in scope changes or re-designs, or both. A 1979 Rand Corp. study for the U.S. Dept. of Energy still serves as a warning to investors in new, untested nuclear technology. The study found that cost budget estimates grew on average 114% over first estimates and that final actual costs exceeded those estimates by 141%. Half of the plants in the study never reached commercial operations. An extreme example of delays and cost overruns, which remains fresh in investors' minds, is Long Island Lighting Co.'s Shoreham nuclear power station. Begun in 1965 at an initial cost estimate of \$65 million—\$75 million, Shoreham endured 20 years of construction delays and design changes due to legal battles, local opposition, regulatory and political intervention, and technical problems that pushed the final cost to almost \$6 billion. In the end, a complete and fully licensed power plant never went operational, and ratepayers, investors, and taxpayers are still footing the bill. Another example is TXU Corp.'s 2,300 MW Comanche Peak Units 1 and 2, which took longer than any nuclear plant to build and saw costs mushroom to nearly \$12 billion by the time full operations began in 1993.

That no new nuclear plant construction has begun in the U.S. for over 2 years suggests that a new one would be susceptible to cost growth risk as engineers incorporate advances in control and power systems, fuel systems, safety and regulatory requirements (which could become more onerous during the years of design and construction), material sciences and information technology. Even promising new designs, such as the pebble bed reactor (PBR) design that Eskom

Holdings Ltd. of South Africa plans to build soon, would likely risk design changes and attendant cost growth if built in the U.S. Cost growth and delay can also arise from design and scope changes due to the efforts of effective interveners, such as the anti-nuclear citizen activist groups that successfully delayed Shoreham and ultimately prevented it from going commercial.

History also suggests that the construction and start-up phases of new nuclear power will likely encounter problems that will result in increased costs and delays. Licensing delays, construction management problem procurement holdups, troubles with new technologies and construction defects, among other problems extended construction beyond 10 years for some U.S. nuclear power plants. It would be overly heroic to assume that the first nuclear plant to be built in more than two decades would escape the industry's legacy of construction problems. For a debt-financed construction endeavor, likely to cost hundreds of millions of dollars (possibly into the billion dollar plus range), these problems, or even the possibility of such problems, will likely drive risk-averse lender to demand a significant risk premium unless a third party assumes completion and delay risks. In the world of cost-of-service, rate-of-return environments, utilities could, and did, pass these costs onto ratepayers to a certain extent. The bankruptcies of El Paso Electric Co. and Public Service Company of New Hampshire in the 1980s, however, attest to the limits of ratepayers' capacity to absorb construction risk.

Today, no utility or independent power producer or their capital provide will want to take unmitigated construction risk, particularly if it is difficult to quantify. In addition, given the possibility that much of the construction risk of a new nuclear plant may lay outside of the engineering, procurement, and construction contractor's control, no contractor will want to risk its balance sheet to provide the fixed-price, date-certain, turnkey construction contracts that have given great certainty to the cost of today's new fossil-fueled power plants. Because of the long lead-time historically associated with nuclear power, securing 100% financing upfront, as the industry has become accustomed to, may be difficult. That could introduce financing risks if projects encounter problems during construction; delays in securing final financing would, among other problems, drive up capitalized interest costs during construction and ultimately the project's cost.

While U.S. nuclear power plants have operated without major mishap for over 20 years, unexpected costs during the operational phase of a nuclear plant can be substantial. And it is unclear whether and if proposed government programs will be able, or willing, to offset the risk of these costs. Still, today's operators have demonstrated that they can safely operate older nuclear power plants. Yet the potential that incidents, such as last year's wholly unanticipated corrosion problem at FirstEnergy Corp's Davis Besse 900 MW plant, are not unique, one-time affairs will keep credit risk high for nuclear plant owners. In addition, investors will remember that the Davis Besse repair costs of about \$400 million, not including replacement power, are unrecoverable from ratepayers, leaving investors to shoulder the costs, incidentally, had the outage occurred during a period of high power prices and tight supply, as was the case two years ago, the cost to investors would have been much higher.

Decommissioning costs, which entail the considerable expense of tearing down a plant and safely disposing or storing the radioactive waste, remain uncertain at best given

how few U.S. nuclear plants have undergone decommissioning. Progress toward creating a permanent disposal site for nuclear waste at the government's Yucca Mountain site in Nevada will help mitigate decommissioning risk, as well as spent fuel disposal costs. Again, it is not clear who will bear decommissioning costs, but if lenders foresee any lender liability risk, they will steer clear of new nuclear investments or require steep compensation. That, as a point aside, may be one of the reasons so many plants have been granted license extensions. Refurbishing a depreciated nuclear power plant costs far less than decommissioning one.

Finally, for many of the reasons described above and all else being equal, Standard & Poor's Ratings Services has found that an electric utility with a nuclear exposure has weaker credit than one without and can expect to pay more on the margin for credit. Federal support of construction costs will do little to change that reality. Therefore, were a utility to embark on a new or expanded nuclear endeavor, Standard & Poor's would likely revisit its rating on the utility.

COMPETITION INTRODUCES NEW RISKS FOR NUCLEAR ENERGY

As electricity deregulation and industry reform have progressed, capital providers to the nuclear power sector face some of the same risks as capital providers to other power generation technologies. Again, if policymakers want to attract capital to the industry, lenders in particular will likely have to be convinced that at least some of the risks are covered or mitigated. The sheer size of most new nuclear investments suggests that downside risk for lenders could be considerable indeed.

Clearly, buying and selling electricity in a competitive environment comes with its risks, both market and political. The wake of California's electricity reform problems forced one utility into bankruptcy and brought another to the brink of bankruptcy. Independent power producers are resisting efforts by California and its Department of Water Resources to abrogate or renegotiate recently executed power sales agreements. These events, combined with the credit crunch that has hit many other utilities and energy merchants, have understandably moved public utility commissioners and capital providers into more risk-averse postures. Absent these problems, nuclear power would still be challenged to attract new capital; in this environment, however, the task is all the more difficult. Competition has dramatically shifted risks from ratepayers to lenders and other investors; that is not likely to change.

In a competitive wholesale power environment, nuclear plants would likely sell power as a base load generator behind hydroelectric and ahead of coal and gas. Capital costs would be higher than coal plants and much higher than natural gas plants, but marginal operating costs would be very low, as they are now. Nonetheless, an owner of a new nuclear plant would likely want a long-term—20 years or more—power contract with a creditworthy utility to ensure that fixed and variable cost are covered in order to attract the massive amount of capital needed for construction. Alternatively, a utility that wants to add a new nuclear plant to its portfolio would need regulatory assurances from its public utility commission that the entire cost of the plant would be recoverable from its rate base. In the first instance, few utilities, or their regulators, want such long-term contract obligations, especially in an environment of excess generation that can be purchased on the cheap. That gas costs and clean-air compliance costs could be on the rise might offset some of those concerns.

For some of the same reasons, public utility commissioners may not be so forthcoming with their authority to grant rate-based treatment of a new nuclear plant, especially in the preconstruction period if cost growth risk remains uncovered. For many commissioners, the all-in costs of alternative generation will likely seem more predictable and cheaper than a new nuclear plant.

The current backlash against regulatory reform and open markets in parts of the country could also put a new nuclear plant at risk. A large, new nuclear plant will typically need access to a large electrical network with a geographically dispersed customer group—the network that a structured regional transmission organization, as envisioned by FERC, could provide. However, if transmission access is limited or if states have chosen to maintain barriers to electricity trading and marketing, physical or otherwise, as many have, a new nuclear power plant may find itself operating within a much smaller system, a situation that could raise its credit risk, all else being equal. One obvious mitigant to this rise would be to build much smaller nuclear plants, such as the 100-MW modular PBR designs.

Whether a new nuclear plant is financed directly from the wallets of captive ratepayers or with long-term contracts, a large nuclear plant's size relative to its market raises outage-cost risk. A nuclear plant with a long-term power contract will likely contain provisions to provide replacement power, or the financial equivalent, if the plant becomes temporarily unavailable. Given nuclear power's vulnerability to rare, but extended forced outages, replacement power costs for 1,000–2,000 MW of base load power could be considerable, which would factor into credit risk. Similarly, a utility that owns a large nuclear station could find itself spending hundreds of millions of dollars to cover its short position while its station was down without assurances of recovery from ratepayers. Again, smaller PBRs would mitigate this risk.

Some of the preliminary provisions of the Senate Energy Bill contemplate some of these risks. A long-term power contract, for example, with the federal government that covers 50% of the plant's costs might mitigate some of concerns of operating in a competitive environment. Similarly, loan guarantees or lines of credit could also offset the costs. However, if gas- and coal-fired plants can be built for much less (e.g., 50% less) and the operational risk of extended nuclear plant outages remains uncovered, a government program could fall short of relieving investors' credit concerns. Moreover, as with any government subsidy program, offenders would invariably factor U.S. government counterparty risk in the form of subsidy reauthorization uncertainty. Would the programs envisioned by the Senate bill last through the capital recovery period? Maybe. Maybe not.

A new risk for nuclear energy that has caught everyone's attention is terrorism. Because of the dangers that nuclear energy brings, security and insurance costs for nuclear facilities—new and old—are much higher than for fossil or renewable power plants. Therefore, in a competitive power environment, stakeholders in power generation may be reluctant to assume new risks that cost more to mitigate. Again, if a government subsidy can put security costs for new nuclear plants on an even playing field with conventional power generation, the industry could attract new capital. However, most new programs envisioned by Washington only address the construction risk.

As a note aside, some power generators and utilities may oppose efforts to support new

U.S. nuclear generation capacity beyond existing subsidies, such as Price-Anderson, if they are heavily invested in coal and gas. New nuclear energy's low variable operating costs would likely displace existing coal-fired and gas-fired generation units in today's environment. It will do little, however, to displace oil-fired generation or lower U.S. oil imports because so little electricity, about 2% of the U.S. load, is actually generated by oil and much of that is for peak load, which nuclear energy would not serve anyway. But for stakeholders—investors, state politicians and regulators, lenders, customers—the risk that new nuclear generation could strand investment in conventional fossil-fuel-fired generation may be unacceptable unless the government provides financial compensation. And for a government trying to contain federal spending, those costs could be prohibitively expensive.

AN ENERGY BILL COULD MITIGATE THE RISKS

To attract new capital to build the next generation of nuclear power plants in the U.S., developers will need to convince capital providers that the following risks are not materially greater than for fossil fuel power plants:

The expense of cost growth, scope change, technology risk and start-up delay.

The costs of unforeseen design problems that manifest themselves well after commercial operations begin.

The costs resulting from the activities of effective interveners.

The costs resulting from regulatory changes, including growth in oversight and compliance costs.

The cost arising from forced outages in a competitive wholesale environment.

The costs of replacing credit counterparties who are unwilling or unable to honor obligations or commitments upon which a nuclear plant's financing decisions were made.

The added and uncertain expense of providing insurance and terrorism protection that nuclear plants need and that would disadvantage a nuclear plant operating in a competitive wholesale market.

The versions of the Energy Bill circulating around Capital Hill may indeed mitigate enough of the risks that would otherwise dissuade investors from financing new nuclear capacity. The key drivers will be not so much in the broad generalities of the authorizing legislation, but the details of the enabling regulations promulgated by the Department of Energy. That could take some time to draft. However, the Senate markup of the bill appears to recognize the issues. Absent an affordable alternative, if Price-Anderson is not re-authorized, existing nuclear power plants could be forced to close because of the potential liability of an accident that could run into the billions of dollars. Beyond Price-Anderson, however, considerable government financial support will likely be needed to attract capital, given the perceived credit risks.

The proposed Energy Act's subtitle section, the "Nuclear Energy Finance Act of 2003," provides support for "advanced reactor designs" that covers reactors that enhance safety, efficiency, proliferation resistance, or waste reduction compared with existing commercial nuclear reactors in the U.S. In addition, financial support would consider "eligible costs" that would cover costs incurred by a project developer to develop and construct a nuclear plant, including costs arising from regulatory and licensing delays. Financial assistance may take the form of a loan guarantee of principal and interest, a power purchase agreement, or some combination of both.

The government's proposed support of new nuclear construction will come with limits.

The objective is to cover the risks of new nuclear general technology and construction until capital providers gain confidence that a new generation of nuclear power plants is commercially sustainable. The act would limit support to 50% of eligible project costs and to the first 8,400 MW of new nuclear generation. The 50% limit would certainly control the government's exposure, as well as mitigate the risks of moral hazard that a complete guarantee would invite. However, as the industry has learned, some of the costs that could undermine new nuclear power are not those of construction and design, but are the operational ones that could arise after government assistance has ended. In addition, given the risk of cost growth and the likely high capital costs of a new nuclear plant, a 50% level of financial assistance may not be enough to entice a developer comparing uncertain estimates of \$1,500-\$2,000 per kW capital cost of a new generation nuclear plant with more certain \$500 per kW combined-cycle gas turbine or \$1,000 per kW coal capital costs.

Whether or not the nuclear energy provisions of the Senate's version of the Energy Bill are good economic or energy policy is beyond the scope or intent of this article. New nuclear energy has compelling attributes, such as supporting energy diversity, replacing an aging U.S. nuclear fleet, offsetting rising natural gas prices, and reducing greenhouse gases and NO_x, SO_x, and particulate airborne pollutants. Once the capital costs are sunk, the variable operating cost can indeed be quite low. However, nuclear power tends to raise credit risk concerns during construction and well after construction. Investors, particularly lenders who rarely see any upside potential in cutting-edge technology investments, including energy, will likely find the potential downside credit risk of an advanced, nuclear power plan too much to bear unless a third party can cover some of the risks. An Energy Bill that covers advanced design nuclear plant construction risk may go a long way toward allaying those concerns, but if operational and decommissioning risks remain uncovered, look for lenders to sit this opportunity out.

Mr. REID. I will only read one sentence:

But the industry's legacy of cost growth, technology problems, cumbersome political and regulatory oversight, and the newer risks brought about by competition and terrorism concerns may keep credit risk too high for even the Senate to overcome.

In addition, we have the Economist magazine of May 19 which says, among other things:

That is why the real argument over nuclear's future should rest on economics. Given the industry's history of cost overruns and wasted billions, the claim of dramatically improved economics would, if true, support a revival. Alas, as our special report makes clear . . . the claim is dubious.

Why in the world should a mature, well-capitalized industry receive subsidies, such as government liability insurance or help the costs of waste disposal and decommissioning?

The article closes by saying:

If the private sector wishes to build new nuclear plants in an open and competitive energy market, more power to it. As subsidies are withdrawn, however, that possibility will become ever less likely. Nuclear power, which early advocates thought would be "too cheap to meter", is more likely to be remembered as too costly to matter.

These statements hardly sound like a sound investment for the Federal Gov-

ernment to make at this time. The simple truth is if investors on Wall Street won't invest in new nuclear powerplants, we should not force the families on Main Street to back them with their hard-earned income. We have an obligation to protect the American taxpayer from having his or her money guarantee investments by the Federal Government in these risky programs. This amendment is not about whether you support or oppose nuclear power; it is about keeping the Federal Government from making risky investments.

A wide range of national taxpayer, environmental, and public interest groups understand these risks. That is why more than a dozen of these groups signed a letter supporting the Wyden-Sununu amendment. The groups include the National Taxpayers Union, Taxpayers for Common Sense, Council for Citizens Against Government Waste, the U.S. Public Interest Research Group, and the National Resources Defense Counsel.

I ask unanimous consent that a letter from these organizations be printed in the RECORD.

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

SUPPORT WYDEN-SUNUNU-BINGAMAN-ENSGN AMENDMENT TO STRIKE TAXPAYER FINANCING FOR NEW NUCLEAR REACTORS

June 5, 2003.

DEAR SENATOR: As national taxpayer, public interest, and environmental organizations, we are writing in support of the Wyden-Sununu-Bingaman-Ensign amendment to strike Title IV, Subtitle B from S. 14, the "Energy Policy Act of 2003." This irresponsible provision makes taxpayers liable for up to half the cost of constructing new reactors, a new and unprecedented extreme in the long history of subsidizing the mature nuclear industry. We urge you to support the Wyden-Sununu-Bingaman-Ensign amendment to strike Title IV, Subtitle B of S. 14.

Subtitle B authorizes the Department of Energy to provide federal loan guarantees to finance half the cost of bringing on line an additional 8,400 megawatts of nuclear energy) amounting to an estimated taxpayer subsidy of \$14 to \$16 billion. There are no guidelines regarding interest rates and repayment for the loan guarantees, and the Congressional Budget Office considers the risk of default on such a loan guarantee to be "very high—well above 50 percent."

Additionally, this provision authorizes the federal government to enter into purchase agreements to buy power back from these new reactors. The legislation does not state how much energy the federal government will purchase and at what rate, but Department of Energy documents recommend that the federal government contract to purchase nuclear power at above market rates. Offering these subsidies to a mature industry would further distort electricity markets by granting nuclear power an unfair and undesirable advantage over other energy alternatives.

Even the first nuclear reactors did not require this level of taxpayer financing. Since then, federal taxpayers have already provided \$66 billion in research and development subsidies to the nuclear power industry. Nearly five decades and more than 100 reactors later, it is time for the industry to support itself. If proposed new reactors are as

economical as the industry claims, they should be able to finance them privately.

There is no justification for providing the mature nuclear industry with these massive subsidies. Again, we strongly urge you to vote for the Wyden-Sununu-Bingaman-Ensign amendment to strike Title IV Subtitle B of S. 14.

Sincerely,

Anna Aurillio, Legislative Director, U.S. Public Interest Research Group.

Alden Meyer, Director of Government Relations, Union of Concerned Scientists.

Jill Lancelot, President, Taxpayers for Common Sense.

Debbie Boger, Senior Washington DC Representative, Sierra Club.

Wenonah Hauter, Director, Public Citizen's Critical Mass.

Michael Mariotte, Executive Director, Nuclear Information and Resource Service.

Alyssandra Campaigne, Legislative Director, Natural Resources Defense Council.

Pete Sepp, Vice President of Communications, National Taxpayers Union.

Betsy Loyless, Political director, League of Conservation Voters.

Leslie Seff, Esq., Project Director, Sustainable Energy, GRACE Public Fund.

Erich Pica, Green Scissors Director, Friends of the Earth.

Tom Schatz, President, Council for Citizens Against Government Waste.

Susan Gordon, Director, Alliance for Nuclear Accountability.

Mr. REID. Mr. President, I also have a letter signed by the League of Conservation Voters indicating they will consider including the vote on this amendment in their yearly environmental scorecard. I ask unanimous consent that that letter be printed in the RECORD.

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

LEAGUE OF CONSERVATION VOTERS,

June 10, 2003.

Re Wyden-Sununu-Bingaman-Ensign Amendment To Strike Taxpayer Financing For New Nuclear Reactors.

Hon. HARRY REID,

U.S. Senate,

Washington, DC.

DEAR SENATOR REID: In response to an inquiry from your staff, this letter will confirm that the League of Conservation Voters (LCV) supports an amendment that will be offered by Senators WYDEN (D-OR), SUNUNU (R-NH), BINGAMAN (D-NM) and ENSIGN (R-NV) to the Senate Energy bill (S. 14) striking a provision that would make taxpayers liable for up to half the costs of constructing new reactors, a new and unprecedented extreme in the long history of subsidizing the mature nuclear industry.

S. 14 would provide federal loan guarantees to finance half the cost of bringing on line an additional 8,400 megawatts of nuclear energy, and estimated taxpayer subsidy of \$14 to \$16 billion. There are no guidelines regarding interest rates and repayment for the loan guarantees. In addition, this provision authorizes the federal government to enter into purchase agreements to buy power back from these new reactors. The legislation does not state how much energy the federal government will purchase and at what rate, but Department of Energy documents recommend that the federal government contract to purchase nuclear power at above market rates. Offering these subsidies to a mature industry would further distort electricity markets by granting nuclear power an unfair and undesirable advantage over other energy alternatives.

Even the first nuclear reactors did not require this level of taxpayer financing. Since then, federal taxpayers have already provided \$66 billion in research and development subsidies to the nuclear power industry. Nearly five decades and more than 100 reactors later, it is time for the industry to support itself. If proposed new reactors are as economical as the industry claims, they should be able to finance them privately.

There is no justification for providing the mature nuclear industry with these massive subsidies. For this reason, we strongly support the Wyden-Sununu-Bingaman-Ensign amendment to strike the nuclear construction subsidy from S. 14. LCV's Political Advisory Committee will strongly consider including votes on this issue in compiling LVC's 2003 Scorecard. If you need more information, please call me or Mary Minette, LVC's legislative director, at (202) 785-8683.

Sincerely,

BETSY LOYLESS,
Vice President, Policy & Lobbying.

Mr. REID. The nuclear power industry is a mature, developed industry. It has had more than 30 years to convince the wizards on Wall Street of its financial merit. The truth is Wall Street is not convinced, and until Wall Street is convinced, Congress should stay out of the risky financial deals.

The New York Times today had an article about the empty energy bill. One of the paragraphs from the New York Times article reads:

The biggest addition to this dreary lineup [of matters in this bill] is a huge \$30 billion subsidy for nuclear power.

It goes on to say that this is simply bad. Even pronuclear allies regard this package as being excessive.

The Washington Post today says:

... taxpayers should not be asked to provide subsidies for new nuclear power plants either. As it stands, Senate legislation would provide loan guarantees for up to half of the construction costs of new nuclear plants.

If the Senate wants to encourage nuclear power plant construction, it should find means to do so that don't risk such a high price to the [American] taxpayer.

I don't believe my colleagues should guarantee these loans, and that is what we are doing. They wouldn't do it with their own money, so we should not allow the Federal Government to do it with taxpayer money.

I commend and applaud the sponsors of the amendment, the Senator from Oregon and the Senator from New Hampshire. I hope their amendment will pass.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me speak briefly also in support of the amendment by Senator WYDEN and Senator SUNUNU. This is an amendment I offered in the committee markup with Senator WYDEN. We were not successful at that time, obviously. I congratulate both sponsors of the amendment for offering it again here.

Clearly, I am not opposed to the building of new nuclear powerplants. I believe nuclear power makes a very major contribution to our energy needs. It supplies about 20 percent of our Nation's electricity today. It does so safely. It does so reliably. It does

not generate greenhouse gases. And it does so at prices that are competitive with coal and natural gas.

I hope in the future we will see additional nuclear power production in this country and worldwide. I think it is a technology that provides many benefits to us.

There are provisions in the bill that are strongly in support of the nuclear power industry and its future: The renewal of the Price-Anderson Act, for example, that protects the nuclear industry against liability from accidents. There are provisions in there to carry out research and development to help with the training of a workforce. There are many provisions in this bill that are very strongly in support of the nuclear power industry.

The provision this amendment goes to would authorize the Secretary of Energy to guarantee up to half the cost of 8,400 megawatts of nuclear capacity. That translates into at least six large nuclear powerplants. We do not know with any precision how much these loan guarantees would wind up costing taxpayers. That depends on many variables, such as how many plants are actually built under the program, how much they cost, whether in fact there is a default, what the interest rates might be on the defaulted loans, whether the plants would still be able to operate if there were default.

There is a lot of uncertainty in the provision that is the subject of this debate. The Congressional Budget Office has made a number of assumptions that are favorable to the industry in coming up with its estimate. It assumes, for example, that the Government would only guarantee one, not six, plants during the next 10 years. It also assumes that it would cost about half as much as Seabrook and Shoreham did two decades ago and that it would still be able to operate after a default. Under these assumptions, CBO has concluded that the loan guarantees would cost in the range of \$275 million for the one plant.

The Nuclear Energy Institute takes strong exception to these Congressional Budget Office conclusions. NEI doubts the industry will default on its loans. It believes CBO's estimate is based on noncredible, illogical assumptions and that the CBO estimate is unrealistically high.

So we have experts on all sides of this issue. The debate is important, but I do think it glosses over some of the fundamental questions: Does this nuclear power industry need these loan guarantees at this point? Is guaranteeing the nuclear power industry's loans sound public policy? On both of those issues, I believe the preponderance of the argument is on the side of the Wyden-Sununu amendment. I do not believe loan guarantees are necessary in this magnitude at this time.

This is a mature industry. We have been building nuclear powerplants in this country for nearly half a century. We have over 100 nuclear powerplants

now operating. The nuclear industry did not need loan guarantees to get off the ground 50 years ago, and I do not believe those guarantees are required at this point.

Moreover, the companies that are most likely to build these new nuclear powerplants are the ones that have built them before and the ones that are operating them now. These are not small businesses.

As a result of the recent wave of mergers and acquisitions, there are a dozen utilities that now own 75 percent of the Nation's nuclear capacity and two-thirds of its nuclear reactors. Each of these utilities generates billions of dollars in revenues each year. Many generate tens of billions of dollars in revenue each year. Collectively, these 12 utilities had nearly \$12 billion in revenues in 2001.

There is no evidence of which I am aware in the record before us that the nuclear industry needs loan guarantees of this magnitude to build new nuclear powerplants. The Energy and Natural Resources Committee held hearings on the state of the nuclear industry in the past Congress. We heard from both the utility industry and the financial community, and neither one suggested that loan guarantees were appropriate or required.

The utility representative said that the state of the nuclear industry is "very sound" and that new plants would be "economically competitive" and acceptable to investors. The Wall Street representative at our committee hearing testified that a large successful utility could finance the construction of a new nuclear powerplant, and nobody mentioned the need for a Federal loan program of this type or a loan guarantee program of this type.

Second, I do not believe that shifting the financial risk of constructing these plants from industry to the Federal Government or to the taxpayers is sound public policy.

For most of the last century, utilities built powerplants in this country, whether nuclear or non-nuclear plants, under what is called the regulatory compact. Utilities were State-regulated monopolies. They accepted an obligation to serve everyone in their service territories at State-set rates. In return, they were shielded from competition. They were guaranteed recovery of their prudently incurred costs plus a reasonable profit.

The regulatory compact has largely been abandoned in this country during the last couple of decades. It has been replaced by deregulated, competitive, wholesale electricity markets. So instead of wholesale electricity prices being set based on the utility's cost of production, they are now being set more by the market, and title XI of the bill before us is intended to further these developments.

Giving Government loan guarantees of this magnitude to one segment of the utility industry—indeed one of the better financed segments of the industry—I think unduly interferes with the

free market. It runs counter to efforts to establish competitive electricity markets in this country.

In a competitive market, utilities are supposed to decide whether to build new powerplants by weighing the economic risk involved against the economic reward they might receive. Loan guarantees skew the market by shifting the risk to the taxpayers while keeping the rewards for the utility shareholders.

We have had this debate before, 50 years ago, at the dawn of the nuclear era. The House and Senate debated whether nuclear powerplants should be built and operated by the private sector or by the Government. The decision was made to leave the construction and operation of nuclear powerplants to the utilities, to the private sector.

The Federal Government encouraged support of the utilities through nuclear research programs, through fuel subsidies, and through indemnification against accidents. It did not use loans or grants or loan guarantees.

The Federal Government's faith in the utilities 50 years ago was justified as the more than 100 nuclear powerplants operating today attest, and we should continue to have faith in the free market today and not subsidize the next generation of nuclear powerplants to this extent by shifting economic risks from utility shareholders to the taxpayers.

I urge colleagues to support the amendment. I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). Who yields time? The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I thank my colleague, the Senator from New Mexico, Mr. BINGAMAN, for his comments and his very well-reasoned argument on behalf of our amendment.

As I indicated in my earlier comments, this is part and parcel of a debate as to what an energy policy really should be in our country. I support a number of initiatives that I think would help ensure access to stable, reliable sources of energy for our country's economy so it can continue to grow. That means conservation, and we just had an amendment that sets a target of conserving some 1 billion gallons of gasoline in our automotive industries over the next decade.

We also need to make sure we have good, sound infrastructure for transporting electricity or natural gas across State lines and around the country. We want a good strong electricity title. That has been the effort and the work of the Energy Committee. We need to make sure we streamline and reduce unnecessary regulations. I will come back to this point shortly, but that is one of the real problems the nuclear industry faces right now: uncertainty due to complexity in the regulatory environment where the process of building or licensing a plant can be halted multiple times throughout the licensing process.

Of course, I believe, as I hope most Americans do, that we need access to

new energy sources and new energy reserves, and that is why I supported exploration in the northern slope of Alaska.

At the same time, we need to be careful that our energy policy is not about trying to pick winners and losers in the energy markets; that we not digress toward a subsidy "arms race." We heard people argue if we give a subsidy to this industry, we should give it to another, tax credits there or how about a subsidy here. We should not have a subsidy "arms race" where we burden the taxpayers because that is who is paying for all of this policy, giving out subsidies to industries that are favored at a particular point in time. And we certainly should not single out an industry, as unfortunately a portion of this bill does, for an unprecedented loan guarantee, unprecedented taxpayer guarantees for the construction of new powerplants. Whether this is targeted at the coal-fired electricity industry or natural gas-fired plants or, as in this case, nuclear plants, I think it is questionable public policy to provide such loan guarantees.

We are putting the taxpayer at risk, and we can call five different economists to try to estimate the size and scope of that risk, but the provision of the bill we seek to strike allows the Secretary of Energy to provide loan guarantees for up to half the cost of up to six plants. That is 50 percent of the cost for six plants, each perhaps costing between \$2 billion and \$4 billion. That is a \$10 billion to \$15 billion subsidy.

The Congressional Research Service, which is about as nonpartisan as you can get, states that the maximum Federal cost will be in the range of \$14 billion to \$16 billion in 2002 dollars. The Congressional Budget Office states that the risk of default on these guarantees would be quite high, well above 50 percent.

It is difficult to forecast risk. It is difficult to forecast cost. Whether these were guarantees for 25 percent of the cost or 50 or 100 percent or for one plant or for 71 plants, my concerns and I think the concerns of the Senator from Oregon would still be the same: this sets a bad precedent in singling out one industry for this type of a construction loan guarantee. It sets a bad precedent because in all likelihood other areas of private industry would, in the long run, seek to be treated in the same way. Of course, it sets a bad precedent in that it is an unprecedented sum, an unprecedented guarantee.

I would very much like to see a strong and revitalized nuclear industry, and I credit the chairman of the Energy Committee for focusing on this issue in his bill, extending Price-Anderson, investing in basic research, physics and nuclear technologies, and pushing forward scientific and research initiatives that he has included in the bill.

I disagree on some of the slight nuances of those provisions, whether they

are exactly the right size or targeted to the right areas, but I give him a lot of credit for focusing on strengthening our nuclear power industry. I simply do not believe this kind of a guarantee is right for any industry. Equally important, perhaps more important, I do not believe this kind of a taxpayer subsidy is right for the men and women of our nation who are working long and hard, sending their taxes to Washington, and expecting them to be used fairly and equitably.

There is a lot of uncertainty in the energy markets and in the nuclear power industry in particular, and we can ask the question why are not more plants being built, why have we not had a new plant licensed in over 20 years? I think the answer can be found in the uncertainty and the risk created by the regulatory markets, created by the litigious society that we live in and the fact that the licensing process can be brought to a dead halt time and again. Whether or not we have the technology that would allow us to build a nuclear powerplant for \$100 million or \$500 million versus \$2 billion, this uncertainty is enough to discourage capital markets from lending to the large private companies that are engaged in the nuclear power industry.

I think we will not find private resources being attracted to the nuclear industry, and we should not find taxpayer resources subsidizing the industry, until something is done about that uncertainty and that regulatory complexity.

We have an interest rate environment right now that benefits anyone building anything just about anywhere in our country, the lowest interest rates in 40 years. That is about as big as an incentive as one could possibly have for undertaking new construction projects. I certainly do not believe we need to put the taxpayers on the hook in order to provide even more incentive.

We are reaching out trying to protect the taxpayers, trying to do the right thing, I think trying to make this bill better and trying to set a good precedent. Again, I thank RON WYDEN, the Senator from Oregon, for his work. We have bipartisan support for this amendment, three Republican and three Democrat cosponsors. As we move toward a vote, I think we will see bipartisan support for the amendment.

Again, I thank the chairman of the committee for being thoughtful enough to work with us so we could get a consent agreement to bring this amendment up today, to have a fair and thoughtful debate, and to be able to have a straight up-or-down vote on the amendment at the conclusion of the debate. I reserve the remainder of our time.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if I might speak with the distinguished Senator from Oregon about the

final vote. We are wondering, from our side, for no reasons other than time—the more time we have left, the more we might get done—whether we might be able to vote at 3:45 instead of 4:15, saving half an hour. We would be delighted to not ask the Senator to give up very much of that time but I wonder if he would consider a consent agreement for 3:45, which will give us, instead of our hour, 40 minutes, and what is left would belong to the Senator, or 35 minutes. Would that be fair enough for the Senator?

Mr. WYDEN. I want to be accommodating to the distinguished chairman of the committee. Let me spend a couple of minutes looking into it.

Mr. DOMENICI. Sure.

Mr. WYDEN. I will try to ascertain how many Senators on our side of the proposition would like to speak, but the Senator has always been fair.

Mr. DOMENICI. Let's not agree. Let's put that before them as a possibility. Right now we are exploring the notion of voting at 3:45 instead of 4:15. If we did that, we would allocate the time away from each hour in order to get there. In the meantime, we will both ask our cloakrooms if there is any problems with any Senators. The Senator from Oregon will do it on his side and I will do it on mine.

Mr. President, I assume I can speak at this point; I have the floor?

The PRESIDING OFFICER. That is correct.

Mr. WYDEN. Would the distinguished Senator yield?

Mr. DOMENICI. I would be pleased to yield.

Mr. WYDEN. I think we may need to go to 4 rather than 3:45, but I will try to accommodate the distinguished chairman. We will spend some time checking his desire to move the legislation, which has transcended any particular amendment, and we are anxious to accommodate.

Mr. DOMENICI. For the benefit of the Senators who would like to speak, Senator ALEXANDER has indicated a desire to speak for a few moments. He is here. Senator VOINOVICH, who occupies the chair, desires to speak; Senator LANDRIEU, from the other side of the aisle, desires to speak. Senator INHOFE and Senator LARRY CRAIG.

I say to all of them, if they would let us know through the cloakroom, we will try to put some times opposite their names. We will be using 4 as kind of our scheduling time to see what we can do about setting up a time.

Would the Senator from Tennessee like to speak at this time or would he rather that the Senator from New Mexico speak for a few moments?

Mr. ALEXANDER. I will listen to the Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. I will try to be brief.

My colleagues know I have been in the Senate 31 years and that for the better part of that time I spent my time on energy matters but principally, from the standpoint of the

floor of the Senate, I was known as the person who handled the budget for the Senate. That is where I had the luxury and privilege of meeting the distinguished Senator, who opposes me on the floor, Mr. WYDEN, and many others who serve with me. In fact, that is where I became a very good friend of the distinguished majority leader of the Senate, who served, as the Senator might recall, on that Budget Committee way down at the end of the Republican side. One of the Senators who served for most of that time, that the Senator from Oregon will recognize and remember, was probably one of the most astute and knowledgeable Senators who we have both had the luxury of knowing. We might both put some other attributes along with those but he was that, and that was Senator Gramm of Texas.

One day I was exploring a matter with the Senator from Texas. I said: Senator, you know I have been on this Budget Committee for so long, and I am thinking about moving over to the Energy Committee where I have been in the second position for all of these years. You are from Texas and I noticed you never did bother to even get on the Energy Committee.

He said: Yes, that is right.

I said: Why is that?

Listen carefully. He said: Senator PETE, energy is one of the most difficult things to do anything about, nigh on impossible to effect by law any real policy regarding energy, if you are talking about advanced policy that has any impact.

I said: Well, Senator Gramm, I might agree with you but—and before I could finish he said: However, I would like to correct that and say one thing to you.

Now, this was 5 years ago.

Senator DOMENICI, there is indeed a probability that you can do something if you take over the Energy Committee, and I tell you for sure there is only one thing and that is to reestablish nuclear power as an option for these United States and the world.

I wish he were here. I am not quoting him exactly so do not put it in quotes, but he would remember that.

When I decided to take this job and give up the Budget Committee, I remembered that and I even told my wife, when discussing at home my next few years in the Senate, that some pretty good people think I am taking on a committee that does not have a lot of potential because energy is too tough to legislate and make policy about. It just sort of happens, except for that rascal nuclear power.

Well, he said it. He may not be right but I am trying to prove him right in this debate today and in this Energy bill that we are going to try to finish this week, perhaps with 1 additional week.

On May 21 of this year, Alan Greenspan, speaking to the House Energy Committee, said: If we're going to continue to expand our energy base, we're going to have to be starting to look at

nuclear power as a potential reservoir of new sources of energy which are not available by other means.

He continues: I think that we ought to be spending more money and more time looking and contemplating the issue of nuclear power since natural gas is a serious problem.

This morning I happened to hear a talk show with typical Americans calling talking about energy. It was rather nice to hear people from Oklahoma City, from somewhere in Tennessee, California, Oregon, obviously average citizens who were calling in on a radio show asking questions. Most questions had to do with, why don't we have more natural gas? Finally someone asked, aren't there other things we can use? What about nuclear power? Of course, as one might suspect, the answers were rather muddled.

The real question now before this institution is, can nuclear power, held in abeyance for about 14 to 16 years in the United States while Japan built new facilities, the country of France is 80 percent dependent upon nuclear power, a little country like Taiwan, which is booming, is currently constructing two facilities with General Electric engineering and design—I cannot recall the name of the contractor. And the United States sits with everybody saying it is almost impossible. With the exponential growth in electricity needs, where we all expect to use natural gas in the burners, to create the heat and electricity, it is nearly impossible that we will have enough natural gas. It is not a question of whether we have a lot of it. It is a question that we do not use anything else because we are frightened to death of using anything else.

Some in this country, a small group, have scared us to death about nuclear power. When we add up all the energy produced by nuclear power in the world, including the terrible accident in Russia, which was attributable to a very old-fashioned nuclear powerplant that we would not dare license in America, add these together and nuclear power has been safer than any of the other power sources combined—be it coal or any other—save and except for energy produced by dams. I am speaking of large quantities. Certainly, if we speak of windmills, we speak of solar, we can produce clean energy.

Having said that, the issue before the Senate today is, do we want to support a committee that put together a bill that said, fellow Americans, the time has come to quit playing around with energy and do something about a myriad of sources. And to say, wherever you can, we are going to produce more energy.

We have tried to produce or cause to be produced every natural gas source we know of that had impediments. If it was too deep, we gave it a benefit of some sort so it could get taken out, anyway. If it was too far away in the ice lands of Alaska, we gave those companies something so they could get it down here. If it is coal, we said subsidize.

They are talking that we should not be granting a loan guarantee, presumably at market value, to a first-class company that might want to take a risk at building a powerplant. They are saying we should not do that. But when it comes to coal, we are going to spend over \$2 billion on pure research to try to get to that miracle place of clean coal.

We did not say, my, you just should not put your tax dollars in a big waste.

Last but not least, while our opponents will find this is not relevant, we already have a subsidy for wind energy, those 50-foot-tall windmills. Without the new one contemplated to be added to this bill, that has the potential of producing 245,000 windmills, equivalent source of energy. The powerplants we contemplate lending money to, or offering a loan guarantee, the same amount. Guess how much the taxpayer will have given if that occurs. Thirty-one billion is the direct source for those windmills.

Now, the opposition to ours might say, but you are going to get windmills. When you say to the American power industry, if you want to come along and try to build a new nuclear powerplant, modern type, you have to go get your money, you have to take all the risks, and we will underwrite half of it with a loan, they would have us say that is a terrible risk even if it is only \$2 billion to \$5 billion. But that \$31 billion that might occur for windmills is not? Of course, the windmill is not a risk, but it certainly is throwing your money at something that most Americans would wonder seriously about.

Having said that, this Senator is not against any of the sources. I think we will win today. When we win, we will go to conference eventually and come out with a major new impetus for nuclear power in this country. For the first time somebody is going to say, let us build one or two new nuclear powerplants. And the greenhouse gas issue that has been raised will not be there because there is no pollution from those two plants that I have just described, if they come into being—none. Zero. Absolutely clean.

We are going to have to find some way to take care of the waste someday. If we want to have a debate here today, or next week, on the waste, suffice it to say that the United States has scared herself silly about waste. Waste is nothing but a technical problem. If you want to go see all the waste in France, get a ticket and go to a city, ask them where it is, and they will take you to a building, and you can go see it all.

You might say: Who would want to see it?

They will just take you to a building that looks like a schoolhouse. You walk in and say: Can I see the waste? And they will say: You are walking on it. They will say: Just take a look down.

You look down. It looks like glass, and there sits the waste, encapsulated,

and it will be there for as long as 50 years, if that is what is needed by the French scientists to find out how to put it away or how to reuse it.

Here we sit fooling around because somebody convinced us we ought to become immobilized, when it comes to an alternative, until we have a hole in the ground so deep, so big, in such hard rock that we can figure out, way in advance, a way to put the waste in it and monitor it with calculators and say to America and the world: We just monitored it, and we can tell you there will be no radiation for 10,000 years.

That is the test because we want to be so careful we don't hurt anybody ever. The test of the technology that is going to have to monitor that—and you can hardly draw the plans, it is such an absurdity—is 10,000 years.

Having said all that, we are back to a simple proposition: Do you or do you not want to let the Energy Committee go to a conference with the House and to take with it a bill that says: All the rest of these energies get their help: Biomass gets its assistance, coal gets its help, the renewables are helped immeasurably with tax assistance, every single thing we know how to do to produce more oil and gas is done—right?

Ms. LANDRIEU. Right.

Mr. DOMENICI. I could go on and on. That is all going to be there. But also in the event—and I am looking for the language in the statute as to when the Secretary can issue these—we have statutory language that says, very simply—and I will read it and close:

Subject to the requirements of the Federal Credit Reform Act [et cetera, et cetera, et cetera], 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 or conditions for financial assistance as the Secretary deems necessary. . . .

That then is provided as up to 50 percent of the cost, by way of a loan.

Frankly, it is all a question of risks. It is not a question of philosophy. It is not a question of whose party wants to get on what slope, a slope of entrepreneurship or a slope of guaranteeeship. All of that is meaningless. What this is about is: Is it worth this little risk we are speaking of—to get what I just described going again for America?

I say, overwhelmingly, absolutely, positively, yes. I do hope, come that vote time, there will not be 50 Senators, or half of those who vote today, who will say we want to strike this and kill this opportunity for America.

With that, I will yield the floor to Senator ALEXANDER for his time.

Senator LANDRIEU, are you on some time frame that is urgent?

Ms. LANDRIEU. I can yield to the Senator from Tennessee. He was here, of course, prior to my arrival. How much time would he like?

Mr. DOMENICI. I yield to him and then to the Senator from Louisiana.

Mr. ALEXANDER. I would like about 5 minutes.

Ms. LANDRIEU. Fine.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I rise in support of the chairman in opposition to the amendment.

In 1987 our family, which included three teenagers and a 7-year-old, visited the Peace Park in Hiroshima, Japan. We thought twice before we took our children there because it is such a staggering experience to see what happened on that August day in World War II when the atomic bomb was dropped.

I marvel even more that today Japan, because it knows of the importance of energy, now relies on nuclear energy—the same process that wiped out half the lives in Hiroshima—for peace, for the peaceful production of electricity for homes and jobs for about 80 percent of their electric needs. They are producing about one new reactor a year.

In France, as the chairman said, about 80 percent of the electricity, I believe, is produced by nuclear power. We have about 100 ships in our Navy that operate with little nuclear reactors. Yet, for some reason, over the last 30 years we became afraid to start a new nuclear powerplant. I guess we became so accustomed to abundant supplies of coal and oil and relatively cheap gasoline that we thought it would last forever. But I think we have gotten over that. At least it is time for us to get over that and to break away from this national attitude that, since the 1970s, has kept us from starting a new nuclear powerplant.

Why not nuclear? That is the question we should be asking. We have heard the testimony of the terrible price increases in natural gas and the projections that we have a really serious problem with continuing natural gas prices.

This Senate voted not to go explore for more oil in Alaska.

Windmills are promising, but the promise of 245,000 of them to produce 2 percent of our energy and to see them all over our deserts and ridgetops—there is some limit to what windmills will be able to do for us. Coal produces half of our electricity, but it produces carbon and it produces pollution and we have not yet quite developed the clean coal technology we all want.

Nuclear power more and more seems to be imperative. So what are we doing about it in this bill? We are basically adding nuclear to the arsenal of weapons we want to use to make ourselves less dependent on foreign oil and more likely to have clean air and a cheap and abundant supply of electricity.

It is said that we are subsidizing the idea of nuclear power. In a way we are: A new type of advanced nuclear powerplant that has the promise of building plants for \$1.5 billion—much cheaper,

much more efficient, safer, to start up that industry, to stimulate it. But we are doing exactly the same thing as the chairman said with wind power. We are doing exactly the same kind of thing with clean coal technology to the tune of \$2.2 billion. We are doing exactly the same thing with oil and gas, and \$2.5 billion is in the bill for that.

This morning, we talked about putting a Presidential emphasis, thanks to the Senator from Louisiana, on conservation. We need to add nuclear to our list. The larger question would be, Why would we keep it out? Why would we encourage every other form of energy and not nuclear energy?

I strongly urge that we keep in this bill nuclear power as an option for our future. There will be great discussions in this body about carbon and the concern of greenhouse gases. Nuclear power is carbon free. It is carbon free. There will be a lot of talk about our dependence on oil. The most reliable and largest opportunity to replace oil in the next 20 years is nuclear power.

There is a lot of talk about the worry of natural gas prices. The best way to keep natural gas prices under control is to have an alternative. That would be nuclear power. I strongly urge my colleagues to vote no on the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the vote in relation to the pending amendment occur at 3:50 with the remaining time to be divided with 20 minutes for the proponents and 10 minutes under the control of the opponents.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank the Senator from New Mexico. I will take 3 or 4 minutes. I understand that the Senator from Alabama would like to speak in opposition to the amendment as well.

In all due respect to my colleagues who are offering this amendment to strike this very important provision from the bill, I wanted to come to the floor to strongly disagree and to add my voice at the outset of the debate and on the points which the chairman of the committee brought to the fore on this very important part of the Energy bill.

I wish to begin by saying that our Nation has 103 nuclear powerplants. The nuclear industry provides 20 percent of our electricity. I don't believe we will strip the Energy bill of this provision, but if we did, we would jeopardize the reliable and affordable source of electricity that this Nation needs to stay competitive in this world economy.

It will cost jobs and cause hardship. People would lose their jobs with this amendment.

I am not sure my colleagues are aware that over the next 20 years the

United States doesn't need to move backwards as this amendment would suggest. We need to move very quickly in the other direction. We need to build 1,300 new powerplants in this Nation, which is the equivalent of 60 to 90 new powerplants per year to keep up with the increased demand of electricity. Why? Because our economy is more productive; because technology is demanding it; because good, old Yankee know-how makes it crucial that we provide our businesses with electricity and with power. If we don't give them power, they can't operate. If we don't give them power that is reliable and affordable, then we will lose jobs to our international competitors. It is as simple as that. We need everything and more, everything we thought of and more than we thought of.

Nuclear is a very important component of that. The amendment's authors argue that this is a subsidy. It is not a subsidy. It is a loan guarantee. It is our intention that these loans be fully paid with interest. We do this. There are 100 examples in the Federal rule book where we do this. We want to encourage the development and movement in a certain way. We can give loan guarantees, and we have done it time and again. It is time we do it for the nuclear industry to keep them moving in the right direction.

Let me say to the chairman that I went down to Louisiana. We have two nuclear powerplants. Seventeen percent of Louisiana's fuel is nuclear. As the chairman knows, one out of five has the clean benefit of nuclear power.

My producers of natural gas said to me, Senator, please go and fight for nuclear energy. If we don't get more energy into the marketplace, the demands on natural gas will become so high that we cannot pay our gas bills, and it is driving our industry to its knees. They said, Senator, please go and fight for an increase in all sources, including nuclear.

Nuclear energy currently generates electricity for one in every five homes and businesses.

It is important not only in Louisiana, where two nuclear plants produce nearly 17 percent of my State's electricity, but also in States such as Connecticut, Illinois, New Hampshire, New Jersey, South Carolina, and Vermont where nuclear generates more electricity than any other source.

Nationwide, 103 reactors provide 20 percent of our electricity—the largest source of U.S. emission-free power provided 24-7.

Nuclear energy is one of the most competitive sources of energy on an operational cost basis.

While I strongly support the use of natural gas for our energy needs, we cannot rely, as we have in recent years, on any one source of energy to meet our Nation's increasing electricity demand.

Over the next 20 years, U.S. natural gas consumption is projected to grow by over 50 percent while U.S. natural

gas production will grow by only 14 percent.

The CEO of Dow Chemical recently wrote that the chemical industry—the Nation's largest industrial user of natural gas—is particularly vulnerable to high natural gas prices.

To remain an economic leader we must promote a diversified and robust energy mix, including the full range of traditional and alternative energy sources.

Nuclear energy is also vitally important for our environment and our Nation's clean air goals.

Nuclear energy is the Nation's largest clean air source of electricity, generating three-fourths of all emission-free electricity.

Nuclear energy will be an essential partner for future generations of Americans, whose reliance on electricity will increase and who rightfully will demand a cleaner environment.

Just this past Sunday, the Washington Post highlighted the problems that the Shenandoah National Forest now faces with pollution. Think how much worse our Nation's air pollution would be if nuclear energy did not generate one fifth of our electricity.

To preserve our current levels of emission-free electricity generation, we must build 50,000 megawatts of new nuclear energy production by 2020.

In addition to providing the largest source of emission-free electricity, nuclear energy possesses the most viable solution to our over reliance on foreign oil, i.e., the potential to someday cogenerate hydrogen as a clean transportation substitute to oil.

The Wyden amendment will hurt our Nation's long-term economic, environmental and security goals if passed.

Building a windmill that has a generating capacity of 2 megawatts should not be compared to building a nuclear power plant that produces 1,000 megawatts or more.

I agree with my ranking member that the nuclear industry is mature in the sense that it has been safely, efficiently, and effectively producing electricity for several decades. But we have not brought a new nuclear plant on line in this country for over a decade and a new project will face some uncertainties.

The costs of the first few plants will be higher than those that are built later. Because the business risks will be greater for the initial few projects, financing will be more difficult to obtain. That is why the Federal Government needs to step in and provide an incentive to allow the industry to get over that hurdle.

Some rather large numbers have been thrown around as to the costs of this provision. Were these numbers accurate, I would share the concerns voiced by my colleagues.

The construction costs as derived by CBO would be \$2,300 per kilowatt of capacity is inconsistent with current cost incurred by other nations building similar types of advanced nuclear reactors.

According to a detailed cost analysis developed by industry the first few plants will cost less than \$1,400 per kilowatt hour and will later fall to less than \$1,000 per kilowatt hour, making nuclear plants very competitive with the costs of other technologies.

My colleagues who are opposed to these loan guarantees are assuming that a new nuclear plant could rise to costs over \$3,800 per kilowatt, based on questionable CBO projections.

In addition my colleagues also fail to mention that the Secretary of Energy will be required to use stringent criteria to provide loan guarantees.

I concede that we probably don't know what the exact cost will be, but the economic, environmental, and security benefits of investing in new nuclear plants for our future generations are many and great while the financial risk to the public sector is by comparison rather small. Let's give this idea a chance.

In conclusion, I urge my colleagues to vote against the Wyden amendment. And I thank the chairman for all his efforts in helping to promote a vital source of energy and for helping to pave the way towards improving our Nation's energy security.

I strongly oppose the amendment on the floor to strip the provision in this bill, and I support the chairman's mark.

Mr. DOMENICI. Mr. President, how much time does the Senator from New Mexico have?

The PRESIDING OFFICER. Six minutes.

Mr. DOMENICI. I yield 3 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 3 minutes.

Mr. SESSIONS. Mr. President, I wish to express my deep appreciation to Senator DOMENICI. He, more than any other person in this body, understands what role nuclear power must play in America and in the world if we are to maintain a clean environment and a healthy energy source. In nations that have readily available electricity in the world, compared to those that do not, the lifespan is twice as long.

This is a matter of extreme importance. We are trying to simultaneously increase our power sources in America and improve the cleanliness of our air and protect our environment. The only way that can be done is with nuclear power.

I feel very strongly about this. It is important for America's economy. Alan Greenspan testified at the Joint Economic Committee last week and raised again the crisis that we are facing in natural gas. Natural gas is a source for all new electric plants in America today. We are driving up this tremendous demand on natural gas. If we drive up the cost for natural gas, as we certainly will at the rate we are going, homeowners are going to pay so much more for their heating. Businesses that use natural gas are going

to have to pay twice as much. We can meet that demand without any air pollution by expanding nuclear power.

There are 29 nuclear plants being built around the world. France gets 80 percent of its power from nuclear power. Nearly 50 percent of Japan's power comes from nuclear power.

We have not built a nuclear plant in America in 20 years. It is time for that to change. Twenty percent of our electricity comes from nuclear power producing no adverse environmental impacts to the atmosphere.

I would like to read what we save for the atmosphere by having nuclear power. A recent study showed that nuclear energy has prevented the release of 219 million tons of sulfur dioxide, 98 million tons of nitrogen oxide polluted in the atmosphere, and prevented the emission into the air of 2 billion tons of carbon dioxide. That is considered by some to be a global-warming gas. We can stop that. We may have offset the effects of carbon dioxide already by producing 20 percent of our energy with nuclear power.

We have to include a provision like this in the bill. Last year, I introduced a bill that would provide a tax credit, similar to that for renewable energy, for the production of nuclear energy. The tax credit would have cost only one-fifth the amount of tax credits that other forms of clean energy receive, and it would have encouraged the production of a steady, reliable source of energy. The provision in this bill likewise encourages nuclear energy, and I support it. I reject the notion that there would be a high rate of default on these loans. I have studied nuclear energy and I have visited plants. These loans are needed to provide the nuclear industry a small incentive to take a big step towards constructing a plant. We need to go to conference with it. If we do, I would be willing to work with Senators who oppose this. But I think we have to have something in this bill that will allow us to encourage nuclear power. Not to do so would be a failure of incredible proportions.

I thank the chairman. I feel very strongly about it. I thank Senator DOMENICI again for his historic leadership that can lead us into a new way to produce large sources of energy without pollution costs to the environment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SUNUNU. Mr. President, I ask if the Senator from Oregon would yield 2 minutes to the distinguished Senator from Arizona.

Mr. WYDEN. Yes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first, I agree with the comments of the Senator from Alabama that we ought to be promoting nuclear power. I am a strong advocate of that. I compliment the chairman of committee, Senator DOMENICI, for being very strong in his

support for nuclear energy and for being totally consistent in the positions he has taken.

I want to argue against hypocrisy. An environmental group handed me a sheet of paper a while ago. They are very much against subsidies. As it turns out, a subsidy for nuclear energy would be very bad. They are right about arguing against subsidies. That is why I am going to support this amendment.

But all of the environmental arguments I have seen have been for subsidies when it comes to ethanol, solar power, biomass, wind energy, and you name it. The point here is that we ought to be consistent. If you think subsidies are a wonderful idea for these other things, then maybe you ought to support the loan guarantee for this additional method of producing power. But if you think subsidies are wrong, then you shouldn't support them for anything.

As the chairman of the committee knows, I opposed all of these subsidies in the Finance Committee. I will offer amendments again to try to strip them out of the finance part of the bill when it is added to the Energy bill on the floor.

I wish to make the point that if you want to be hypocritical—I am talking about these organizations and not Members of the Senate—then fine. Oppose this subsidy for nuclear and continue to support it for all of the rest. But if you want to be honest about it, like the chairman and I, though we have come to a different conclusion, but at least the chairman has been consistent and I hope I have been consistent.

I oppose these subsidies, even for those sources of energy which I think are critical for this country to continue to develop, and that includes nuclear energy.

I support the amendment in order to remain consistent in opposing subsidies.

The PRESIDING OFFICER. Who yields time?

Mr. SUNUNU. Mr. President, I thank the Senator from Arizona for his support for our amendment. I will pick up a little bit where he left off talking about the issue of subsidies across a range of areas.

The distinguished chairman of the committee spoke earlier about the clean coal subsidy, the \$2 billion in clean coal subsidy. He suggested that supporters of this amendment also supported that subsidy.

I just want to be clear. I do not support \$2 billion for clean coal. I have, in my service in the House of Representatives, opposed the clean coal technology program. In addition to that, I oppose the fossil fuel research and development fund that is in this bill because they effectively provide a subsidy for research and development in the areas of fossil fuel, areas where private companies operate in a very profitable and successful way.

It is not to hold anything against those fossil fuel firms or those coal firms, but it is to stand up for some of the concerns expressed by the Senator from Arizona that we should try to be as consistent as possible in striking these unnecessary subsidies.

The suggestion was made earlier on the floor—in fact, the statement was made specifically—that this loan guarantee program is “not a subsidy.” I reject that out of hand. If this was not a subsidy, then it would convey no benefit to those who sought the loan guarantee. And if there were no benefit, then people should have no objection to removing it from the bill. But, of course, there is a lot of objection to removing this from the bill because there is a big benefit to be gained by having a federally subsidized loan guarantee for the construction of new nuclear plants.

It was also suggested that perhaps this is an attack on nuclear power. Let me close by reemphasizing that is simply not the case. I support the Price-Anderson provisions in the bill. I supported the effort to establish a long-term storage facility for nuclear waste at Yucca Mountain that could be operated for the long-term, safely for our utilities and energy industries.

In an effort to suggest this is an attack on nuclear power, the big guns have also been rolled out: there's been a suggestion that Alan Greenspan, of all people, might somehow harbor some support for this loan guarantee program. Let me say, clearly, like Alan Greenspan, I am a proponent and supporter of the concept of using nuclear power to help meet our energy needs, but I do not believe, for a moment, that means Alan Greenspan is a supporter of federally guaranteed loans to private industry. And if someone can produce testimony from Alan Greenspan supporting a Federal loan guarantee program for private industry to build nuclear powerplants, I will quite literally eat my hat. I simply do not believe that to be the case.

I join with the Senator from Oregon in support of this amendment to strike one provision from this very large Energy bill; and that will protect taxpayers by preventing them from being exposed to \$14 or \$16 billion in loan guarantees to private industry. I do not think we need it.

I look forward to a vote on this amendment. I certainly ask my colleagues to support the amendment.

I yield the floor.

Mr. INHOFE. Mr. President, I rise to oppose this amendment. Nuclear power is a clean, reliable, stable, affordable, and domestic source of energy. It is an essential part of this Nation's energy mix. And if we care about energy stability and the environment, then nuclear power must play an important role in our energy future.

I am a strong supporter of nuclear power and I want to commend Senator DOMENICI for his commitment to nuclear energy in this bill. His legislation

provides incentives to enhance and expand our energy base and usher new advanced-design nuclear power technologies. It has been nearly 20 years since a new nuclear plant has been built. The safety and efficiency record of the industry over that time has been astounding. Through increased efficiency, nuclear plants have increased their clean generation of energy. The increased electricity generation from nuclear powerplants in the past 10 years was the equivalent of adding 22 new 1,000-megawatt plants in our Nation's electricity grid. But with energy demand increasing by at least 30 percent over the next 15 years, more generation will be necessary to meet our needs. As we look to the future, if we are to meet those needs, provide stability in the marketplace, and ensure clean air, then we will have to continue to expand our nuclear base load. Nuclear energy is America's only expandable large-scale source of emission-free electricity.

The Environment & Public Works Committee—the committee of which I have the honor to serve as chairman—has jurisdiction over the Nuclear Regulatory Agency and I have been active in overseeing that agency, both as the nuclear subcommittee chairman, and now as chairman of the full committee. In 1998 I began a series of NRC oversight hearings. I did so with the goal of changing the bureaucratic atmosphere that had infected the NRC. By 1998, the NRC had become an agency of process, not results. I knew that if we were to have a robust nuclear energy sector, we needed a regulatory body that was both efficient and effective—and one in which the public could be sure that safety is the top priority. If the agency was to improve it had to employ a more results-oriented approach—one that was risk-based and science-based, not one mired in unnecessary process and paperwork. I am pleased that in the last 5 years, we have seen tremendous strides at the NRC. It has become a lean and more effective regulatory agency. I have the utmost confidence in the NRC ability to ensure that nuclear energy in this country is safe and reliable.

We have all of the pieces in place to move to the next generation of nuclear power. If we are to meet the energy demands of the future and we are serious about reducing utility emissions, then we should get serious about the zero emissions energy production that nuclear power provides. And that means that we should not be discouraging the development of new, safe nuclear technologies. Quite the opposite, we should provide the incentives and the assurances in order to meet the energy needs of this country.

The bill before us provides a sensible incentive for future nuclear power projects. Unfortunately, the Wyden/Sununu amendment will remove those incentives—it is a step backward—away from long-term stable and clean energy supplies.

Mr. FEINGOLD. Mr. President, I am pleased to be a cosponsor of this amendment and want to detail the reasons for my support. The amendment strikes subtitle B of title IV of the bill, the section on deployment of new nuclear plants. This section would provide new loan guarantees for the construction of new nuclear plants. In addition to providing the nuclear industry loan guarantees, the Senate Energy Bill appears to also authorize the Federal Government to enter into power purchase agreements to buy power back from new reactors—potentially at rates above market prices.

I think subtitle B goes too far and the amendment to strike is necessary for several reasons. First, the bill places no ceiling on these loans, making the Federal Government liable, according to the Congressional Research Service, for between \$14-\$16 billion in loan guarantees.

Second, I feel strongly that if private investors are not willing to put their own money on the line to support new nuclear plants, then the Federal Government should not put taxpayers' money at risk either. Yet, under the provisions currently included in the Senate bill, taxpayers would be required to subsidize up to 50 percent of the cost of constructing and operating 8,400 megawatts of power. The Congressional Budget Office has estimated the risk of default would be “well above 50 percent.” I feel that \$14-\$16 billion is a lot of money to gamble on an investment that has a 50/50 risk of failure.

Finally, as I have expressed in the past, I am concerned that our current nuclear waste storage program is of insufficient size to handle our current nuclear waste problem. I do not think it is wise to build more plants, when we do not have enough storage for our current waste. Yucca Mountain is not authorized at a size that is big enough to take all of the current nuclear waste. Among the reasons that I opposed the Yucca Mountain resolution was its insufficient size. I was concerned that my home state of Wisconsin would go back on the list as a possible site for a large-scale nuclear repository. Constructing new nuclear plants does nothing to relieve those concerns, and instead makes it more likely that we will have a growing nuclear waste problem for which we will need a permanent storage solution, putting Wisconsin back at risk.

I think this amendment makes fiscal and policy sense, and deserves the support of the Senate.

Mr. VOINOVICH. Mr. President, I rise in support of nuclear energy and in support of the provisions in S. 14 that promote the use of this vital component of our energy portfolio.

Nuclear energy accounts for 20 percent of our electricity generation—one in five American homes and businesses are powered by nuclear energy. It is an important energy source now, and will

become even more important in the future—as we strive to meet growing energy demands while protecting our environment.

As many of my colleagues know, nuclear energy provides emissions-free electricity—no emission of airborne pollutants, no emission of carbon dioxide or other greenhouse gases. In fact, nuclear energy provides three-fourths of the emissions-free electricity generated in the United States—more than hydro, wind, solar and geothermal energy combined.

President Bush has said many times that energy security is a cornerstone of national security. He is right—and nuclear energy is a vital component of our energy supply.

Uranium—the fuel for our nuclear fleet—is mined domestically and by many of our allies.

Unlike oil, nuclear energy is not subject to foreign manipulation.

Unlike natural gas, nuclear energy does not have domestic shortages and importation problems.

Unlike wind, solar and geothermal energy, nuclear energy provides highly affordable and reliable power.

Production costs of nuclear energy were 1.76 cents per kilowatt-hour versus 1.79 cents for coal and 5.69 cents for natural gas in 2000.

Plant capacity utilization exceeded 90 percent in 2002—the fourth year in a row that the industry set a record for output without building any new plants.

Nuclear energy is safe. Our nuclear plants are the most hardened of any commercial structures in the country and have a superb safety record and few, if any, industries have oversight comparable to that provided by the NRC for nuclear plants.

Our nuclear Navy is a great example of the safety of nuclear energy—

The U.S. Navy has safely traveled over 126 million miles without a single reactor incident and with no measurable impact on the world's environment.

Sailors on a nuclear submarine, working within yards of a reactor, receive less radiation while on active duty than they would at home from natural radiation background.

However, we must act now if we want to preserve the benefits of nuclear energy.

The last license for a domestic reactor was issued in 1978—and the technologies used to power our nuclear plants are over 30 years old.

Our industry has developed advanced nuclear technologies—and the NRC has licensed them—but new plants have only been built overseas, not in America.

Our nuclear plants were built in a highly regulated market—where returns on these investments were guaranteed—not in today's highly competitive energy markets.

Nuclear plants present unusual risks to the financial community due to the significant up-front capital invest-

ments that are required years before they generate any returns—as opposed to natural gas generators that are relatively inexpensive and easy to build.

Without new interest in nuclear power, our pool of qualified nuclear workers is drying up.

From 1990–95, the number of students in nuclear engineering dropped by 30 percent.

In 1975, there were 76 research reactors on American college campuses—today there are 32.

Current estimates project that domestic energy demand will increase by almost 50 percent by 2030. Without a significant effort to increase our nuclear capacity—which must include construction of new nuclear facilities—we will have no other choice than reliance on natural gas to meet that demand, which will drive up the costs for both electricity and natural gas through the roof.

The nuclear energy provisions in S. 14 are essential to assure that nuclear energy continues to thrive and provide its benefits to our Nation:

Price-Anderson reauthorization: The bill permanently reauthorizes the Price-Anderson liability protection that is so crucial to all nuclear facilities.

Advanced reactor construction: The bill will authorize construction of a new advanced reactor as a research test-bed using the very latest ideas developed in the Generation IV reactor program.

Advanced fuel cycle initiative: Authorizes funding for development of technologies to reduce the volume and toxicity of final waste projects, simplify siting for future repositories and recover fuel from spent fuel.

Federal loan guarantees: The bill provides loan guarantees for new plant construction in order to offset the problems with new development that I mentioned earlier.

I want to spend just a minute on the Federal loan guarantees that are the subject of an amendment by Senator WYDEN and Senator SUNUNU.

These loan guarantees are necessary to jumpstart construction on new nuclear plants. In order to begin construction of a new facility, the nuclear industry needs to move into uncharted waters—they need to go to investment bankers and say “I know that this is a huge capital outlay, and that we haven't built one of these facilities in 30 years, but we need to do this.” These loan guarantees will ensure that private-sector financing will be available for utilities that make the decision to move forward.

My distinguished colleague from Oregon has stated that we are throwing away good money on these “subsidies.” I must respectfully disagree. As Chairman DOMENICI pointed out earlier, this is not a handout program.

These are loan guarantees—for up to 50 percent of the construction costs for a new facility—which means that the utilities will have to make payments

on the loans, and that there will likely be no expenses to the Government.

I applaud the work that Chairman DOMENICI has done on these provisions—all of these provisions—and I will oppose any efforts to strip them from the energy bill.

I urge my colleagues to oppose the Wyden-Sununu amendment.

Mrs. FEINSTEIN. Mr. President, I rise to support the amendment offered by Senators WYDEN, BINGAMAN, SUNUNU, and ENZI to strike the section of the energy bill providing Federal subsidies for the construction of new nuclear plants.

Title IV of the energy bill includes loans, loan guarantees, and other forms of financial assistance to subsidize the construction of new nuclear powerplants.

In the past 50 years, California has built 5 commercial nuclear powerplants and one experimental reactor. Today, just two of these nuclear powerplants are still operating in the State. The plants at San Onofre and Diablo Canyon are running at diminished capacity but still provide 4,400 megawatts of power in California—close to a fifth of California's energy supply.

Impressive as these numbers may be in terms of the power-generating capacity of nuclear energy, they tell only part of the story of California's experiment with nuclear power. Of six nuclear powerplants built in California, four have been decommissioned due to high operating costs and excessive risk.

In the late 1950s, an experimental reactor at the Rocketdyne site in Ventura County was shut down after a severe meltdown.

In 1967, the Vallecitos plant closed its doors after 20 years of operating because its owner, General Electric, was unable to obtain accident insurance due to the high risk of operating a nuclear power plant.

In 1976, the Plant at Humboldt Bay shut its doors after 13 years of operation as a result of the discovery of a fault line near the plant that would have required millions of dollars in seismic retrofits.

And in 1989, the Rancho Seco plant near Sacramento was closed by public referendum after 14 years of operation plagued by mismanagement that resulted in cost overruns.

Nuclear power is expensive and risky. Yet I believe that if private investors are not willing to put their own money on the line to support new nuclear plants, then the Federal Government should not put taxpayers' money at risk either. However, under the nuclear subsidy provision in this energy bill, taxpayers would be required to subsidize up to 50 percent of construction costs of new nuclear plants—costs that CRS estimates to be in the range of \$14–16 billion. CRS also estimates the risk of default on these loan guarantees to be “very high—well above 50 percent.”

I strongly believe it is not in the public interest for our Nation to subsidize

costly nuclear plants. Instead we should devote more resources to the development of renewable energy.

I strongly believe we should be doing more to encourage the development of renewable power such as, wind, geothermal, and biomass, instead of providing subsidies to an industry that has not built a new powerplant since the 1970s.

Unfortunately, this Energy bill currently has an over-reliance on promoting traditional energy resources, such as nuclear power.

The U.S. nuclear power industry, while currently generating about 20 percent of the Nation's electricity, faces an uncertain long-term future. No nuclear plants have been ordered since 1978 and more than 100 reactors have been canceled, including all those ordered after 1973. No units are currently under construction.

The nuclear power industry's troubles include high nuclear powerplant construction costs, public concern about nuclear safety and waste disposal, and regulatory compliance costs.

Controversies over safety have dogged nuclear power throughout its development, particularly following the March 1979 Three Mile Island accident in Pennsylvania and the April 1986 Chernobyl disaster in the former Soviet Union. These events shaped much of our opinions about nuclear power.

Safety continues to raise concerns today. In a recent example, it was discovered in March 2002 that leaking boric acid had eaten a large cavity in the top of the reactor vessel in Ohio's Davis-Besse nuclear plant. The corrosion left only the vessel's quarter-inch-thick stainless steel inner liner to prevent a potentially catastrophic release of reactor cooling water.

Furthermore, nuclear powerplants have long been recognized as potential targets of terrorist attacks, and I remain skeptical that there are enough safeguards in place to defend against potential terrorist attacks on our nuclear plants.

Concern about nuclear safety and waste disposal makes Californians apprehensive about nuclear power. California has shifted away from nuclear power over the years and activists in the communities surrounding the Diablo Canyon and San Onofre plants continue to express concerns about the safety of the remaining reactors in California.

The construction of new nuclear reactors would also exacerbate the nuclear waste problem. Since the volume of nuclear waste in the United States is expected to exceed capacity at the controversial Yucca Mountain repository by 2010, any new plants will create even more waste storage problems.

I voted with Senator BINGAMAN to strike these nuclear subsidies in committee and today I will vote with Senator WYDEN to do the same.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, how much time remains for each side?

The PRESIDING OFFICER. The proponents of the amendment have 14 minutes 18 seconds; the opponents of the amendment have 2 minutes 35 seconds.

Mr. WYDEN. Mr. President, if I could engage the distinguished chairman of the committee, I would like to close the debate. At this point, I believe the Presiding Officer said I have in the vicinity of 14 minutes. I say to the Senator, you have in the vicinity of 2 minutes. Would you like to speak now?

Mr. DOMENICI. No, I would not.

Mr. WYDEN. Then I will take 5 minutes of our time at this point.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, at that point we have 9 minutes remaining?

The PRESIDING OFFICER. About 8½.

Mr. WYDEN. Thank you, Mr. President.

Mr. President, a couple of arguments need to be addressed at this point. The Senator from Louisiana, Ms. LANDRIEU, just recently said the Wyden-Sununu provision would, in some way, jeopardize the reliability of power and cost jobs today. That is simply not correct. No plant that is operating today—not one—would be affected by this amendment, and not a single job in America would be lost. Now, with respect to jobs of the future—and I think this is important to note—if you look at the official figures of the Federal Government—these are supplied by the Energy Information Agency—the fact is, you can build four or five gas-fired plants for the cost of one nuclear facility. That is, again, not something just made up. Those are the official figures of the Federal Government with respect to the comparative costs of this amendment.

I think we ought to note, for example, just how unprecedented this is. When people began to debate nuclear power decades ago—50 years ago—when the commercial nuclear industry was first getting started, there were not any loan guarantees. In fact, even during the early days, there was no subsidy along these lines. People would say, let's support research, let's support various opportunities to assist with the nuclear reactors but not even in the early days was there a construction subsidy. In fact, in the Atomic Energy Act of 1954 there was an explicit prohibition on subsidizing any of these facilities.

So what we are talking about is something where a nonpartisan analysis from the Congressional Budget Office has made it clear it is risky. They said there is upwards of a 50-percent likelihood of default. The Congressional Research Service has said it is going to be costly. Mr. President, \$14 to \$16 billion is the appraisal of the Congressional Research Service.

I have made it clear it is unprecedented both with respect to this bill and the history. Finally, it is simply unfair when you compare it to other sources of power.

I wrap up this part of the discussion by making sure Senators are clear on the distinction between nuclear power and various other sources of power under this proposal.

Under the way the Domenici legislation is written, if you do not produce any wind, you get no direct subsidy. But under the legislation as it stands today, if you do not produce any nuclear power, you get a subsidy. That is as clear a distinction as we could possibly make. For all the other sources of power, if you produce nothing, no subsidy; for nuclear, if you produce nothing, you get a big subsidy. The difference—what it all comes down to—is whether Senators believe that one particular source of power deserves cash up front and, in effect, putting taxpayers on the hook at the outset before anything is produced.

On a bipartisan basis—three Democratic Senators, three Republican Senators, and an Independent—we think that is unwise.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I have been asked because of other people—not me—that we commence this vote at 3:45. I ask unanimous consent that be the case.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The unanimous consent request has been made. Is there objection?

Mr. WYDEN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, if we could just take a second to make sure we are fair, I note that the Senator from Nevada would like to have several minutes, and we would like the opportunity to close. So if we can work out the opportunity—

Mr. DOMENICI. I say to the Senator, they want a vote at 3:45, so we don't need any time. He can have 3 minutes and you can close.

Mr. WYDEN. I withdraw my reservation.

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

The Senator from Nevada is recognized for 3 minutes.

Mr. ENSIGN. Mr. President, I just want to make a couple points and keep it fairly brief.

The nuclear power industry has been around for a long time. We hear about other new sources of energy that this country is trying to develop, and it seems to make sense we would subsidize some of that new research. It is basic research that the Government is involved in. Whether it is health care, whether it is energy, that seems to be an appropriate role for the Federal Government.

But nuclear energy has been around for a long time, and it is commercially viable in many other countries in the

world. To this Senator, it does not seem to be the right thing to do to be subsidizing nuclear power because it should have already proven its merit in the marketplace and been able to stand on its own.

Unfortunately, we have a situation where we had a vote last year on the Yucca Mountain project, which is the Nation's nuclear waste repository, and this Senate decided to continue to build Yucca Mountain. What that indicates is that the Senate is already subsidizing nuclear power. People say, no, Yucca Mountain is being built by the ratepayers, the people who receive the benefits of nuclear energy. They pay a tax on that or a rate on that and, therefore, they pay into the nuclear fund that will build on Yucca Mountain.

According to the General Accounting Office, that is not going to be enough. So we are going to be subsidizing nuclear power as it is. To add another subsidy would be wrong at this time. Whether you look at Japan or Germany, these other countries, they are building them commercially; they are operating them viably.

If nuclear power is so good commercially, then it should stand on its own. We have several other provisions in the bill that Senators SUNUNU and WYDEN have not touched on nuclear power. But to actually have Federal loan guarantees that will leave the taxpayer holding the bill would be wrong at this time. If nuclear power is going to stand, let it stand on its own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. DOMENICI. Mr. President, I wonder if the Senator could do me one favor. Let Senator GRAHAM have 1 minute. Then you wind up with the time you have, the same time you have.

Mr. WYDEN. I am happy to accommodate the Senator from South Carolina. How much additional time do I have?

The PRESIDING OFFICER. Under the unanimous consent agreement, the vote was to occur at a quarter to 4. You have the time between now and then.

Mr. DOMENICI. We don't need to have the Senator speak. Go ahead.

Mr. WYDEN. Mr. President, I ask unanimous consent that the Senator from South Carolina have 2 additional minutes and if I could have 3 additional minutes after he is done speaking.

Mr. DOMENICI. We cannot do that.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. It is not me. I have just been told, after instructions from the leadership.

Mr. WYDEN. Mr. President, then I would like to accommodate the Senator from South Carolina. I have a couple of minutes to go.

Mr. DOMENICI. You don't have a couple minutes.

The PRESIDING OFFICER. You have 2 minutes at this point. The Senator from Oregon.

Mr. WYDEN. Mr. President, as we move to the vote, basically all the arguments made against the Wyden-Sununu-Snowe-Ensign-Bingaman amendment, all of the arguments made against us were made for the WPPSS facilities which resulted in the biggest municipal bond failure in history. Back then they said it wouldn't be unduly risky. They said there wouldn't be any questions with respect to exposure to those who were financing it. Look at what happened. Four out of those five facilities did not get built.

I say to my colleagues, those who are pronuclear, those who are antinuclear, this is not about your position with respect to nuclear power pro or con. It is about whether or not you are going to be protaxpayer. The Congressional Research Service says the taxpayers are on the hook for \$14 to \$16 billion. The Congressional Budget Office says there is upwards of a 50-percent likelihood of default. Under this provision, the loan guarantees provide opportunities to construct nuclear facilities that no one else is getting. Other people don't get the break unless they produce something. Here you get the break even if you produce no nuclear power whatsoever and you get it directly out of the taxpayer's pocket.

It is unwise. I hope my colleagues will vote with three Democratic Senators, three Republican Senators, and an Independent for this amendment.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 875.

Mr. DOMENICI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ALLEN (when his name was called). Present.

Mr. REID. I announce that the Senator from Connecticut (Mr. LIEBERMAN) is necessarily absent.

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

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 214 Leg.]

YEAS—49

Akaka	Dodd	Lautenberg
Baucus	Dorgan	Leahy
Bayh	Durbin	Levin
Biden	Edwards	McCain
Bingaman	Ensign	Mikulski
Boxer	Feingold	Murray
Byrd	Feinstein	Reed
Campbell	Graham (FL)	Reid
Cantwell	Gregg	Rockefeller
Chafee	Harkin	Sarbanes
Clinton	Jeffords	Schumer
Collins	Johnson	Smith
Conrad	Kennedy	Snowe
Corzine	Kerry	Stabenow
Daschle	Kohl	Sununu
Dayton	Kyl	Wyden

NAYS—50

Alexander	Bennett	Breaux
Allard	Bond	Brownback

Bunning	Graham (SC)	Nelson (FL)
Burns	Grassley	Nelson (NE)
Carper	Hagel	Nickles
Chambliss	Hatch	Pryor
Cochran	Hollings	Roberts
Coleman	Hutchison	Santorum
Cornyn	Inhofe	Sessions
Craig	Inouye	Shelby
Crapo	Landrieu	Specter
DeWine	Lincoln	Stevens
Dole	Lott	Talent
Domenici	Lugar	Thomas
Enzi	McConnell	Voinovich
Fitzgerald	Miller	Warner
Frist	Murkowski	

ANSWERED "Present"—1

Allen

NOT VOTING—1

Lieberman

The amendment (No. 875) was rejected.

Mr. CARPER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. I thank all Members for debate and votes.

I believe the Indian amendment of the Senator from Colorado is next.

AMENDMENT NO. 864 WITHDRAWN

Mr. CAMPBELL. Mr. President, as the author of amendment No. 864, the Indian provision to the Energy Bill, I ask unanimous consent to withdraw the amendment.

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

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I inquire as to what the order is.

The PRESIDING OFFICER. There is no unanimous consent agreement at this time.

AMENDMENT NO. 876

(Purpose: To Tighten Oversight of Energy Markets)

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk on behalf of Senators FITZGERALD, HARKIN, LUGAR, CANTWELL, WYDEN, BOXER, and LEAHY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, and Mr. LEAHY, proposes an amendment numbered 876.

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

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

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

Mrs. FEINSTEIN. Mr. President, I heard the comments of the distinguished ranking member that they had not had an opportunity to see the amendment. Of course, we will allow that opportunity to take place. This amendment closes a major loophole which allows energy trades to take place electronically, in private, with no transparency, no record, no audit trail, or any oversight to guard against fraud and manipulation.

This amendment will close a loophole created in 2000 when Congress passed the Commodity Futures Modernization Act which exempted energy and metals trading from regulatory oversight and excluded them completely if the trade was done electronically.

This amendment was presented by me before. Senator FITZGERALD spoke, Senator WYDEN spoke, Senator CANTWELL spoke. We got just about a majority. Senator Gramm of Texas argued against it. It did go back to the Agriculture Committee. The Agriculture Committee held hearings and both Senators HARKIN and LUGAR participated in making changes, which I think has made this a better amendment.

We were hoping for a markup, but the Congress ended without that markup having taken place. Now the Energy bill is before us, and it seems to me this is the time to present this.

This bill has had floor discussion. It has had a committee hearing. It has been modified by the chairman and the ranking member of the Agriculture Committee and is now before us.

Today, if there is no delivery of physical energy, there is no price transparency. By that I mean, if I buy natural gas from you and you deliver it to me, the Federal Energy Regulatory Commission has the authority to ensure that the transaction is transparent—meaning it is available to look at—and that it is reasonably priced. However, many energy transactions no longer result in delivery. In other words, if I sell to you and you sell to Senator CRAIG who sells to Senator DOMENICI who sells to somebody else who then delivers it, none of these trades is covered if done electronically. That means there is no record; there is no audit trail; there are no capital requirements; there is no transparency; there is no antifraud or antimanipulation oversight today. It is a huge loophole permitted in the Commodity Futures Modernization Act of 2000.

This lack of transparency and oversight applies to energy and metals trading. It does not apply if you are selling wheat or pork bellies or any other tangible commodity. Why do we include metals? Fraud and manipulation have not been confined to the energy trading sector. For example, in 1996 U.S. consumers were overcharged \$2.5 billion from Sumitomo's manipulation of the copper markets.

Furthermore, in 1999 the President's Working Group on Financial Markets recommended excluding only financial derivatives, not energy and metals derivatives, from the CFTC's jurisdiction.

After intense lobbying by, of all people, Enron, a change was made to the Commodity Futures Modernization Act to exempt energy and metals trading from CFTC oversight in 2000. It did not take long for EnronOnline and others in the energy sector to take advantage of this new freedom by trading energy derivatives absent any transparency and regulatory oversight. In other words, a whole new niche was found

where you could avoid any scrutiny and do this trading.

After the 2000 legislation was enacted, EnronOnline began to trade energy derivatives bilaterally, without being subject to proper regulatory oversight. It should not surprise anyone that without the transparency, prices soared and games were played.

Three years ago this summer, California's energy market began to spiral out of control. In May of 2000, families and businesses in San Diego saw their energy bills soar. The western energy crisis forced every family and business in California and many of the other States to pay more for energy. The crisis forced the State of California into a severe budget shortfall. It forced the State's largest utility into bankruptcy and nearly bankrupted the second largest publicly owned utility.

Now, 3 years and \$45 billion in costs later, we have learned how the energy markets in California were gamed and abused. Originally everyone around here said: Oh, it's the problem of the 1996 deregulation law. I will admit that law is a faulty law. However, you cannot have the price of energy 1 year being \$7 billion throughout the whole State and the next year it is \$28 billion and say that is supply and demand. You cannot have a 400 percent increase just based on supply and demand. Clearly, you do not have a 400 percent increase in demand in a 1-year period of time. Nor did that happen in a 1-year period of time.

In March of this year, the Federal Energy Regulatory Commission issued a report titled "Price Manipulation In Western Markets," which confirmed that there was widespread and pervasive fraud and manipulation during the western energy crisis. According to the FERC report, the abuse in our energy markets was pervasive and unlawful. Yet this Energy bill does not prevent another energy crisis from occurring nor does it curb illegal Enron-type manipulation.

Just last week, the FBI arrested former Enron trader John M. Forney, saying he was a key architect of Enron's well-known trading schemes blamed for worsening California's energy crisis in 2000 and 2001.

Mr. Forney was charged with a single count each of wire fraud and conspiracy. He is the third Enron trader accused by the Justice Department of criminal manipulation of western energy markets but the first who did not reach a plea agreement, leading to his arrest last Tuesday. According to the criminal complaint, Forney is allegedly the architect of the Enron trading strategies with the now infamous names of Ricochet, Death Star, Get Shorty, Fat Boy, and others.

These Enron strategies were first revealed on Monday, May 6, 2002, when the Federal Energy Regulatory Commission posted a series of documents on their Web site that revealed Enron manipulated the western energy market by engaging in these suspect trading strategies.

Under one such trading strategy called Death Star, which was also called Forney's Perpetual Loop, for John Forney, Enron would "get paid for moving energy to relieve congestion without actually moving energy or relieving any congestion," according to an internal memo. It was a fraud.

It was a fraud. A was a trading strategy which was clearly and simply fraudulent and manipulative.

In another strategy detailed in these memos, Enron would "create the appearance of congestion through the deliberate overstatement of loads" to drive up prices.

The above-mentioned strategies reveal an intentional and coordinated attempt to manipulate the Western energy market for profit.

This is an important piece of the puzzle that has been uncovered. Some former Enron traders helped fill in the blanks.

CBS News reported in May 2002 that former Enron traders admitted the company was directly responsible for local blackouts in California. Yet, interestingly enough, no one has followed up on this report.

According to CBS News reporter Jason Leopold, the traders said Enron's former president Jeff Skilling pushed them to trade aggressively in California and told them, "If you can't do that, then you need to find a job at another company or go trade pork bellies."

The CBS article mentions that Enron traders played a disturbing role in blackouts that hit California. The report mentions specific manipulative behavior by Enron on June 14 and 15 in the summer of 2000 when traders said they intentionally clogged Path 26—a key transmission path connecting Northern and Central California.

Here is what one trader said about the event:

What we did was overbook the line we had the rights on during a shortage or in a heat wave. We did this in June 2000 when the Bay Area was going through a heat wave and the ISO couldn't send power to the North. The ISO has to pay Enron to free up the line in order to send power to San Francisco to keep the lights on. But by the time they agreed to pay us, rolling blackouts had already hit California and the price for electricity went through the roof.

In other words, they waited for the weather. They calculatedly overbooked the line to clog the lines so that power could not be transmitted to the north. Therefore, what power was transmitted went sky high in terms of price. Second, a blackout resulted.

California lost billions. Yet according to the traders, Enron made millions of dollars by employing this strategy alone.

On top of all this, traders disclosed that Enron's manipulative trading strategies helped force California to sign expensive long-term contracts. It is no surprise that Enron and others were able to profit so handsomely during the crisis.

Now, after 3 years, the FBI and the Justice Department are beginning to

bring these traders to justice. In February, Jeffrey Richter, the former head of Enron's Short-Term California energy trading desk, pled guilty to conspiracy to commit fraud as part of Enron's well known schemes to manipulate Western energy markets.

Richter's plea followed that of head Enron trader Tim Belden in the fall of 2002. Belden admitted that he schemed to defraud California during the Western energy crisis and also plead guilty to conspiracy to commit wire fraud.

Nobody can believe this didn't happen, because it did. Two people have pled guilty, and a third was just arrested for doing just what we hope to prevent happening with this amendment.

The plea by Jeff Richter came on the heels of FERC's release of transcripts from Reliant Energy in January of this year that reveal how their traders intentionally withheld power from the California market in an attempt to increase prices. This is one of the most egregious examples of manipulation and it is clear and convincing evidence of coordinated schemes to defraud consumers.

Let me read just one part of the transcript to demonstrate the greed behind the market abuse by Reliant and its traders.

On June 20, 2000 two Reliant employees had the following conversation that reveals the company withheld power from the California market to drive prices up:

RELIANT OPERATIONS MANAGER 1. I don't necessarily foresee those units being run the remainder of this week. In fact you will probably see, in fact I know, tomorrow we have all the units at Coolwater off.

The Coolwater plant is a 526 Megawatt plant.

RELIANT PLANT OPERATOR 2. Really?

RELIANT OPERATIONS MANAGER 1. Potentially. Even number four. More due to some market manipulation attempts on our part. And so, on number four it probably wouldn't last long. It would probably be back on the next day, if not the day after that. Trying to uh . . .

RELIANT PLANT OPERATOR 2. Trying to shorten supply, uh? That way the price on demand goes up.

RELIANT OPERATIONS MANAGER 1. Well, we'll see.

RELIANT PLANT OPERATOR 2. I can understand. That's cool.

RELIANT OPERATIONS MANAGER 1. "We've got some term positions that, you know, that would benefit.

That is what existed. That is the kind of thing that went on, and it has to stop. It has to be made illegal and it has to have heavy penalties.

Let's turn to some other examples.

On January 27, 2003, Michelle Marie Valencia, a 32-year-old former senior energy trader for Dynegy, was arrested on charges that she reported fictitious natural gas transactions to an industry publication.

On December 5, 2002, Todd Geiger, a former vice president on the Canadian natural gas trading desk for El Paso Merchant Energy, was charged with wire fraud and filing a false report

after allegedly telling a trade publication about the prices for 48 natural gas trades that he never made in an effort to boost prices and company profit.

In other words, he is telling an energy trade publication about 48 gas trades that were never made. It was bogus information which was given out. Why? Simply to boost the market.

These indictments are just a few examples of how energy firms reported inaccurate prices to trade publications to drive energy prices higher.

Industry publications claimed they could not be fooled by false prices because deviant prices are rejected, but this claim was predicated on the fact that everyone was reporting honestly which we now know they weren't doing.

CMS Energy, Williams, American Electric Power Company, and Dynegy have each acknowledged that its employees gave inaccurate price data to industry participants. On December 19 Dynegy agreed to pay a \$5 million fine for its actions.

Let us turn to other types of fraudulent trades that many energy firms have admitted to.

Dynegy, Duke Energy, El Paso, Reliant Resources Inc., CMS Energy Corp., and Williams Cos. all admitted engaging in false "round-trip" or "wash trades."

What is a "round-trip" trade, one might ask?

"Round-trip" trades occur when one firm sells energy to another and then the second firm simultaneously sells the same amount of energy back to the first company at exactly the same price. No commodity ever actually changes hands, but when done on an exchange, these transactions send a price signal to the market and they artificially boost revenue for the company.

How widespread are "round-trip" trades? Well, the Congressional Research Service looked at trading patterns in the energy sector over the last few years and reported, "this pattern of trading suggests a market environment in which a significant volume of fictitious trading could have taken place."

Yet since most of the energy trading market is unregulated by the government, we have only a slim idea of the illusions being perpetrated in the energy sector.

Consider the following confessions from energy firms about "round-trip" trades:

Reliant admitted 10 percent of its trading revenues came from "round-trip" trades. The announcement forced the company's President and head of wholesale trading to both step down.

These are bogus traders.

CMS Energy announced 80 percent of its trades in 2001 were "round-trip" trades.

Eighty percent of all of the trading this company did was bogus.

Remember, these trades are sham deals where nothing was exchanged, yet the company booked revenues from

the trades. This is exactly what our legislation aims to stop.

Duke Energy disclosed that \$1.1 billion worth of trades were "round-trip" since 1999. Roughly two-thirds of these were done on the InterContinental Exchange owned by banks that oppose this legislation.

Let me repeat that. Duke Energy disclosed that \$1.1 billion worth of trades were bogus "round-trip" trades since 1991. And two-thirds of those were done on the InterContinental Exchange, which is an electronic exchange. That means that thousands of subscribers would have seen false price signals.

A lawyer for J.P. Morgan Chase admitted the bank engineered a series of "round-trip" trades with Enron. Dynegy and Williams have also admitted to this "round-trip" trading. And although those trades mostly occurred with electricity, there is evidence to suggest that "round-trip" trades were made in natural gas and even broadband.

By exchanging the same amount of a commodity at the same price, these companies have not engaged in meaningful transactions but in deceptive practices to fool investors and drive up energy prices for consumers. It is, therefore, imperative that the Department of Justice, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and every other oversight agency conduct an aggressive and vigorous investigation into all of the energy companies that may have committed fraud and abuse in the western energy market.

Beyond that, I believe strongly that Congress must reexamine what tools the Government needs to keep a better watch over these volatile markets that, frankly, are little understood. In the absence of vigilant Government oversight of the energy sector, firms have the incentive to create the appearance of a mature liquid and well functioning market, but it is unclear whether such a market exists. And I don't believe, for a minute, that such a market exists.

The "round-trip" trades, the Enron memos, the FERC report on "Price Manipulation in the Western Markets" raise questions about the energy markets of our country. To this end, I believe it is critical for the Senate to approve this amendment, which would provide more regulatory oversight of online energy trading.

When the Senate Energy Committee marked up the Energy bill in April, there was a consensus to include some provisions of the Energy Market Oversight Act, S. 509, I introduced earlier this year. The Energy bill, S. 14, does include higher criminal and civil penalties for violations of the Federal Power Act and the Natural Gas Act.

Under section 1173 of the bill now on the floor, fines will be \$1 million instead of the current \$5,000 for a one-time violation of the statutes. I thank

the chairman of the committee for this. Jail time will be raised to 5 years instead of the current 2 years. And I thank the chairman of the committee for this. Fines will be \$50,000 per violation per day instead of the current \$500 per violation per day for violations of the statutes. And I thank the chairman of the committee for this.

Furthermore, section 1174 of the Energy bill will eliminate the unnecessary 60-day waiting period for FERC to grant refunds. I thank both Senator DOMENICI and Senator BINGAMAN, the chairman and the ranking member of the Energy Committee, for their efforts to include provisions of S. 509, the Energy Market Oversight Act, in this Energy bill.

Now let me turn to the specifics of the amendment.

I am offering this amendment—and I am hopeful that Senator FITZGERALD will come to the floor; I know he intends to speak on this amendment, and I hope he does—I am offering this amendment to subject electronic exchanges, such as EnronOnline, the InterContinental Exchange, and any other electronic exchange, to the same oversight, reporting, and capital requirements of other commodity exchanges, such as the Chicago Mercantile Exchange, the New York Mercantile Exchange, and the Chicago Board of Trade.

Why should there be one secret trading venue where fraud and manipulation can take place *abbondanza*? I do not think there should be. I do not think it is in the interests of our citizens to have that happen. And the western energy market should be a major case in point.

I am very pleased that Senators FITZGERALD, HARKIN, LUGAR, CANTWELL, WYDEN, LEAHY, DURBIN, and BOXER have again signed on to this amendment. I was very proud of the work we did in the 107th Congress, and I hope we can adopt this amendment on this Energy bill because without this type of legislation, there is insufficient authority to investigate and prevent fraud and price manipulation since parties making the trades are not required to keep a record. That is the problem.

The CFTC will say: Oh, we are already doing that. But in the law there is no requirement to keep a record. There is a specific exemption in the law. So I do not see how the CFTC has the adequate tools to do what they need to do without this amendment because this amendment closes that loophole which exists just for energy and just for metals and, because of its existence, has allowed EnronOnline and a number of other exchanges—Dynegy had one; InterContinental Exchange had one as well—to do all these things in secret with no audit trail, no record, no capital requirements. Nobody has a responsibility to set any capital requirements. There is no audit trail and no antifraud and antimanipulation oversight. Clear and simple, it is a travesty.

Right now, energy transactions are regulated by FERC. When there is actual delivery, that is taken care of. If Senator REID sells me energy and I deliver it, that is covered by FERC. But interim trades are not covered by anybody. They are on their own in secret.

Many energy transactions no longer result in delivery, so this giant loophole where there is no government oversight—when these transactions are done on electronic exchanges—is major. I think it is mega. I think a number of companies have jumped into this void simply because they thought they could make a quick buck by gaming the system, and in fact they have done just that.

As I mentioned, in 2000 Congress passed the Commodity Futures Modernization Act, which exempted energy and metals from regulatory oversight, and excluded it completely if the trade was done electronically. So today, as long as there is no delivery, there is no price transparency, there is no record, there is no audit trail, there is no capital requirement, there is no antifraud, antimanipulation oversight.

This lack of transparency and oversight only applies to energy. It does not apply if you are selling wheat or pork bellies or any other tangible commodity. And financial derivatives are not included in this amendment.

It did not take long for Enron and others to take advantage of this new freedom by trading derivatives absent any regulatory oversight. Thus, after the 2000 legislation was enacted, EnronOnline, as I said, began to trade energy derivatives bilaterally without being subject to regulatory oversight. It should not be a surprise to anyone that prices soared.

In March, Warren Buffett published a warning in *Fortune* magazine saying:

Derivatives are financial weapons of mass destruction.

In his annual warning letter to shareholders about what worries him about the financial markets, Warren Buffett called derivatives and the trading activities that go with them “time bombs.”

In the letter, Mr. Buffett states:

In recent years some huge-scale frauds and near-fraud have been facilitated by derivatives trades. In the energy and electric utility sectors, for example, companies used derivatives and trading activities to report great “earnings”—until the roof fell in when they actually tried to convert the derivatives-related receivables on their balance sheets into cash.

We clearly saw this with Enron. Was Enron and its energy derivative trading arm, Enron Online, the sole reason California and the West had an energy crisis? No. Was it a contributing factor to the crisis? I believe it was.

Unfortunately, because of the energy exemptions in the 2000 Commodities Futures Modernization Act, which took away the CFTC’s authority to investigate, we may never know for sure. In the 107th Congress, this legislation was debated during consideration of the

Senate Energy bill, and it was a subject of a hearing in the Senate Agriculture Committee. As I said, time ran out before it could be marked up and passed. Since that time, both Senators LUGAR and HARKIN have made significant improvements to the legislation.

So today I am pleased to note that the following companies and organizations are supporting this legislation: the National Rural Electric Cooperative Association; the Derivatives Study Center; the American Public Gas Association; the American Public Power Association; the California Municipal Utilities Association; Southern California Public Power Authority; the Transmission Access Policy Study Group; U.S. Public Interest Research Group; the Consumers Union; the Consumers Federation of America; Calpine; Southern California Edison; Pacific Gas and Electric; and the FERC Chairman Pat Wood.

Here is a quick explanation of what this amendment does. It applies antifraud and antimanipulation authority to all exempt commodity transactions. An exempt commodity is a commodity which is not financial and not agricultural and mainly includes energy and metals. The bill sets up two classes of swaps for those made between sophisticated persons, basically institutions and wealthy individuals, that are not entered into on a trading facility, for example, an exchange. Antifraud and antimanipulation provisions apply and wash trades are prohibited. The following regulations would apply to all swaps made on an electronic trading facility and a “dealer market” which includes dealers who buy and sell swaps in exempt commodities and the entity on which the swap takes place. Antifraud and antimanipulation provisions and the prohibition of wash trades apply.

If the entity on which the swap takes place serves a pricing or price discovery function, increased notice, reporting, bookkeeping, and other transparency requirements are provided. The requirement to maintain sufficient capital is commensurate with the risk associated with the swap. We don’t determine that in this legislation. The Commodities Futures Trading Commission would determine that. In other words, they would determine what kind of net capital requirement there will be, and that would be commensurate with the degree of risk involved in the transaction.

Except for the antifraud and antimanipulation provisions, the CFTC has the discretion to tailor the above requirements to fit the character and financial risk involved with the swap or entity. While the CFTC could require daily public disclosure of trading data, such as opening and closing prices, similar to the requirement of futures exchanges, it could not require real-time publication of proprietary trading information or prohibit an entity from selling their data. So proprietary information is protected.

The CFTC may allow entities to meet certain self-regulatory responsibilities as provided in a list of core principles. If an entity chooses to become a self regulator, these core principles would obligate the entity to monitor trading to prevent fraud and manipulation, as well as assure that its other regulatory obligations are met.

The penalties for manipulation are greatly increased. The civil monetary penalty for manipulation is increased from \$100,000 to \$1 million. Wash trades are subject to the monetary civil penalty for each violation and imprisonment of up to 10 years.

The FERC is required to improve communications with other Federal regulatory agencies. A shortcoming in the main antifraud provision of the CEA is also corrected by allowing CFTC enforcement of fraud to apply to instances of either defrauding a person for oneself or on behalf of others.

This would also require the FERC and the CFTC to meet quarterly and discuss how energy derivative markets are functioning and affecting energy deliveries. So they are required to look at this, to monitor it closely, and to sit quarterly and see how these markets are, in fact, functioning.

This would grant the FERC the authority to use monetary penalties on companies that don't comply with requests for information. This is essentially the same authority the SEC has today.

It would make it easier for FERC to hire the necessary outside help they need, including accountants, lawyers, and investigators for investigative purposes. And it would eliminate the requirement that FERC receive approval from the Office of Management and Budget before launching an investigation or price discovery of electricity or natural gas markets involving more than 10 companies.

This amendment is not going to do anything to change what happened in California and the West. But it does provide the necessary authority for the CFTC and the FERC which will help protect against another energy crisis. No one is immune from this kind of thing. The gaming, the fraud, the manipulation has been extraordinary.

Just the chutzpah to do Death Star, Get Shorty, Ricochet, just the chutzpah to do these kinds of trades in secret, it is a bunco operation. It is nothing else but. And who is buncoed? The consumer is buncoed. That is why consumer organizations feel strongly about this.

When regulatory agencies have the will but not the authority to regulate, Congress must step in and ensure that our regulators have the necessary tools. Unfortunately, sometimes an agency has neither. In this case, I am glad to have the support of FERC, and I hope the CFTC will reconsider its position and support this amendment.

I note that Senator FITZGERALD is on the floor. I would like to yield to him. But before I do, may I just say one quick thing.

Mr. REID. You are not yielding to Senator FITZGERALD.

Mrs. FEINSTEIN. Pardon me?

Mr. REID. You are not yielding to Senator FITZGERALD.

Mrs. FEINSTEIN. I am not?

The PRESIDING OFFICER (Mrs. DOLE). Senators are not permitted to yield the floor to one another.

Mrs. FEINSTEIN. I thank the Chair for the clarification.

I wish to make one comment about this amendment. This amendment has been in the Agriculture Committee. It has had a hearing. It has been reviewed by both staffs, Republican and Democratic. The Democratic chairman of the committee, Senator HARKIN, worked on this. The ranking member at the time, Senator LUGAR, worked on this. They have both concurred. They are supporting this legislation. The staffs have reviewed it.

We believe it is bona fide, that it is solid, and that it will stand the test of time.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 877 TO AMENDMENT NO. 876

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 877 to amendment No. 876.

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

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

The amendment is as follows:

(Purpose: To exclude metals from regulatory oversight by the Commodity Futures Trading Commission)

On page 17 after line 25:

“(10) APPLICABILITY.—This subsection does not apply to any agreement, contract, or transaction in metals.”

Mr. REID. Madam President, first, I commend the senior Senator from California and her cosponsor, the junior Senator from Illinois, for their amendment and their work on this very difficult issue dealing with derivatives and how to regulate them.

To critics of the amendment, I suggest you put yourself in Senator FEINSTEIN's shoes. She represents the largest State in the United States and one of the largest governments in the world. The State of California's GDP is larger than most countries' of the world.

In the West, we are still feeling shock waves from the energy crisis that threatened California's and Nevada's prosperity and brought home to all of us that we are in uncharted territory with energy deregulation.

Senator FEINSTEIN inadvertently included metal derivatives with the energy derivatives that are the intended target of her amendment. Unlike energy derivatives which raise questions

because of the recent energy crisis, metal derivatives have been sold over the counter for decades. The amendments in 2000 to the Commodities Exchange Act did not change this, and that was proper. They only clarified and confirmed the legality of these markets.

Lumping metal derivatives together with energy derivatives would impose regulatory burdens that never existed even before the 2000 amendments and, of course, without justification; therefore, I offer this second-degree amendment to restore metal derivatives trading to exempt commodity status. Metals would be treated as if they were under the Commodity Futures Modernization Act of 2000.

Like other derivatives, metal derivatives markets help companies manage the risk of sudden and large price changes.

In recent years, derivatives and so-called hedging transactions helped the mining companies in the State of Nevada, which is the third largest producer of gold in the world, second only to Australia and South Africa, with a steadily declining gold price by selling mining production forward.

A large mining company in Nevada, Barrick Gold, had no layoffs during this period of time as a result of these forward selling programs. The last couple of years illustrate the function and value in the marketplace of such transactions. Some companies decided not to hedge, betting the gold price would rise and hedging contracts would lock them into below-market prices. Most of those companies are no longer around because the gold price has stayed relatively low.

In contrast, other companies hedged some or most of their production. These companies have survived or even thrived, for the most part. By choosing to manage their risk, they accepted the risk that the gold price could rise, but they stabilized company performance, continued to provide jobs and contribute to communities in rural Nevada where they are so important.

The gold mining business in America is so important. It is important because it is one of the few areas where we are a net exporter, and that is the way it has always been. The Feinstein amendment includes metal derivatives citing fraud in the metals markets, but there is no example of fraud on any occasion regarding the metals markets in the past decade.

Examples of such fraud that did take place a long time ago are cases such as the Hunt brothers in silver and Sumitomo in copper. These were regulated markets and over the counter trades did not exist at that time. The Hunt brothers just went out and bought silver on the free market. Neither of these fraud cases are addressed by the Feinstein amendment.

The attempt, as I indicated, by the Hunt brothers in 1979 to “corner the silver market” involved manipulation of the physical silver market. The

Hunt silver scandal involved trading on regulated exchanges, not in the over-the-counter derivatives markets. The trading abuses involved the physical accumulation of 200 million ounces of silver. It did not involve over-the-counter derivatives.

I say in passing, I had a great friend. His name was Forrest Mars, one of the richest men in the world. He lived in Las Vegas in a very small apartment above his candy store. But as you know, this giant of commerce was a multi-multibillionaire. After the Hunt brothers had manipulated the market, he told me: These guys are so dumb. They should have come to me. I could have told them you cannot have monopolies. They do not work. I tried it a couple times.

He said: For example, once I went out and tried to corner the market on black pepper. Black pepper has been part of commerce for so many centuries, and he figured he could corner the market on all black pepper, and he did. He owned every producing facility, farm, and manufacturing facilities related to black pepper in the world. But he said: They outfoxed me because all they did was dye white pepper and ruined my monopoly.

I say this because the Hunt brothers fiasco in 1979 was an effort to have a monopoly, and it did not work for a lot of reasons.

The Sumitomo situation involved the alleged manipulation of the copper market by a Japanese company acting through a rogue trader acting in London and Tokyo. The trading abuses occurred on a fully regulated exchange, not in the over-the-counter derivatives market. The trading abuses involved manipulation of the price of copper on the London Metal Exchange, a futures exchange which is fully regulated by the UK's Financial Services Authority. Further, the manipulation took place overseas, not in United States markets.

I repeat, we owe Senator FEINSTEIN and Senator FITZGERALD a debt of gratitude for their interest in this issue and their work in proposing changes to the Commodity Exchange Act that will ensure trading in energy derivatives when it is done over the counter with transparency, in a way that inspires public confidence in the markets.

I urge my colleagues to eliminate metals from this amendment. I think it would help the adoption of their amendment. If they decide not to do that, I urge my colleagues to support my amendment which strikes metal derivatives from the Feinstein amendment. My amendment would not allow metal derivatives markets and participants to trade derivatives without accountability and transparency. Adequate recordkeeping needs to be in place. The Commodity Exchange Act already requires some recordkeeping for these otherwise "exempt" transactions.

Derivatives are essential to the health of the metals market, and fraud

in metals markets did not involve over-the-counter derivatives.

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. FITZGERALD. 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. FITZGERALD. Madam President, I rise today to support my colleague from California, Senator FEINSTEIN, and her amendment, which I have cosponsored, which would very simply close the so-called Enron loophole in the commodity futures trading laws of this country.

This really is not that complex an issue. A few years ago, we passed a reauthorization of the Commodity Futures Trading Commission. I am very familiar with the commodities industry because we are the heart of it in my State of Illinois, particularly the city of Chicago, where they have the largest derivative exchanges in the country in the Board of Trade, in the Mercantile Exchange in Chicago. Those exchanges trade all sorts of commodities from pork bellies to Treasury bonds. They trade financial commodities as well as agricultural commodities, corn and soybeans.

The Board of Trade and the Mercantile Exchange, like the NYMEX, the New York Mercantile Exchange in New York, or the New York Board of Trade, are fully regulated exchanges. The reauthorization of the Commodity Futures Trading Commission, which we passed a few years ago, continued that regulation that we have had in this country over our boards of trades and our other derivatives or futures transaction trading facilities in this country.

Somehow, when we were working on that legislation in the House and the Senate—it is funny how little codicils, little paragraphs and sentences get added when the bills go to conference committees between the House and the Senate. I believe what happened is when that bill was over in the House, a couple of congressmen added some language that exempted from all regulation by the CFTC—and there is no regulation by the SEC in this area—online facilities that trade energy, metals, and broadband derivatives contracts or futures contracts. Online exchanges that trade those kinds of contracts are completely exempt from regulation. This is the so-called Enron loophole.

At the time, Enron owned EnronOnline and they had an online platform for trading energy contracts, which when Enron went bankrupt later they sold.

Now that EnronOnline was totally exempted from regulation—as Senator FEINSTEIN very eloquently and very thoroughly described for us all of the bogus trades that were done on online derivative exchanges that trade metals

and energy contracts, and she described the wash trades that were discovered when Enron fell apart. In fact, many energy companies were simply engaging in round trip trades with trading partners. A round trip trade, as Senator FEINSTEIN noted, is when one party sells a commodity to another party at a certain price, and the other party sells that same commodity back at the very same price. Nothing really transpired in that transaction except that the other party books revenue from a sale and this party books revenue from a sale, but nothing really happened from an economic point of view.

If party A sells a barrel of oil to party B for \$30, and party B simultaneously sells a barrel of oil back to party A for \$30, nothing has really happened. Everybody is still the same. What we saw in the energy industry with a whole bunch of energy companies, not just Enron, is they were artificially boosting their revenues by engaging in wash trades, round trip trades with other energy partners.

I recall one energy company after this came to light had to restate its revenues downward by \$7 billion when new auditors came in and made them cancel out all these wash trades.

Senator FEINSTEIN's amendment simply closes this Enron loophole. It says the CFTC will be able to ban wash trades on these online derivatives transaction facilities. That is all we are trying to do. She does not impose full-scale regulation by the CFTC like we have at the Board of Trade or Mercantile Exchange in Illinois or the New York Mercantile Exchange in New York. They have far more regulation. However, we will put a light level of regulation on online derivative transactions facilities that trade energy, metals, and broadband online. Do not forget, Enron was a big trader of broadband, as well. In fact, that is why the Enron loophole as it got written in the House created a special carve-out for energy, metals, broadband, and also weather contracts.

The question is—why are we picking out energy, metal, broadband, and weather contracts and saying these contracts when traded online cannot be regulated by anyone? What is the public policy rationale for this special carve-out? Why didn't they also include corn and soybeans in this carve-out? Or other commodities? The fact is, this was a special interest carve-out for a hand full of companies.

Now, there is a company owned by a number of banks and energy companies called the InterContinental Exchange. I believe it is opposed to our amendment. Why they are opposed—I gather some of their owners are, in fact, for this—but the majority of the owners of this exchange are opposed. They do not want to be regulated. Our obligation is not to those banks that own the InterContinental Exchange or to the energy companies that own the InterContinental Exchange. Our obligations here

are to investors around the country and to consumers around the country.

We saw what kind of wool can be pulled over people's eyes when online exchanges are allowed to go on without any regulation. Not only were a bunch of energy companies such as Enron doing round-trip trades to artificially boost their own revenues but they were also doing fictitious round-trip trades to set artificial prices.

Indeed, although I was very skeptical at first whether that was happening in California but, in fact, it was. The online exchanges would tell California that this is the price that has been trading on our online exchange, so that is the price you have to pay for the energy. But, in fact, it was a fictitious market and most of the trades were fictitious and no one could regulate it.

All we are trying to do is have a light level of regulation to ban wash trades, round-trip trades, ban fraud and abuse, and protect consumers and investors, have some price discovery so people can know what the prices are for the commodities that are traded on these online exchanges, a very light level of regulation to protect the integrity of our derivatives market.

My good friend and colleague from the State of Nevada, the senior Senator from Nevada, Mr. REID, has proposed exempting metals contracts from the amendment Senator FEINSTEIN and I have put together. In other words, he would go along with closing the Enron loophole with respect to energy and broadband but he wants to keep a carve-out for metals. I don't think that is a good idea. We should not have to wait until we have fraudulent transactions involving a metals contract, say, of gold, silver, or platinum, before we act. We have already had fraudulent transactions in energy markets on the online exchanges and we need to stop that. But certainly we can foresee the same problem could occur in an online contract of metals that is traded on one of these online exchanges. All commodities of which there is a finite supply should be treated equally. We should not have a special carve-out either for energy or for metals or for broadband.

In 1999, a working group was put together on the financial markets and the working group was put together ahead of our rewrite of the Commodity Futures Modernization Act. The panel comprised in the working group was made up of Federal Reserve Chairman Alan Greenspan, the Treasury Secretary, the Chairman of the SEC, and the Chairman of the CFTC at the time. In their report, the President's Working Group on Financial Markets, as it was called, that group concluded:

Due to the characteristics of markets for nonfinancial commodities with finite supplies [energy, metals broadband all fit that category; they are nonfinancial commodities and there are finite supplies of energy and of metals] the working group is unanimously recommending that the exclusion not be extended to agreements involving such commodities. The exclusion should not extend to

any swap agreement that involves a non-financial commodity with a finite supply.

In other words, the President's working group was saying there should be oversight, there should be regulation of swap agreements, of futures contracts, of derivatives contracts, involving non-financial commodities with finite supplies. They separated that category of commodities from financial commodities that have an infinite supply, say, interest rates futures, or futures contracts or derivative contracts based on currencies. With those types of financial commodities, it is very difficult for someone to corner the market in interest rates, for example. I don't think it is possible. There is not a finite supply of interest rates. No one could corner the market there. So they wanted to provide legal certainty for derivatives involving financial commodities with infinite supplies and they have done that. We did not touch financial derivatives. We allow that legal certainty to remain for the financial commodities. We do not upset that. Instead, we simply treat energy, metals, and broadband, as the other finite commodities such as corn and soybeans and other agricultural commodities are treated.

The President's working group made this recommendation that all non-financial commodities with finite supplies be treated the same. I have to ask my colleagues, what possible public policy rationale could explain the carve-out in the commodity futures reauthorization bill for energy and metals transactions? If it is proper to exempt these finite physical commodities from CFTC regulation, why not exempt agricultural commodities such as corn, soybeans, and pork bellies? It does not make any sense and we should close this loophole.

Some have argued that we shouldn't have regulation in this area. I know, particularly on my side of the aisle, there are a lot of conservative Republicans, and I am certainly a conservative Republican, and very pro-free markets. I am always reluctant to see Government regulation and I always question the need for it. However, I point out that a light level of Government regulation can actually be healthy in promoting markets.

There is no finer example than our security markets in the United States. Prior to the adoption of the Securities and Exchange Commission Act in the early 1930s, average people remained very leery of ever investing in the stock market. They thought it was a fool's game that was rigged for the insiders on Wall Street and it was very risky. In fact, by regulating the securities markets and making it safe for average people to invest in the markets by having some laws against the insider dealing and so forth, and requiring a thorough dissemination of information so it could be widely shared, we have gotten to the point where over 50 percent of Americans in this country invest in the stock market.

I point to that example as an area where we have pretty light regulations in our security laws. They are simply disclosure laws. Publicly traded companies have to file disclosure and there is not much more regulation than that, but that disclosure is very important in maintaining the integrity of our markets.

I believe Senator FEINSTEIN and I have an amendment that is very light regulation, that simply will help restore the faith of people who may want to trade, of institutions that may want to trade in an online derivatives facility. It will restore their faith in that market, give them more trust in that market and make them more likely to use that market.

Since we have had this scandal in the energy industry, the InterContinental Exchange's volume has just plummeted and people who wanted to hedge their positions in energy and metals have been flocking back to the fully regulated exchange in New York, the New York Mercantile Exchange.

So the point here, the moral of this story, I think, is by opposing this regulation, the InterContinental Exchange has, in fact, hurt their own cause because people are staying away from their market. They do not trust it, they know there is no price discovery, they know there is no regulator there who is going to prevent them from being defrauded. There is no cop there so nobody wants to trade there.

So if the InterContinental Exchange and the banks that own it want to encourage all the Senators here to vote against this, I think they are actually working against their own self-interest in the long run, just as Wall Street would have been working against its own self-interest back in the 1930s if they had come to Washington and tried to block the implementation of the Securities Exchange Commission Act.

All the bill does, and Senator FEINSTEIN has gone through it very thoroughly—but specifically it requires reporting, notification, and record-keeping. In addition, it requires these energy and metal trading venues to keep books and records and maintain sufficient capital to operate soundly. Those are just commonsense requirements. Why anybody would be against this, I don't know.

Finally, on a somewhat more parochial basis, as someone who represents the exchanges in Chicago, the Board of Trade and the Mercantile Exchange, they have a much heavier degree of regulation than we are asking of these online exchanges that trade in energy and metals. I, frankly, think it is unfair to impose super-regulations on one type of trading facility and then no regulation at all on another type of facility. I think that unfairness in the disparate treatment between different derivatives transaction facilities is a disparity and disparate treatment that should be eliminated in the name of fairness.

The bottom line is, while there has been a lot of hype surrounding this

issue, I think those who study it closely will realize, will recognize it is good public policy. It is in the public's interest.

I urge my colleagues to support this amendment. It is very well drafted. Senator LUGAR and Senator HARKIN have both signed on as cosponsors. It was the subject of a hearing in the Agriculture Committee, as Senator FEINSTEIN pointed out, and the Agriculture Committee, of course, is where legislation dealing with the Commodity Futures Trading Commission goes. The Agriculture Committee has worked on this, and they produced very good legislation that will prevent, if we adopt it, the kind of abuses we have seen in online derivatives transactions in the last couple of years. It is a common-sense amendment. It simply will make it easier to act against fraudulent or bogus energy or metals or broadband trades. It is common sense. I urge my colleagues to adopt it.

Unless anyone further wishes to talk, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Madam President, I rise to thank the Senator from Illinois. We have worked on this now through two Congresses. It was very clear to me that he has a great deal of knowledge in this area. His advice, his support, his efforts have been very helpful. I think he has very clearly stated the facts of this legislation.

There are those who, for purposes I do not understand, want to make this legislation out to be much more than it is, some heavy requirement of Government. Really, all we are saying is, if you are going to trade online, energy and metals and broadband, those trades are subject to recordkeeping, to an audit trail, and to antifraud and antimanipulation oversight.

That is the same as any other finite commodity. Anywhere else does this same thing. But this loophole, at the request, as the Senator from Illinois said, of Enron—by the House, and then in a conference in 2000 they dropped the requirement for coverage from the Commodity Futures Modernization Act. Therefore, this loophole was created into which these companies jumped and began to set up these online trading exchanges.

I couldn't believe my eyes when I saw that one company announced that 80 percent of the trades they did in 2001 were round trip or wash trades.

Senator FITZGERALD just explained that very clearly, what a round trip or a wash trade is.

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

Mrs. FEINSTEIN. I certainly will.

Mr. FITZGERALD. I ask Senator FEINSTEIN, I was wondering, you said

one company said 80 percent of its trades had been wash trades, just round trip trades. Was that an energy firm?

Mrs. FEINSTEIN. Yes, it was CMS Energy. The year was 2001. They announced that.

Additionally, Duke Energy disclosed that \$1.1 billion worth of trades were round trip, wash trades, since 1999; roughly two-thirds of these were done on the InterContinental Exchange, which means that thousands of subscribers would have seen these false price signals.

I could finish this, if you like? A class action suit accused the El Paso Corporation of engaging in dozens of round trip energy wash trades that artificially bolstered its revenues and trading volumes over the last 2 years.

CMS Energy Corp. has admitted conducting wash energy trades that artificially inflated its revenue by more than \$4.4 billion.

So this is important. I have a hard time, I think, as you do, that if I sell something to you and you just sell it back to me and we both boost sales and yet nothing is really sold, that that is a legitimate way of doing business.

Mr. FITZGERALD. Madam President, I ask Senator FEINSTEIN if it is true that under the current law no one can do anything about these wash trades because of this Enron loophole that is in the law. We are trying to take that out, so somebody could actually ban this kind of fraudulent trading practice. Isn't that correct?

Mrs. FEINSTEIN. That is absolutely correct. That is what we are trying to do. For the life of me, I don't understand why people are against it.

Mr. FITZGERALD. Does the Senator know why people would oppose the authority of regulators to ban wash trades? Has anybody explained that to the Senator?

Mrs. FEINSTEIN. The only thing I can figure is they want to do it. They want the unabashed ability to conduct the bogus trades. That would be the only reason they would want this little, dark, hidden place through electronic trading because there is no oversight for fraud or manipulation. There is no record kept. There is no audit trail.

Mr. FITZGERALD. And no one can find out what prices they were trading at, either. There is no price discovered.

Mrs. FEINSTEIN. That is right.

Mr. FITZGERALD. They do not do these wash trades at the exchange in New York because all of that would be transparent to the public.

Mrs. FEINSTEIN. That is exactly right. That is why we suspect it. It is hard to prove.

Again, there have been three arrests of Enron traders who devised these schemes. Actually two were plea-bargained. There was a recent arrest last week of this fellow who apparently set these trading schemes up for Enron.

To have a transparent marketplace, I think, gives confidence to the 50 percent of the people who are small inves-

tors who would want to participate in the market. You have to show there is oversight. You have to show it is up and up, that it is a legitimate bona fide marketplace with trades that mean something.

In my heart of hearts, I believe that a lot of this kind of activity is what amounted to a 400-percent increase in the cost of power in 1 year in California alone.

Mr. FITZGERALD. Because they were simply trading back and forth amongst themselves at a price that really was not determined on an arms' length basis. They were just engaging in bogus trades back and forth to artificially set a price or to artificially increase revenues for the companies on both sides of the trade. Some of these transactions were done on the InterContinental Exchange.

As I recall, when we had the hearing before the Senate Agriculture Committee, either early this winter or maybe even last fall, some shareholder on the InterContinental Exchange came before the committee and testified that notwithstanding the official position of the exchange they, as an owner of the exchange, disagreed with the policy of the InterContinental Exchange on this, and they favored our elimination of this Enron online loophole in the commodities laws; they thought that the company in which they were a shareholder would be better off if there were some regulation of their business.

Does the Senator recall that?

Mrs. FEINSTEIN. I was not at the hearing. I do not recall that. But I think whomever that was, they are certainly correct because that would give confidence to their company and to people to invest in that company which is on the up and up, which is regulated and which has transparency.

I think particularly now after what we know has transpired over the past that this is one of the reasons why our economy has had problems in that people have lost confidence. They have seen these companies go down.

The Senator mentioned some of the big companies that have gone down that have done just this kind of thing. At some point, Peter has to pay Paul. If they don't have the capital to handle it, there is a problem.

Mr. FITZGERALD. If we had the same problem somewhere in the stock market and people couldn't figure out the price of a stock by looking in the newspaper or looking on the Internet to see what the published price of a stock was on the exchange, if instead you had a similar situation with a stock as you have with these online energy derivatives exchanges, and a customer had to call the exchange and ask what the price of oil is trading at, but you just had somebody telling you the price of oil is such and such but you had no way of verifying that, I think no one would want to invest in the stock market if you couldn't discover the price, or if there was no price discovery.

Why does the Senator think anybody would even want to trade on an online exchange in which there is no price discovery, or where there is no regulator protecting the customers from fraud, manipulation, or abuse? Why is it that someone would even want to trade on such an exchange? Isn't it true that, in fact, the InterContinental Exchange volume, the last I heard, was dropping and their legitimate customers were going back to trading on a fully regulated exchange in New York, the NYNEX?

Mrs. FEINSTEIN. The Senator is asking me to hypothesize. I sure wouldn't do it. I can only assume that some sophisticated trader has worked out some scheme and was utilizing it in this venue and knew that he or she was safe because there was no way to pin it on them. There were no records kept.

Mr. FITZGERALD. If someone is operating a corrupt exchange and there is no price discovery and no regulation, isn't it true that a customer could call into that exchange and say, I want to trade oil at \$30 a barrel, and the broker could tell them he could get some oil at \$35 a barrel and just require the customer to pay more than that customer really should have had to pay because the market wasn't that high, there is no way for the customer to know what the real market price is? The broker could make up a price and then keep the difference for himself or for the exchange. Isn't that correct, if there is no price discovery?

Mrs. FEINSTEIN. That is correct.

Mr. FITZGERALD. It seems to me that this is an absolute no-brainer to close this indefensible loophole. I can't imagine that anybody is going to want to defend the concept that we can have an online exchange that is open for business with the public, although not retail customers, I gather, but institutional customers, where it is just a black hole which no one can regulate and can't ban wash trades where there is no price discovery. What in the world would be the objection to closing this loophole and having some modicum of oversight to protect the people who may want to use this exchange and to protect the integrity of the market?

Mrs. FEINSTEIN. The Senator is absolutely correct. When we had this vote in the last Congress, if I recall correctly, we got 48 votes. It wasn't really crystal clear what the excesses were at that time. Now we have documentation of the excesses. We have literally billions of dollars of fraudulent trades, wash trades, round-trip trades, whatever you call them, but fraudulent trades. So we know. We also know that Mr. Fortney was arrested and two others have plead guilty to creating these schemes. To continue to allow that kind of thing to exist would be a real dereliction of this Congress.

Mr. FITZGERALD. There really is a difference between this year's vote and last year's. Last year when the Senator and I had this amendment on the floor, it was in the immediate aftermath of

all those energy companies collapsing. There were some initial reports out there about possibly bogus trades but we didn't have that proof yet. We had 48 votes, 2 votes shy of passing it.

Since that time, and in the intervening year, we have had all the hard evidence come out proving everything the Senator and I were saying last year on the floor of this body—that there were, in fact, bogus wash trades not only in the millions of dollars but in the billions of dollars. How big were some of those?

Mrs. FEINSTEIN. CMS Energy admitted to conducting wash energy trades that artificially inflated its revenue by \$4.4 billion.

Mr. FITZGERALD. That was probably a huge percentage of their revenues—all fictitious—from doing wash trades on an online exchange with no economic purpose. But that fictitious revenue was fooling the investing public, making people think that company had more revenue than it actually did. They were all just "wash" trades.

Mrs. FEINSTEIN. Right. May I ask the Senator a question? Some, I understand, may come to the floor and want a study. The study has already been done, and it is the "Final Report On Price Manipulation in Western Energy Markets, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices." It was prepared by the staff of the Federal Energy Regulatory Commission. It was put out in March of this year.

I would like to read one section of it to the Senator and see if he is aware of this. It reads:

Recommend that Congress consider giving direct authority to a Federal agency to ensure that electronic trading platforms for wholesale sales of electric energy and natural gas in interstate commerce are monitored and provide market information that is necessary for price discovery in competitive energy markets.

Mr. FITZGERALD. So you are saying the FERC has done a study in which they have already concluded that we basically need to close this loophole so there can be some price discovery and some monitoring of these energy markets?

Mrs. FEINSTEIN. That is correct. This is the report. It is a final report. It was done in March 2003, so it has been circulated for a few months.

Additionally, our legislation has the support of the chairman of the Federal Energy Regulatory Commission. We have kept in touch with him so he is aware of what is in the report, and, of course, the former chairman of the Agriculture Committee, Senator HARKIN, and former ranking member of the Agriculture Committee, Senator LUGAR.

Mr. FITZGERALD. Madam President, and my dear colleague from California, I think this is simply commonsense legislation and long overdue. I think it is unfortunate that we made the mistake when passing the Commodity Futures Modernization Act back a few years ago, which created

that special carve-out for energy and metals and broadband contracts that were traded in an online exchange, that they could be exempt from regulation by anybody. Because had we not made that mistake, had Congress not made that mistake, it might have prevented the manipulation and fraud and abuse that was done at the hands of a whole bunch of energy companies. We might have prevented that, if we had not allowed this loophole to be included in that Commodity Futures Modernization Act. And I think it is high time we simply close that loophole.

Madam President, I will be interested to see who comes to the floor to make an argument that we should still have this loophole so that energy and metals contracts can be traded without any oversight by any regulator, so no one can discover the price, so that there is no protection for the customers of these exchanges.

I will be interested to see who comes to the floor and what their argument is in favor of this because, I have to tell you, on most pieces of legislation that come before this body, it is pretty easy to see what the arguments will be on the other side. There is normally at least a plausible public policy rationale on both sides of the issue. But in this case, I have to say that, looked at very objectively, it is hard to understand how anybody could oppose this commonsense measure to protect the integrity of our energy and metals trading markets in this country. It seems like a very commonsense piece of legislation.

I compliment Senator FEINSTEIN. She has been tenacious in bringing this up, and she has been persistent to make sure that we had the opportunity to offer the amendment on the floor.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I would also like to point out another study that has been done in a CRS report for Congress, and that was dated January 28 of this year, pointing out that this bill was presented in the last Congress and probably would be presented in this Congress. One of the points it makes is that if over-the-counter derivatives dealers were required to keep and make available for inspection records of all trades and to disclose information about trading volume and prices, abuses like the ones we have been talking about would be easier to detect and, thus, presumably less likely to occur.

That is really the purpose of this: not to allow sort of a secret niche in the trading arena where people could go to hide and trade, but to bring the sunshine into that niche and to provide—and it is very conservative—regulation of what they must do.

I know my friend and senior Senator from Nevada has proposed an amendment. Regrettably, I have to vote against the amendment. This bill had been worked out with Senator HARKIN

and Senator LUGAR. My understanding is they believe we should close the loophole entirely, not leave one area sort of in the dark, so to speak.

I am troubled by the amendment because our reading of the amendment indicates that it effectively exempts metals entirely without any oversight or regulation by the CFTC, even less than under current law. In good conscience, I cannot do that.

So I think we made the arguments, Madam President. And with what has happened—and now that we know the extent of the fraud that has taken place online—not to close that loophole, I think, would be a terrible blot on this Congress.

So I am hopeful we will have a positive vote.

I thank the Chair for your indulgence and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I have been working with the two sponsors of this legislation. They have agreed to take my amendment. I have spoken with the majority and they say, no, they didn't want it to be done tonight, maybe tomorrow. I would simply say that we in good faith have worked, as I told the majority leader I would do, to try to move this bill along. Moving this bill along does not mean they are only going to be happy if we offer amendments that they like. The Senator from California in good faith offered this amendment. Whether people like it or not, if we are going to move this Energy bill along, we have to vote on it in some way. But it is my understanding that tonight nothing is going to happen.

It is pretty obvious nothing is going to happen. There has been nobody here. There has been nobody here to oppose her amendment. Of course, no other amendments can be offered until this one is set aside.

I just want the record to so reflect at a later time, when people come and say, we should try to move this bill along, and there have been statements on the floor made by the manager and the majority leader that they wanted to finish this bill this week.

I was asked at lunchtime, how did I feel about finishing the bill this week. I said to the reporters asking me: When you step back a little bit, there is about as much chance of our finishing this bill this week as my turning a back flip here in front of the two of you.

The record should reflect, I can't turn a back flip and never have been able to.

My point, I repeat, is that I am doing my very best to cooperate as I have been advised by the Democratic leader we should do everything we can to help with this bill. But help is a two-way street. When an amendment is offered that people don't like, you just can't have them leave rather than a single word being spoken against the amendment of the Senator from California other than my amendment which they have agreed to accept.

Having said that, wanting to continue to move this important piece of legislation, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. EDWARDS. Mr. President, I was unavoidably absent for rollcall vote No. 212 on the Dorgan amendment. Were I present for that vote, I would have voted in favor of the amendment.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak for a period not to exceed 10 minutes each.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROWNBACK. Mr. President, I ask unanimous consent to speak in morning business for up to 10 minutes.

The PRESIDING OFFICER. The Senator has that right.

IRAN

Mr. BROWNBACK. Mr. President, I don't want to overly belabor the point but there is a very important thing happening on the other side of the world, in Iran, at this very time. My office has been receiving, now, numerous reports of a growing protest in Iran taking place right now. This is within the past couple of hours. It is down in Tehran, as I speak. It is estimated that this past evening between 5,000 to 8,000 students are joining protests against the Government's crackdown on student democracy dissidents.

Recently, five student leaders were arrested in advance of the July 9 anniversary of the original mass student protest in 1999. Even though it is now almost dawn in Tehran, the protest has continued.

I understand during the night there was a dissipation of the protest. A number of the student protesters—this was outside Tehran University—who were protesting dissipated. Rather than going back to their dorm rooms, they have gone and dispersed to other places because, after the 1999 protest, a number of the Iranian military guard went to the dormitories and arrested en masse a number of students and they were roundly punished.

We have also received reports that Iranian Government forces are beating up on the protesters, firing warning shots at them. I do not have that verified but we have received these reports.

I call this to the attention of Members of this body because there has been a lot of discussion going on at the present time of U.S. policy towards Iran. I think it is clear the United States should clearly stand with those who stand for democracy.

We don't know if the student protest is going to go ahead and mature further or not, or if it is going to further brutally be put down.

This is in a buildup to a July 9 protest that had been planned for a number of months, to recognize the July 9, 1999, student protest that was brutally put down by the regime. This has been building. In anticipation of that, the regime in Tehran—and this is a dictatorial regime that has never been elected, the rulers have never been selected by the people in Iran—arrested these student leaders in advance of July 9 in an effort to put it down before it gets started.

This is deplorable. This is not democracy. The United States should stand with those who stand for democracy. We should have a clear official policy that our position toward Iran is to support those who support democracy and we support democracy in Iran. We stand for that with the Iranian people.

There has been a growing, burgeoning movement in Iran of young people who do not want anything to do with this dictatorial regime. They have lived, now, some 25 years, over 25 years under this militant, dictatorial regime that supposedly has put Islamic law in place and they are tired of it and they want no more of it. They want no more of it and they are willing to put forward their lives in this gallant effort, this brave push for democracy. That is their desire.

I call on the Iranian Government to stop beating and harassing their own people. The students are shouting: Khatami, Khatami, go away.

These are the same students who gave President Khatami his start 7 years ago. He was elected as a reformer, which he has not produced on. Instead, he has continued with the same totalitarian way.

I believe he was one of seven candidates at the time selected by the ruling mullahs to be able to run in front of the people, and the people selected the most reformist, most hope minded.

He has not produced. But they didn't get a free selection. Nor does Khatami—I want to identify this as well—have free control. The ruling mullahs continue to control the military secret police, foreign policy, and the treasury.

They control, not President Khatami. So it is a system where unelected, unselected dictators brutalize a country, an elected reformer is not allowed to reform, and he isn't even selected by the people. He has to go through a selection process by the ruling mullahs, so only appropriate candidates can run for office. And the students are tired of it. They are fed up with it, they are protesting, and they are being brutalized in the process.

We should support the student movement for the July 9 nationwide protest in Iran. We should state that it is U.S. policy to stand for true democracy in Iran.

This is a great nation of great people. It is going to make a wonderful open democracy when it is liberated and opened up. These students are trying to pave the way for that to occur.

This is how history is made. It is made one brave act at a time. The world is watching how the regime treats the students, the protesters, and it will hold this regime accountable.

In Iran they have a saying that they yell frequently: "Free Iran." As these protesters are yelling "Free Iran," that should be our call as well: Free Iran.

Mr. President, I yield the floor.

VOTE EXPLANATION

Mr. BIDEN. Mr. President, yesterday evening the Senate confirmed the nomination of Michael Chertoff to the United States Court of Appeals for the Third Circuit. I was in Delaware attending a funeral last evening and, accordingly, was unable to attend yesterday's vote on Mr. Chertoff's nomination. I wish to note for the record, however, that I would have voted for Mr. Chertoff's confirmation yesterday, having voted to report favorably his nomination from the Judiciary Committee last month.

THE COAL ACT

Mr. GRASSLEY. Mr. President, I rise today to call attention to an issue whose time for reform and resolution has come. I am speaking of the so-called "reachback" and "super-reachback" issues enacted in the Coal Act in the 1992 Energy bill. This insidious tax has caused numerous businesses to fail over the past 10 years as a result of its inequitable taking from those that should not have been included in this effort in the first place.

The Coal Act obligated companies to pay an annual tax to cover premiums of coal miner retirees' health care benefits. Not only did the Coal Act require companies then active in the coal mining business to pay but it also retroactively required companies—referred

to as the reachback companies—that were no longer in the coal mining business to participate and assessed them liability to pay in to the Coal Act's combined benefit fund, CBF. This retroactive tax has been so crippling for a number of companies that many have been driven into bankruptcy. The very existence of many other companies that are subject to this tax is in danger due to the heavy obligation this tax imposes on them.

Needless to say, the provisions of the Coal Act that created the CBF were hastily crafted and rushed into law without the benefit of hearings in the Senate Finance Committee or serious examination by the Senate.

The combined benefit fund is not only financed by the taxes on these reachback and super-reachback companies. At its inception, the coal miners' pension funds were used for part of the startup money for the fund. It is additionally funded through current transfers of the surplus interest income of the abandoned mine lands reclamation fund, or the AML. As of 2003, those transfers have been in the hundreds of millions of dollars.

Since the beginning, the solvency of the CBF has been in question. Even now, the possibility exists that, without reform in the near future, this fund could fail putting in jeopardy the coal miner retirees' health care benefits. To temporarily stabilize the CBF, Congress appropriated \$68 million for fiscal year 2000 and another \$96 million for fiscal year 2001 and \$35 million for fiscal year 2003. These ad hoc appropriations are not a permanent solution and do nothing to guarantee that retirees will continue to receive health benefits in future years. For some younger retirees, the benefits from the CBF is their only source of health care until they are eligible for Medicare. For older retirees, it serves as a kind of Medigap policy.

In addition to reachback companies, the current law imposed crippling taxes on companies such as Plumb Supply in my home State of Iowa. Plumb Supply has been designated as a super-reachback company. The super-reachback companies were relieved of their prospective liability by the U.S. Supreme Court since 1998. They were not, however, afforded refunds of those improperly assessed taxes they had been required to pay into the CBF. This hurts Plumb Supply and all other similarly situated companies. The super-reachback companies have been waiting patiently for the return of their money for nearly 7 years.

Many of us in the Senate, along with our colleagues in the House of Representatives, pursued legislation aimed at solving the reachback issue in a comprehensive manner during the 106th and 107th Congresses. We took on these efforts in order to create stability and fairness in the combined benefit fund, and to thereby provide a solution that would address the needs of all interested parties.

I sincerely hope that the Ways and Means Committee will take up legislation during this session of Congress to continue this program for coal mine retirees and their beneficiaries in a responsible fashion, while ending the unfair taxation imposed on businesses no longer active in the coal mining business.

Such legislation should do four things. First, it should provide for permanent solvency for the combined benefit fund. Second, it should relieve all reachback companies of prospective liability. Third, the long-overdue refunds to the super-reachback companies should be satisfied immediately. Finally companies with an ongoing reachback liability should be given an opportunity to prefund their obligations on an actuarially sound basis.

If the Ways and Means Committee can send us this legislation, the Finance Committee will be most happy to receive and examine it so this issue can finally be resolved.

BURMESE FREEDOM AND DEMOCRACY ACT

Mr. LEAHY. Mr. President, I strongly support the Burmese Freedom and Democracy Act of 2002, introduced by Senator MCCONNELL and Senator FEINSTEIN. This legislation seeks to pressure the military junta in Burma to release Aung San Suu Kyi and help bring democracy and human rights to Burma.

Several days last week, Senator MCCONNELL came to the floor to speak on this issue. I want to commend him for his steadfast leadership, and associate myself with his remarks. I have also joined as an original cosponsor of this legislation.

The message that we are sending to the ruling junta in Burma is clear: Its behavior is outrageous. Aung San Suu Kyi is the rightful, democratically elected leader of Burma. She and her fellow opposition leaders must be immediately released. This legislation also sends a clear signal to the administration, ASEAN members, and the international community that we need to turn up the heat on this illegitimate regime.

The efforts of Senators MCCONNELL and FEINSTEIN are already having an impact. On June 5, 2003, the State Department issued a strong statement on this matter, which reads:

The continued detention in isolation of Aung San Suu Kyi and other members of her political party is outrageous and unacceptable. We call on the SPDC to release them immediately, and to provide all necessary medical attention to those who have been injured, including assistance from international specialists. The offices of the National League for Democracy closed by the SPDC should be reopened without delay and their activities no longer proscribed.

But we all know that U.S. actions can only go so far. Bringing democracy and human rights to Burma will require active pressure from its neighbors in Southeast Asia, particularly

Thailand, Japan, and China. It will require these and other nations to disavow the failed policies of engagement. These policies simply have not worked.

I am pleased to see that the McConnell-Feinstein legislation attempts to trigger a process that will ratchet up the regional pressure on the Burmese Government. I am also glad to see that the United States has demarched every government in Southeast Asia on this issue.

In closing, I want to highlight the fact that the U.N. Envoy, Razali Ismail, was finally able to see Aung San Suu Kyi. According to CNN, Mr. Ismail said that she shows no signs of injury following clashes with a pro-government group. His exact words were "she did not have a scratch on her and was feisty as usual." That is indeed good.

I was also glad to see Mr. Ismail call on the members of ASEAN to drop the organization's policy of nonintervention. He stated: "ASEAN has to break through the straitjacket and start dealing with this issue. . . . The situation in Burma can only be changed if regional actors take their positions to act on it."

I agree. The international community has a responsibility to act together to pressure the SPDC. The time for appeasement is over.

Mr. ALLEN. Mr. President, I rise today to condemn the ongoing repression of the democracy movement in Burma. This latest crackdown has included the rearrest and injury of Daw Aung San Suu Kyi and brutal attacks on her supporters. Burma's regime has ignored the basic human rights of its citizens and is intent only on preserving its own brutal grip on power.

Since last May, the international community has significantly decreased pressure on Burma's regime. During that time, we have seen only increased abuses. The numbers are staggering: Burma's regime has forcibly conscripted 70,000 child soldiers, far more than any other country in the world. The regime has tortured and locked up 1,400 political prisoners. Even worse, the regime has borrowed a tactic from the Bosnian war by using rape as a weapon of war, heaping misery on countless women and girls.

Clearly, the United States and the international community must more actively address the situation and Burma and take available steps to prevent further violence against those seeking desired democratic reform.

As my colleague from Kentucky Senator McCONNELL has stated forcefully and eloquently over the last two weeks, the United States must provide international leadership. Next week, Thailand's Prime Minister Thaksin Shinawatra will be visiting Washington, DC to meet with the President and other senior government officials. This meeting would provide an ideal opportunity to urge the Prime Minister to make every effort to formulate a policy to help bring about positive change in Burma.

I say to the people of Burma that the people of the United States support you and share your values. We admire your courage, and commend your bravery. We will continue to support your struggle, as long as this oppressive regime remains in power.

The United States has a long history of supporting democratic change and condemning regimes that repress and disregard the will of the people. This most recent attack on democratic reformers in Burma only underscores the need for the U.S. to be vigilant in voicing strong disapproval with the actions of the current regime, and assist the legitimately elected leaders of Burma to bring much needed democratic reform and respect for universally recognized human rights to the people of Burma.

HONORING OUR ARMED FORCES

Mr. CRAPO. Mr. President, today I rise to pay tribute to those members of the Armed Forces who have served and continue to serve in Operation Iraqi Freedom. Countless women and men have answered the call of our country to preserve and protect our freedom against those individuals and regimes that would seek to compromise or destroy our way of life. Reservists have left civilian lives behind, parting with wives, husbands, parents, children, and friends in order to fulfill their commitment to our country's defense. Active Duty military members have gone from merely conducting exercises mimicking war, to leaving their homes and families to engage in the real thing, on foreign soil, thousands of emotional and physical miles from familiarity and comfort. These brave soldiers, airman, marines, and sailors do their jobs in a place where injury and death lie in wait at every turn. The next rise in the gritty, windblown landscape may hide 160 pounds of profound desperation peering from behind the barrel of a gun. The building around the corner needing to be secured might be rigged with enough explosives to make a small child's father or mother nothing but a memory. floating just beneath the roiling surface of the water, there might be a mine, with deadly patience waiting for the next ship to pass overhead so that it can accomplish its gruesome mission. These are some of the hazards our military members face in their jobs. Frankly, it makes our job in these marble halls seem significantly less perilous.

I speak today to recognize in particular those faithful men and women from my State—Idaho. We have had approximately 450 reservists and active-duty members called to serve in the war. That may not seem like a large number compared to those from some other States, but proportionately it represents a significant percentage of Idahoans. We also have countless other soldiers who have family and friends who call Idaho home. This number does not include the over 160 who were activated to fill positions vacated at in-

stallations here by deployed personnel. We also have Idahoans continuing to serve in Operation Enduring Freedom, and in the fight against terrorism. I have spoken before of MAJ Gregory Stone and CPL Richard P. Carl, both soldiers from Idaho who lost their lives in Operation Iraqi Freedom. I now ask for a moment of silent prayer and reflection from my fellow Senators as we consider what their dying, as well as over 150 other men and women who have met the same fate in this conflict, has accomplished for our personal freedom.

Thankfully, many of those who were called to military service from Idaho have just recently returned safely home. Yet their experiences overseas will remain with them for the rest of their lives.

Some may remember lines of tanks rolling ominously forward under a dusty sky, marred by waves of heat emanating from the desert floor. That memory may be infused with the pungent odor of layers of sweat and grime under desert camies, mingled with the acrid odor of burning gasoline and oil. Others may remember pulling the trigger on their weapon and seeing death for the first time in their young life. They may remember being close enough to smell it and feel it, or feel as if their own was but a whisper away. Still more may remember the sight of crowds, pushing against one another, some greeting the American soldiers with cheers of gratitude, some screaming epithets, some shamelessly begging for food and water to feed themselves or their starving families, and others simply greeting this modern army in grim, expressionless silence brought on by years of brutal repression and loss. The smell of desperate, poverty-stricken humanity, and the sounds of raw emotion cascading forth in an uninhibited tidal wave after a lifetime of unchecked tyranny, may remain forever embedded in the memories of many of those soldiers. Finally, and very tragically, some will never forget a life that slipped away while they clutched a friend's bleeding body to their chest in shared agony.

I give account of these images to remind us of the grim reality of war, and the tremendous sacrifice that these noble women and men have made so that we can continue to live in glorious freedom. We tend to take for granted, at times, the price that is paid for this amazing gift. The cost comes not only in the loss of life, but the loss of innocence. The cost is borne by family members as well, and by those, whom never having set foot outside this country, bear the scars of a father, mother, husband, wife, son or daughter forever gone from this life.

This body voted to support a decision to send these men and women into harm's way. Lest the proud soldiers from Idaho, and their persevering families, think that I came to that decision lightly, I stand now before you and recognize their tremendous bravery in the

face of danger, their courage in the face of death, and their unequivocal commitment to preserving the ideals of liberty and democracy. I want to convey no doubt that their decision to become a member of the most well-trained, professional military in the world places them in my highest esteem. With gravity and sincerity, I thank them and I honor them. They have given me, my wife, and most importantly, my children, and yours as well, the priceless gift of freedom.

FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

Mr. LEAHY. Mr. President, I am proud to be an original cosponsor of the Federal Employees Protection of Disclosures Act, a bill to ensure that Federal employees can report fraud, waste, and abuse within their employer Federal agencies without fear of retaliation. I cosponsored this much needed reform in the last Congress and commend the junior Senator from Hawaii for reintroducing it today. Congress must encourage Federal employees with reasonable beliefs about governmental misconduct to report such fraud or abuse, but it must also protect those who blow the whistle rather than leave them vulnerable to reprisals.

Unfortunately, whistleblower protections under current law have been weakened by the Federal circuit, the court that now possesses exclusive appellate jurisdiction over such claims. The Federal circuit has issued a number of rulings that erode whistleblower rights in direct contradiction to the plain language of the law and the congressional intent of established whistleblower protections. The potential chilling effect of these decisions threatens to undermine the fundamental purpose underlying whistleblower laws. The Federal Employees Protection of Disclosures Act will address this problem by expanding judicial review of such cases to all Federal circuit courts of competent jurisdiction. Jurisdiction will then include the place where the whistleblower lives or where the Government misconduct occurred.

The bill also updates the current law. For example, it clarifies that whistleblower disclosures can come in many forms—such as oral or written, or formal or informal disclosures. It also broadens current law to reflect that reporting occurs in many different areas, such as over policy matters or individual misconduct. The law expands the current list of prohibited personnel actions against a whistleblower in two ways: One, the opening of an investigation of the employee, and two, the revocation of a security clearance. The bill also ensures that appropriate disciplinary actions are taken against managers who negative actions toward employees were motivated in any way by the employee's whistleblowing. More practical reforms are also included, such as making the collecting

of attorney's fees available to whistleblowers who prevail in court. In addition, under the bill, consequential damages may be suffered by the employee if they are the result of a prohibited personnel practice.

Whistleblower information is one tool in helping the Government and private sector find ways to prevent future terrorist attacks as well. Though certain safeguards remain for intelligence-related or policy-making functions, the Federal Employees Protection of Disclosures Act maintains existing whistleblower rights for independently obtained critical infrastructure information without fear of criminal prosecution. These protections are needed to encourage individuals to submit information to the Government about cyberattacks or other threats that might affect the Nation's critical infrastructures.

Whistleblowers have proven to be important catalysts for much needed Government change over the years. From corporate fraud to governmental misconduct to media integrity, the importance of whistleblowers in galvanizing positive change cannot be questioned. I urge my fellow Senators to support this important bill.

IN MEMORY OF FORMER CONGRESSMAN TOM GETTYS

Mr. HOLLINGS. Mr. President, tomorrow I will be attending the funeral of a former colleague from the South Carolina congressional delegation, Tom Gettys, and I rise to recognize this legend from Rock Hill.

I have known Congressman Gettys for many years. He came to Washington 2 years before I did, having already been an officer in the Navy, a school principal, a postmaster, and so he came in with a reputation of a person's person. It did not matter who you were in the world, he was your buddy; and since he was in a position to help people as a Member of Congress, he would and he did.

He stayed just 10 years, but he made an impression for the next 30. I never heard a single bad thing said about him, and I don't know very many politicians I can say that about. He has been out of office since 1974, but everybody in my State still always refers to him as Congressman because he was just one great guy who cared about people. This Senator will miss this gentleman, always the statesman, always the one with a good story.

Tomorrow, I will extend the Senate's sympathy to his wife Mary, and his daughters Julia and Sara. And to share just how much Tom meant to his community, I ask unanimous consent that this article from the Herald in Rock Hill be printed in the RECORD.

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

[From the Rock Hill (SC) Herald, June 9, 2003]

FORMER CONGRESSMAN LEAVES LEGACY OF DEDICATION

(By Andrew Dys)

He voted to create Medicaid and was proud the rest of his life—but he was just as proud to know the doormen and elevator operators in the U.S. Capitol by first name. Tom Gettys, a working-class man from Rock Hill's Hampton Street who went on to become a Congressman from South Carolina's 5th District from 1964 to 1974, died Sunday at Westminster Towers in Rock Hill. Gettys was 90.

Gettys' legacy of grace, dedication and constituent service is one that current 5th District Congressman John Spratt, D-York, has tried to emulate during his own 20 years in Congress. Gettys' record is not in the laws he passed, but the people he helped.

"His life exemplified what living in a democracy is all about," Spratt said Sunday night. "Everybody in this district not only respected Tom Gettys, but they loved him as well. Tom had a natural, easygoing affinity for people and the problems they had to live through. Tom Gettys will be missed by all of us."

Gettys was born on June 19, 1912, and was educated at the public schools in Rock Hill and later at Clemson and Erskine College. He was principal at the now-defunct Central Elementary School in Rock Hill from 1933 to 1941.

Gettys volunteered for the Navy in World War II after the bombing of Pearl Harbor, and Spratt remembers Gettys was fond of saying "Admiral Nimitz and I did all right over there in the Pacific."

5th District Congressman Dick Richards called on Gettys to run his staff in Washington for seven years. A political future hatched in Washington, but Gettys did more than politick the back hallways of Capitol Hill—he studied law at night and passed the bar exam, and even was Rock Hill's postmaster upon his return from Washington from 1951 to 1954.

Before Gettys won his spot in Congress in 1964 against a crowded four-man field, he was a lion of Rock Hill civic life, serving as president of Rotary, the Chamber of Commerce, the YMCA and even as chairman of the Rock Hill School Board. After his return, he became a part of the civic fabric of Rock Hill.

The city honored Gettys by naming the old federal courthouse on East Main Street in his honor in 1997, a building now called the Tom S. Gettys Center.

Gettys had a stroke several years ago and months ago moved from his longtime Myrtle Drive home into Westminster Towers. He maintained contact with old friends, however, and regularly attended bi-weekly meetings of the Rock Hill Rotary Club when his health would allow.

John Hardin, former Rock Hill mayor and lifelong friend, said Gettys and he were part of a weekly golfing outing with A.W. Huckle, publisher of The Evening Herald, and banker George Dunlap.

"I had known him since childhood," Hardin said, "but we became intimate friends after World War II."

Gettys, a Navy officer, was assigned to Iowa but requested overseas service and jumped at duty in the Pacific.

Hardin, who ran First Federal Savings and Loan, saw Gettys frequently when he traveled to Washington to lobby as president of the Savings and Loan League.

"The thing he liked best was trying to help people," Hardin said. "He was great at what they call constituent service. He was more interested in helping people than in passing legislation."

Gettys was a great teaser, and he often would catch people by surprise by asking if they enjoyed the casserole he sent. When told that, no, they hadn't gotten a casserole, Gettys would respond, "Well, I left it on the porch. The dogs must have gotten it."

The former congressman cultivated stories about being tightfisted, but in reality, he was a gentle, caring person, Hardin said.

"He had the best sense of humor," Hardin said. "I don't know anyone who had a better one."

Another former Rock Hill Mayor, Betty Jo Rhea, called Gettys, "One of my favorite people."

Gettys' reputation as the hometown guy turned legislator is deep in the memories of Rock Hill residents. People knew Gettys had many jobs before he ran for Congress and that he came home when he was finished his work in Washington.

"Tom was my husband Jimmy's principal when he was at Central School on Black Street in the early 30s," Rhea said.

Gettys is survived by daughters Julia and Sara and his wife of 55 years, Mary Phillips Gettys. Funeral arrangements will be announced later.

His sister Sara, who still lives in Rock Hill, said the Tom Gettys people knew from public life was the same guy the family loved. Even after 10 years in Congress, Tom Gettys was a Rock Hill boy deep in his bones.

"He was a great person who looked after all of us," Sara Gettys said. "The man who went to Washington was the same man when he came home."

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, 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 in Lincoln Park, MI, on September 19, 2001. Mr. Ali Almansoop, a 45-year-old U.S. citizen originally from Yemen, was shot to death by a man who confessed the attack was in retaliation for the September 11 tragedy. The attacker broke into the apartment where Mr. Almansoop was asleep, dragged him out of bed, and shot him in the back as he attempted to flee. The Department of Justice investigated the slaying as a hate crime murder.

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.

ARMED FORCES DAY

Mr. ALEXANDER. Mr. President, on May 17, Armed Forces Day, I drove down to Madisonville, TN to participate in the raising of the largest American flag in our State. The people of

Madisonville and Monroe County had been working on this for months.

The community joined together to make the Veterans Flag Memorial something to be proud of. Along with the impressive flag, a brick wall was erected.

Businesses donated bricks, mortar, concrete and a variety of services from architectural to brick masonry. Citizens donated approximately \$70,000 to the project, including contributions and brick sales. The brick sales were reserved for veterans and active duty military. The memorial has been a labor of love for the community. The dedication ceremony to celebrate this hard work was an important event.

As I drove up to Haven Hill Memorial Gardens, where the ceremony was to be held, it started to rain; then it poured. Thunderstorms arrived, and lightning began to dance in the sky. Not many of us wanted to get too close to the 150 foot flagpole.

But through it all, the ceremony went forward. There must have been 500 people who sat there in the rain, absolutely drenched. And then, the sun came out as the program began.

The most impressive moment came with the raising of the flag. Twenty men marched forward carrying the flag. It was soaking wet and very heavy. This is what the organizer of the event, City Alderman Irad Lee, wrote to me:

I was told by the commander of the Tennessee State Guard that had we waited another five minutes, the flag would have been too heavy for their twenty men to carry. I am unsure how much a saturated 1,800 square foot flag weighs, yet one young man named Dwight Taylor of 312 Atkins Road in Madisonville, a city maintenance crew worker, auxiliary policeman and patriot, endured while cranking the flag to the top of flagpole.

I watched Dwight Taylor crank that flag to the top of the pole. I was astonished to see one man do that. It was a tribute to his patriotism and strength. It seemed at the time an impossible feat.

But so does the history of this country that our flag represents.

When Americans want to see the grandest flag in Tennessee, they will travel to Madisonville. And it is appropriate that they do so.

Congressman JIMMY DUNCAN told the crowd that Monroe County sent more volunteers to Desert Storm in the Gulf War for its population size than any other county in America. This is yet another example in our history of Tennessee living up to its nickname, "The Volunteer State."

I felt privileged to be a part of the Armed Forces Day event, and I wanted the nation to know about the patriotic citizens of Madisonville and Monroe County, TN.

HEALTH CARE HERO

Mr. SMITH. Mr. President, 5 years ago, the State of Oregon witnessed one of the greatest tragedies in its 150 year

history—a senseless school shooting at Thurston High School in Springfield. The shock waves from that awful event still reverberate in our State and in our schools. But as so often happens in the face of great evil, good people stand together in grief to create hope for a better future.

In the case of the Thurston shooting, that beacon of hope is the Ribbon of Promise campaign. Five years after the shooting, the campaign is continuing its work to prevent school violence. Because of the impact the campaign has made and the lives it has saved, I rise today to recognize this program and its volunteers as a Health Care Hero for Oregon.

The Ribbon of Promise National Campaign to Prevent School Violence was founded on May 22, 1998, the day after the Thurston shooting. Thurston was one of several school attacks occurring across the Nation, from Pearl, MS, to Jonesboro, AR. While still in the throes of grief, the Springfield community decided enough was enough and began the work of preventing future attacks.

Overnight, the Springfield area bloomed with miles of blue plastic ribbons decorating cars, mailboxes, lampposts, trees and lapels, signaling the community's support for the victims and their families. The ribbons promised to end the specter of school violence, a promise repeated at candlelight vigils, community gatherings, and funerals.

But the promise didn't end when the media attention subsided. The ribbons were woven together into a grassroots organization dedicated to making a national impact on the problem of school violence. The resulting campaign, the Ribbon of Promise, identified its mission as bringing communities together with schools, law enforcement, and the juvenile justice system to prevent school violence. Today, the organization continues to fill its role by acting as resource for communication, education, and action against future attacks.

Since the campaign's inception, the ribbons have appeared in many important places. President Clinton wore one when he traveled to Eugene for a Thurston memorial service. NASA crewmember Wendy Lawrence took the ribbon on the shuttle Discovery in 1998. Since that time, over 250,000 lapel ribbons have been distributed across the world.

Results of the campaign have been tremendous. The group's web site has become a primary resource for violence prevention information. Springfield High School's DECA class developed a video called By Kids 4 Kids, launching the student arm of the campaign. This important program, also known as BK4K is teaching students to speak out when they hear threats of violence. This information, spread from student to student, is often the only way schools, parents, and law enforcement have the opportunity to prevent violent attacks. The BK4K campaign is

changing the student culture of our Nation, teaching kids to break their code of silence in order to save lives.

Scores of other campaign accomplishments include a parent information program, a network of 24-hour report hotlines across the country, and continued research on the problem of school violence. While there remains much work to be done, the accomplishments of the Ribbon of Promise campaign are very real. But the best result of their work is the safe return of students at the end of each schoolday.

Oregon continues to mourn for the victims of the Thurston shooting. But we also have hope that through the efforts of this outstanding organization, further violence in our State has been prevented. I thank all the volunteers and staff of this great campaign and designate the Ribbon of Promise as a Health Care Hero for Oregon.

IN MEMORY OF AL DAVIS

Mr. CONRAD. Mr. President, today I wanted to honor the memory of a member of the congressional family whose life was tragically cut short last month. Albert James Davis, who was the Democratic chief economist at the House Ways and Means Committee, died on May 30.

Mr. Davis had served the Congress with distinction since 1984, first as a senior economist with the Democratic staff of the House Budget Committee, then as chief economist for that committee, and finally as chief economist for the Ways and Means Committee.

Although Mr. Davis never worked in the U.S. Senate, his death is a profound personal and professional loss for many Members and staff of the Senate. Mr. Davis was a highly respected and much loved member of the group of policy experts who work largely behind the scenes to provide Members of Congress with information about the policies they are considering. Many Senate staff—and many members of my Budget Committee staff—had worked with Mr. Davis, either directly in the House or through bicameral staff meetings and frequent phone conversations. And although few knew it, many Senators benefitted from Mr. Davis's knowledge and wisdom because of the frequent use made by Senate staff of insightful memos and analyses of important issues that Mr. Davis graciously shared with them.

He was one of the leading experts in the country on issues involving taxes and entitlement programs. Just as important as his deep understanding of these complex issues was his ability to express his thoughts about them in a simple, straightforward way that others—congressional staff, the press, and Members of Congress—could understand. And he could do it in a gracious and humorous way that did not betray any impatience with a listener who might be a little slow to grasp what was being explained.

Mr. Davis was a committed Democrat, but he was more committed to

honest and intelligent analyses of the issues. You could count on him to give you the straight scoop about any issue. He would not fudge the facts just to fit his personal policy preferences. When my staff gave me information from Al Davis, I knew I could rely on it.

The combination of respect and affection that many members of the Senate family had for Al Davis is a testament to his intelligence, his ability, and his huge and warm heart. The Senate was considering the conference report on the reconciliation tax bill when it became known that Mr. Davis was not likely to recover. The sense of sorrow and loss felt by Senate staff on the floor that day was immense. For many of those staff, it was hard to imagine not being able to pick up the phone to ask Al about an issue. They understood the quality of reporting on tax and entitlement issues would be diminished because Al would not be around to explain a complicated issue in a way that the average reader or listener could understand. And they keenly felt the loss of a unique and wonderful person. Many people in the Senate family were touched by Al—benefitted from his knowledge and wisdom and were lucky enough to consider him a friend. He will be greatly missed.

APPOINTMENT OF TIMOTHY A. EICHORN TO THE UNITED STATES AIR FORCE

Mr. LUGAR. Mr. President, I rise today to share with my colleagues my congratulations to Timothy A. Eichhorn, who on February 25, 2003, was named by the Senate to receive an appointment as a grade of lieutenant colonel to the U.S. Air Force.

I have known the Eichhorn family for many years, and I am pleased to join his family and friends in congratulating Timothy on this momentous occasion. This appointment is clearly a testament to his hard work, dedication, and enthusiasm for military service.

In a time when U.S. Armed Forces are deployed around the world, I am pleased to know that outstanding individuals, such as Timothy Eichhorn, have been called to public service.

ADDITIONAL STATEMENTS

WIND CAVE NATIONAL PARK CENTENNIAL COMMEMORATION

• Mr. JOHNSON. Mr. President, I rise today in tribute to Wind Cave National Park on the occasion of the park's centennial anniversary.

Nestled in the southeast corner of the Black Hills of South Dakota and adjacent to Custer State Park, Wind Cave has a rich and colorful history that has informed and educated generations of people from around the world.

Wind Cave was established as a national park by President Theodore Roosevelt on January 3, 1903, as the

Nation's seventh national park and the first one created to protect a cave. It was designated as a National Game Preserve on August 10, 1912.

But Wind Cave's history is recorded as part of Black Hills history from the time Native Americans told stories of holes in the ground that blow wind. The first recorded discovery of Wind Cave dates to 1881 when Jesse and Tom Bingham were first attracted to the cave by a whistling noise. As the story goes, wind was blowing out of the cave entrance with such force it blew off Tom's hat. A few days later, when Jesse returned to show the phenomena to some friends, he was astonished to find the wind had changed directions and his hat was sucked into the cave.

Since that time, notable visitors have included Charlie Crary, the first person reported to enter the cave; J.D. McDonald, whose family gave the first cave tours and sold cave formations to J.D.'s son, Alvin; Alvin McDonald, who was the first explorer of the cave and who kept a diary and map of his findings; and "Honest John" Stabler who formed a partnership with the McDonalds to develop the first passages and staircases into Wind Cave. Indeed, the early history of the cave was plentiful and colorful.

William Jennings Bryan and Governor Lee visited the cave in 1892. That same year, one of the first attractions was put on display. For a quarter, visitors could come to the cave and view a 'petrified man' that had been found north of the cave. Over the years, visitors would come to view the natural attractions Wind Cave would have to offer.

Captain Seth Bullock became the cave's first supervisor in 1902, with George Boland serving as the area ranger. South Dakota Congressman Eben W. Martin was instrumental in the designation of Wind Cave as a national park. General John J. Pershing visited in 1910 and took important cave room readings with his pocket aneroid barometer. In 1914, Ester Cleveland Brazell was a ranger guide at the Cave, possibly making her the first woman to hold the title of ranger in the National Park Service. Walt Disney and other film and video companies have produced films in the park and countless rolls of film have been shot by amateur photographers for display in home movies and scrapbooks.

Today, Wind Cave has more than 108 miles of explored and mapped passages, making it the fourth-longest cave in the United States and sixth longest in the world. Well over 5.5 million people have visited Wind Cave over the past 100 years.

The first major improvements in the park were accomplished by the Civilian Conservation Corps in the 1930s. Wind Cave was one of many important projects CCC workers developed in South Dakota. Many of the projects can still be seen today, including roads, the entrance to the cave, concrete stairs in the cave and the elevator building and shaft.

By 1935, the game preserve became an integral part of Wind Cave National Park. Bison, elk, and pronghorn became staples of the visitor experience, and the park's boundaries were expanded in 1946 to over 28,000 acres.

Wildlife management was a main priority and key challenge in the 1950s and 1960s as herds grew and restoration and management of native grasses, exotic plant species, and animal herds became a main focus.

The unique blend of wildlife and aesthetic beauty on the park's surface, combined with the beautiful cave formations, extensive passageways, and informative guided tours beneath the surface provide the general public with a wonderful Black Hills experience and one that provides young people with a unique learning opportunity. Visitors can take in such attractions as Lincoln's Fireplace, Petrified Clouds, Devil's Lookout, Roe's Misery, Sampson's Palace, Queen's Drawing Room, the Bridge of Sighs, Dante's Inferno, and the Garden of Eden.

I want to commend the 18 superintendents who have served Wind Cave National Park, including current superintendent Linda Stoll, for their leadership and excellent stewardship of the park over the past 100 years. I also want to applaud the dedication and commitment of the park's staff over the years, from rangers and administrative staff to tour guides and custodians. All of them have partnered to ensure the visiting public's experience at Wind Cave is a memorable one. Wind Cave National Park is one of the jewels in the Black Hills crown of tourism destinations. Over the years, it has been a privilege for me to work on infrastructure needs and issues of importance involving Wind Cave National Park.

From earthquakes, floods and fires to the occasional lost spelunker, Wind Cave has come a long way since the 'Petrified Man' displays and 25-cent tours. Wind Cave today offers a complete visiting and educational experience for people of all ages. The ever-expanding cave continues to excite and astonish scientists, cave surveyors, spelunkers, and the general public. I wish to congratulate Wind Cave National Park on its centennial anniversary and encourage everyone to visit the beautiful Black Hills of South Dakota and Wind Wave National Park.●

RECOGNIZING KAREN McCANN ON HER RETIREMENT

● Mr. LEVIN. Mr. President, it is with great pride that I pay tribute to an exceptional educator from my home State of Michigan. On June 12, Karen McCann will retire after 24 years in public education. Karen's creativity and dedication to her students has deeply enriched the lives of thousands of young people throughout Michigan.

Karen has been an innovative and enthusiastic teacher throughout her 24-year career as an educator in the

Michigan public school system. While working in the Farmington schools and Troy schools with students from 4th through 9th grades, she has prided herself on developing new methods of engaging and motivating her students. She truly cares about her students' overall well-being and strives to create an environment that fosters curiosity and challenges students to apply what they have learned to life outside the classroom.

Karen's commitment to Michigan's children has been demonstrated in many ways throughout her long and distinguished career. She has received numerous awards including the Detroit News' My Favorite Teacher Award and has been nominated for several others, including the Disney American Teacher Award, the Newsweek/WDIV Outstanding Teacher Award, and is currently under consideration for the JASON Foundation for Education's Hilda E. Taylor Award. She has earned such distinguished honors because of the heartfelt respect and admiration of her peers, students, and parents.

During the past 7 years, Karen McCann has served as a Michigan JASON Teacher Mentor. The JASON Project is a program designed to foster interest in natural sciences through imaginative hands-on experiences. She has carefully created new and exciting opportunities for students to expand their knowledge beyond the classroom by integrating a variety of activities with the general curriculum established by the Troy School District. For example, she has designed field trips and coordinated guest speakers to enhance her students' learning experiences and also created a series of after-school programs entitled "JASON U" to enrich her students' lives beyond the normal schoolday. In addition, Karen has arranged exciting new opportunities for continuing professional development in the form of seminars for teachers throughout the State of Michigan.

Michigan's children have been touched by Mrs. McCann's genuine interest and unwavering desire to provide a meaningful learning experience. I have no doubt that Karen's contributions to Michigan's public schools will continue to foster innovation in the future. I am confident my colleagues will join me in offering our heartfelt thanks and appreciation to Karen McCann and in wishing her well in her retirement.●

TRIBUTE TO BURKE MARSHALL

● Mr. LIEBERMAN. Mr. President, I rise to pay tribute to a life spent in pursuit of the highest American ideals. Burke Marshall, a wonderful man, a frontline soldier in the battle for civil rights, and a deeply respected resident of Connecticut, died Monday, June 2 at the age of 80. I am honored to have known him and occasionally benefited from his wise counsel.

Burke became assistant attorney general for civil rights in the Kennedy

Administration in 1961, just 7 years after the Brown v. Board of Education decision had declared "separate but equal" schools to be unconstitutional. On paper, in the annals of the law, things were changing. But in practice, on the streets and in the schools, those who suffered under Jim Crow knew that America was still defaulting on its promissory note. Segregation was still fierce. America was still failing to live up to its founding principles.

During his tenure, Burke worked tirelessly to desegregate public facilities in the South. In 1961, he helped craft the Government's ban on segregation in interstate travel. In 1962, he played a central role in the maneuvering that led to the admission of James Meredith to the University of Mississippi, the first black student to pass through the gates of that school. In Birmingham in 1963, he negotiated a settlement between civil rights activists and the city's business community that helped bring the city back from the brink of violence. And in 1964, he helped shape the landmark Civil Rights Act, which would outlaw discrimination in public accommodations nationwide.

During his tenure, Burke Marshall traveled throughout the South, persuading local authorities to desegregate bus stations, train stations, airports. This wasn't glamorous work. It took patience and persistence, clarity and courage. But without that patience, persistence, clarity, and courage, America would have stalled. America would have regressed. America would not have grown into the great Nation, full of hope and opportunity for people of all races and backgrounds, that it increasingly is today.

Looking back, reading history books, some might think the civil rights movement was inexorable or its outcome inevitable. After all, the justice of the cause now seems so obvious. But in those days, nothing was for granted. Advancing civil rights was a struggle. Young people were being beaten by mobs; fire hoses and dogs were being turned on peaceful protestors. Many defenders of segregation would stop at nothing to stop the march of social progress.

The only reason we were able to build a better country was because of the extraordinary heroism of ordinary people, and because of the difficult decisions made every day by people like Burke Marshall. He chipped away at the evil of Jim Crow and helped open the floodgates so that, as the Bible said, justice could begin to flow like water, and righteousness, like a mighty stream.

Justice isn't yet flowing like a mighty river in America, nor is righteousness flowing like a mighty stream. We still have hills to climb, as Dr. King might say, before we reach the mountaintop. But thanks to the foothold that people like Burke Marshall have given us, we have the ability to keep climbing. We can see the summit. And

we have the strength and the inspiration to never give up until we reach it.

I got to know Burke Marshall because, in 1970, he moved to Connecticut and joined the faculty of Yale Law School, my alma mater, where he served as deputy dean and professor. I unfortunately had already graduated, but I was lucky to befriend Professor Marshall around New Haven. He was a warm, kind, decent man, who believed that the fight for justice was never-ending.

The dean of Yale's Law School, Tony Kronman, put it well. He said, "His goodness was so large that I half believed and fully wished he would live forever. Burke's generosity brought out the best in others. His love of justice helped change a nation."

Burke Marshall was a quiet man. In fact, his wife Violet once said that, because he said so few words, she wasn't sure whether he liked her or not until he proposed. But he wasn't quiet when it counted. On matters of principle, on questions of justice, he heeded the wisdom of Dr. Martin Luther King, Jr., who said: "Our lives begin to end the day we become silent about things that matter."

Burke Marshall always spoke when it mattered, and that is why his legacy will live on forever in the hearts he touched and in the country he helped change for the better.

My condolences to his wife Violet, his daughters Katie, Josie, and Jane, and his grandchildren. May God bless them and the memory of Burke Marshall.●

TRIBUTE TO KELSEY LADT

● Mr. BUNNING. Mr. President, I rise to honor and pay tribute to Kelsey Ladit of Paducah, KY, for her inimitable sense of giving and community service. Kelsey, age 8, led an art tour fundraiser for the Community Foundation of Western Kentucky, with proceeds benefitting the Lourdes' Foundation patient care fund and the St. Nicholas Free Family Clinic.

Kelsey Curd Ladit, daughter of Vicki and Ric Ladit, is a gifted and precocious young lady with an exceptional sense of selflessness and charity. She single-handedly led a tour of the artwork inside her parents' home for 35 people. Kelsey paused by each painting to share historical insight and anecdote, a remarkable feat for someone so young.

Kelsey researched art at Murray State University under the tutelage of Dr. Joy Navan. With the encouragement from Navan and family friend Bill Ford, Kelsey planned the fundraiser and interviewed directors of various beneficiaries before selecting the Lourdes' Foundation and the St. Nicholas Free Family Clinic.

Kelsey, who is herself an accomplished artist and pianist, plans on expanding the art tour to four homes in the coming years, in order to better serve her community. Later this summer she will participate in a forensic

anthropology course at Murray State University and a gifted and talented camp at Western Kentucky University.

It is my pleasure to honor such an exceptional and altruistic young lady for her extraordinary charitable contributions to her community. I thank the Senate for allowing me to laud her praises. She is one of Kentucky's finest.●

TRIBUTE TO DR. HARRY BEGIAN

● Mr. LEVIN. Mr. President, today I have the honor of recognizing a great musician and educator from my home State of Michigan. During a career that has spanned more than 50 years, Dr. Harry Begian has made numerous contributions to the music and education communities across the country and around the world. He has greatly influenced both high school and collegiate bands throughout the Midwest and the Nation. On June 21, 2003, a reunion and banquet will be held at Cass Technical High School in Detroit to honor not only Dr. Begian's 17 prolific years as Director of Bands at Cass Technical High School but also his lifetime of musical contributions that have touched so many.

Dr. Begian's early involvement with music included studying trumpet and flute with famed musicians Leonard Smith and Larry Teal. Dr. Begian completed his undergraduate and master's degrees at Wayne State University. He also earned a doctorate in music at the University of Michigan.

Dr. Begian became Director of Bands at Cass Technical High School in 1947, where he built one of the preeminent high school bands in the country. During the following 20 years, he served as Director of Bands at Wayne State University, Michigan State University, and the University of Illinois. In addition to his work as a band director, Dr. Begian has served as a guest conductor and lecturer throughout the United States, Canada, and Australia. In 1987, the Detroit Symphony Orchestra invited him to conduct a formal concert in Detroit's Orchestra Hall.

The Music Division of the Library of Congress created the Harry Begian Collection in tribute to his accomplishments. The permanent collection currently contains 26 reel-to-reel recordings of Dr. Begian's performances at Cass Tech. In addition, the collection also includes 50 records and 15 compact discs from Dr. Begian's time with the University of Illinois Symphonic Band.

Dr. Begian is a charter member of the American School Band Directors Association and a past president of the American Bandmasters Association. He has won the National Band Association's Citation of Excellence, the Edwin Franko Goldman Award, and the Norte Dame St. Cecelia Award. I know that my Senate colleagues will be pleased to join me in saluting Dr. Harry Begian's lifetime full of contributions to the world of music.●

PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO THE RISK OF NUCLEAR PROLIFERATION CREATED BY THE ACCUMULATION OF WEAPONS-USABLE FISSILE MATERIAL IN THE TERRITORY OF THE RUSSIAN FEDERATION—PM 37

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a 6-month periodic report prepared by my Administration on the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation that was declared in Executive Order 13159 of June 21, 2000.

GEORGE W. BUSH,
THE WHITE HOUSE, June 10, 2003.

REPORT OF THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO THE RISK OF NUCLEAR PROLIFERATION CREATED BY THE ACCUMULATION OF WEAPONS-USABLE FISSILE MATERIAL IN THE TERRITORY OF THE RUSSIAN FEDERATION BEYOND JUNE 21, 2003—PM 38

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the emergency declared with respect to the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation is to continue beyond June 21, 2003, to the *Federal Register* for publication. The most recent notice continuing this emergency was published in the *Federal Register* on June 20, 2002 (67 FR 42181).

It remains a major national security goal of the United States to ensure that fissile material removed from Russian nuclear weapons pursuant to

various arms control and disarmament agreements is dedicated to peaceful uses, subject to transparency measures, and protected from diversion to activities of proliferation concern. The accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, I have decided that it is necessary to continue the national emergency declared with respect to the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation and maintain in force these emergency authorities to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, June 10, 2003.

MESSAGE FROM THE HOUSE

At 2:19 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill and joint resolution, each without amendment:

S. 763. An act to designate the Federal building and United States courthouse located at 46 Ohio Street in Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse."

S.J. Res. 8. A joint resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of sexual assault in the United States and supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1610. An act to redesignate the facility of the United States Postal Service located at 120 East Ritchie Avenue in Marceline, Missouri, as the "Walt Disney Post Office Building."

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

H. Con. Res. 162. A concurrent resolution honoring the city of Dayton, Ohio, and its many partners, for hosting "Inventing Flight: The Centennial Celebration," a celebration of the centennial of Wilbur and Orville Wright's first flight.

The message also announced that pursuant to 22 U.S.C. 276th and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Mexico-United States Interparliamentary Group, in addition to Mr. KOLBE of Arizona, Chairman, appointed on March 13, 2003: Mr. BALLENGER of North Carolina, Vice Chairman; Mr. DREIER of California; Mr. BARTON of Texas; Mr. MANZULLO of Illinois; Mr. WELLER of Illinois; Ms. HARRIS of Florida; Mr. STENHOLM of Texas; Mr. FALEOMAVAEGA of American Samoa; Mr. PASTOR of Arizona; Mr. FILNER of California; Mr. REYES of Texas.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 222. An act to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

S. 273. An act to provide for the expeditious completion of the acquisition of land owned by the State of Wyoming within the boundaries of Grand Teton National Park, and for other purposes.

MEASURES REFERRED

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1954. An act to revise the provisions of the Immigration and Nationality Act relating to naturalization through service in the Armed Forces, and for other purposes; to the Committee on the Judiciary.

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

H.R. 1610. An act to redesignate the facility of the United States Postal Service located at 120 East Ritchie Avenue in Marceline, Missouri, as the "Walt Disney Post Office Building"; to the Committee on Governmental Affairs.

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

H. Con. Res. 162. Concurrent resolution honoring the city of Dayton, Ohio, and its many partners, for hosting "Inventing Flight: The Centennial Celebration", a celebration of the centennial of Wilbur and Orville Wright's first flight; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 1215. A bill to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

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-2652. A communication from the Under Secretary, Emergency Preparedness and Response, Federal Emergency Management Agency, transmitting, pursuant to law, the report relative to the funding of the State of New York as a result of record/near record snowstorms on December 25-26, 2002, and January 3-4, 2003, has exceeded \$5,000,000; to the Committee on Environment and Public Works.

EC-2653. A communication from the Director, Human Resources Management, Department of Energy, transmitting, pursuant to law, the report of a vacancy and designation of an acting officer for the position of Chief Financial Officer for the Office of Management, Budget and Evaluation; to the Committee on Energy and Natural Resources.

EC-2654. A communication from the Secretary of Energy, transmitting, pursuant to law, the Annual Report for the Strategic Petroleum Reserve, covering calendar year 2002; to the Committee on Energy and Natural Resources.

EC-2655. A communication from the President, The Foundation of the Federal Bar Association, transmitting, pursuant to law, the report Audit Report of the Foundation of the Federal Bar Association for the Fiscal Year ending September 30, 2002; to the Committee on the Judiciary.

EC-2656. A communication from the President of the United States to the President Pro Tempore of the United States Senate, transmitting, consistent with the War Powers Resolution, the report on recent developments in Liberia and Mauritania and the activities to insure the safety of The United States Embassy and Embassy Staff located in those countries; to the Committee on Foreign Relations.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-127. A resolution adopted by the House of the State of Hawaii relative to improving benefits for Filipino Veterans of World War II; to the Committee on Veterans' Affairs.

HOUSE RESOLUTION No. 75

Whereas, on January 7, 2003, Senator Daniel K. Inouye introduced S. 68 in the United States Senate, which bill was read twice and then referred to the Committee on Veterans' Affairs; and

Whereas, S. 68 proposes to amend title 38 of the United States Code, to improve benefits for Filipino veterans of World War II and for the surviving spouses of those veterans; and

Whereas, S. 68 would increase the rate of payment of compensation benefits to certain Filipino veterans, designated in title 38 United States Code section 107(b) and referred to as New Philippine Scouts, who reside in the United States and are United States citizens or lawful permanent resident aliens; and

Whereas, S. 68 would further increase the rate of payment of dependency and indemnity compensation of surviving spouses of certain Filipino veterans; and

Whereas, S. 68 would further make eligible for full disability pensions certain Filipino veterans who reside in the United States and are United States citizens or lawful permanent resident aliens; and

Whereas, S. 68 would further mandate the Secretary of Veterans Affairs to provide hospital and nursing home care and medical services for service-connected disabilities for any Filipino World War II veteran who resides in the United States and is a United States citizen or lawful permanent resident alien; and

Whereas, S. 68 would further require the Secretary of Veterans Affairs to furnish care and services to all Filipino World War II veterans for service-connected disabilities and nonservice-connected disabilities residing in the Republic of the Philippines on an outpatient basis at the Manila VA Outpatient Clinic; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, That the United States Congress is respectfully urged to support the passage of S. 68 to improve benefits for certain Filipino veterans of World War II; and

Be it further resolved, That certified copies of this Resolution be transmitted to the

President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Hawaii congressional delegation and the Secretary of Veterans Affairs.

POM-128. A joint resolution adopted by the Legislature of the State of Washington relative to restoring the deduction of retail sales tax under the federal income tax; to the Committee on Finance.

SENATE JOINT MEMORIAL 8003

Whereas, The federal tax reform act of 1986 put additional financial stress on the taxpayers of the state of Washington by eliminating the retail sales tax deduction; and

Whereas, Taxpayers in other states may deduct major state taxes in determining federal income tax; and

Whereas, Taxpayers of the state of Washington would realize substantial reductions in federal tax burdens if they could deduct retail sales taxes; and

Whereas, Congress is in the process of consideration tax reduction proposals; and

Whereas, Congress could easily relieve the burden on taxpayers of the state of Washington by restoring the full retail sales tax deduction;

Now, therefore, Your Memorialists respectfully pray that the United States restore the deduction of retail sales tax under the federal income tax.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM-129. A concurrent resolution adopted by the legislature of the State of Louisiana relative to provisions of the Internal Revenue Code which provide for the taxation of Social Security income; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 6

Whereas, current provisions of the Internal Revenue Code provide for the taxation of up to eighty-five percent of income derived from Social Security benefits; and

Whereas, Social Security payments are often the primary income of retirees; and

Whereas, retired persons are citizens who can least afford a reduction in income; and

Whereas, retired persons are currently facing increased costs of living, including increased costs of prescription drugs; and

Whereas, other measures currently being reviewed by congress to stimulate the economy do not address the needs of low- and middle-income retired persons.

Therefore, be it resolved, That the Louisiana Legislature does hereby memorialize the United States Congress to repeal the provisions of the Internal Revenue Code which provide for the taxation of Social Security income.

Be it further resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM-130. A concurrent resolution adopted by the Legislature of the State of Louisiana relative to reviewing and consider eliminating the provisions of law which reduce or totally eliminate social security benefits for those persons who also receive a state or local government retirement benefit; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 39

Whereas, the Congress of the United States has enacted both the Government Pension

Offset (GPO), which reduces the spousal and widow(er)s social security benefit, and the Windfall Elimination Provision (WEP), which reduces the earned social security benefit for persons who also receive a state or local government retirement; and

Whereas, the intent of Congress in enacting the GPO and WEP provisions was to address concerns that public employees who had worked primarily in state and local government employment receive the same benefit as workers who had worked in social security employment throughout their careers, thereby providing a disincentive to "double-dipping"; and

Whereas, the GPO affects a spouse or widow(er) receiving a state or local government retirement benefit who would also be entitled to a social security benefit earned by a spouse; and

Whereas, the GPO formula reduces the spousal or widow(er)s social security benefit by two-thirds of the amount of the state or local government retirement benefit received by the spouse or widow(er), in many cases completely eliminating the social security benefit; and

Whereas, the WEP applies to those persons who have earned a state or local government retirement benefit in addition to having the necessary credits earned in social security employment; and

Whereas, the WEP reduces the earned social security benefit by using a modified formula of the averaged indexed monthly earnings, which may reduce the earned social security benefits by as much as fifty percent; and

Whereas, the GPO and WEP have a disproportionately negative effect on employees working in lower-wage government jobs, such as policemen, firefighter, teachers, and municipal, parochial, and state employees; and

Whereas, these provisions also affect more women than men because of the gender differences in salary that continue to exist across of nation; and

Whereas, Louisiana is making every effort to improve the quality of life of her citizens, to encourage them to remain here lifelong, and to provide for them in their retirement years.

Therefore, be it resolved, that the Legislature of Louisiana does hereby memorialize the Congress of the United States to review and consider eliminating the GPO and WEP social security benefit reductions.

Be it further resolved, That a copy of the Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of American and to each member of the Louisiana congressional delegation.

POM-131. A concurrent House resolution adopted by the Legislature of the State of Louisiana relative to the Pledge of Allegiance; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 121

Whereas, Louisiana is one of numerous states in which students recite the Pledge of Allegiance in public schools; and

Whereas, the practice of including "under God" in the Pledge was established by federal law decades ago and reaffirmed by a new federal law just last year; and

Whereas, recent polls indicate that up to ninety percent of the public is overwhelmingly in favor of allowing students to recite the Pledge of Allegiance; and

Whereas, Constitution signer George Washington declared, "the fundamental principle of our Constitution . . . enjoins [requires] that the will of the majority shall prevail," and Thomas Jefferson pronounced, "the will of the majority [is] the natural law of every

society [and] is the only sure guardian of the rights of man"; and

Whereas, Thomas Jefferson also stated, "A judiciary independent . . . of the will of the nation is a solecism—at least in a republican government"; and

Whereas, the United States Court of Appeals for the Ninth Circuit has violated these fundamental principles and abrogated the "consent of the governed" as set forth in our governing documents; and

Whereas, the will of the people can be protected against further judicial usurpation by the federal courts on this issue through congressional action to limit the jurisdiction of the federal courts as explicitly set forth in the Constitution in Article III, Section 2, Paragraph 2 (federal courts "shall have appellate jurisdiction both as to law and fact with such exceptions and under such regulations as Congress shall make"); and

Whereas, the intent of the Framers regarding this power of Congress to limit judicial overreach was clear, such that Samuel Chase, a signer of the Declaration of Independence and a United States Supreme Court Justice appointed by President George Washington, declared, "The notion has frequently been entertained that the federal courts derive their judicial power immediately from the Constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise"; and

Whereas, Justice Joseph Story, in his authoritative Commentaries on the Constitution, similarly declared, "In all cases where the judicial power of the United States is to be exercised, it is for Congress alone to furnish the rules of proceeding, to direct the process, to declare the nature and effect of the process, and the mode, in which the judgments, consequent thereon, shall be executed . . . And if Congress may confer power, they may repeal it . . . The power of Congress [is] complete to make exceptions"; and

Whereas, this position is confirmed not only by signers of the Constitution such as George Washington and James Madison but also by other leading constitutional experts and jurists of the day, including Chief Justice Oliver Ellsworth, Chief Justice John Marshall, Richard Henry Lee, Robert Yates, George Mason, and John Randolph; and

Whereas, the United States Supreme Court has long recognized and affirmed this power of Congress to limit the appellate jurisdiction of the federal courts, as in 1847 when the court declared that the "court possesses no appellate power in any case unless conferred upon it by act of Congress" and in 1865 when it declared "it is for Congress to determine how far . . . appellate jurisdiction shall be given; and when conferred, it can be exercised only to the extent and in the manner prescribed by law"; and

Whereas, congress has on numerous occasions exercised this power to limit the jurisdiction of federal courts, and the Supreme Court has consistently upheld this power of congress in rulings over the last two centuries, including cases in 1847, 1866, 1868, 1878, 1882, 1893, 1898, 1901, 1904, 1906, 1908, 1910, 1922, 1926, 1948, 1952, 1966, 1973, 1977, and others; and

Whereas, it is Congress alone that can remedy this current crisis and return to the states the power to make their own decisions on recitation of the Pledge of Allegiance in public schools.

Therefore, be it resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to limit the appellate jurisdiction of the federal courts regarding the recitation of the Pledge of Allegiance in public schools.

Be it further resolved, That a copy of this Resolution be transmitted to the presiding

and chief clerical officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM-132. A concurrent resolution adopted by the Legislative of the State of Texas relative to Federal income tax; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 6

Whereas, Current federal tax provisions place an arbitrary state cap on the volume of private activity bonds, which hinders the ability of Texas to meet its rapidly growing water infrastructure needs; and

Whereas, Private activity bonds afford a cost-effectiveness, nonrecourse means of financing the development of adequate wastewater and drinking water facilities for the future and minimize and drinking facilities for the future and minimize the risk to the ratepayer; and

Whereas, Other sources of municipal infrastructure financing, such as general obligation bonds, revenue bonds, enterprise bonds, and loans under the federal Environmental Protection Agency's state revolving loan fund program, are insufficient to allow Texas to comply with new federal environmental and public health mandates; and

Whereas, The cap on the volume of private activity bonds forces water and wastewater projects to compete with other projects in Texas without regard to the urgent priority of protecting public health and the environment; and

Whereas, Private activity bonds foster innovative public-private partnerships and help them develop cost-effective projects for the construction of sewage and drinking water facilities and the rehabilitation and upgrade of existing water infrastructure; and

Whereas, Removing the financing cap would give public officials the maximum number of tools for meeting the growing public demand for water services while ensuring compliance with federal environmental and public health laws; now, therefore, be it

Resolved, That the 78th Legislature of the State of Texas hereby respectfully urge the Congress of the United States to amend the Internal Revenue Code of 1986 to provide that the volume cap for private activity bonds not apply to bonds for water and wastewater facilities; and, be it further

Resolved, That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the Speaker of the house of representatives and the president of the Senate of the United States Congress, and to all the members of the Texas delegation to the Congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America.

POM-133. A concurrent resolution adopted by the Legislature of the State of Hawaii relative to the establishment of State-Province relations between the State of Hawaii of the United States and the Province of Ilocos Norte of the Republic of the Philippines; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 17

Whereas, The State of Hawaii is actively seeking to expand its international ties and has an abiding interest in developing goodwill, friendship, and economic relations between the people of Hawaii and the people of Asian and Pacific countries; and

Whereas, as part of its effort to achieve this goal, Hawaii has established a number of sister-state agreements with provinces on the Pacific region; and

Whereas, because of the historical relationship between the United States of America and the Republic of the Philippines, there continue to exist valid reasons to promote international friendship and understanding for the mutual benefit of both countries to achieve lasting peace and prosperity as it serves the common interests of both countries; and

Whereas, there are historical precedents exemplifying the common desire to maintain a close cultural, commercial, and financial bridge between ethnic Filipinos living in Hawaii with their relatives, friends, and business counterparts in the Philippines, such as the previously established sister-city relationship between the City and County of Honolulu and the City of Cebu in the Province of Cebu; and

Whereas, similar state-province relationship exist between the State of Hawaii and the Provinces of Cebu and Ilocos Sur, whereby cooperation and communication have served to establish exchanges in the areas of business, trade, agriculture and industry, tourism, sports, health care, social welfare, and other fields of human endeavor; and

Whereas, a similar sister-state relationship would reinforce and cement this common bridge for understanding and mutual assistance between ethnic Filipinos of both the State of Hawaii and the Province of Ilocos Norte; and

Whereas, there is an existing relationship between the Province of Ilocos Norte and the State of Hawaii because several notable citizens of Hawaii can trace their roots or have immigrated from the Province of Ilocos Norte, including the city of Laoag; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, the Senate concurring, That Governor Linda Lingle of the State of Hawaii, or her designee, be authorized and is requested to take all necessary actions to establish a state-province affiliation with the Province of Ilocos Norte in the Republic of the Philippines; and

Be it further resolved, That the Governor or her designee is requested to keep the Legislature of the State of Hawaii fully informed of the process in establishing the relationship, and involved in its formalization to the extent practicable; and

Be it further resolved, That the Province of Ilocos Norte be afforded the privileges and honors that Hawaii extends to its sister-states and provinces;

Be it further resolved, That this state-province relationship shall continue until July 1, 2008; and

Be it further resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Governor of the State of Hawaii, the President of the United States Senate, the Speaker of the United States House of Representatives, Hawaii's Congressional delegation, the President of the Republic of the Philippines through its Honolulu Consulate General, and the Governor and Provincial Board of the Province of Ilocos Norte, Republic of the Philippines.

POM-134. A concurrent resolution adopted by the Legislature of the State of Hawaii relative to fully funding the Millennium Challenge Account; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 28

Whereas, in September 2000, the United Nations General Assembly adopted the United Nations Millennium Declaration, a resolution establishing international development goals to reduce poverty and improve lives,

now known as the Millennium Development Goals; and

Whereas, members of the United Nations, including the United States, pledged to meet established benchmark for the Millennium Development Goals by 2015 to:

(1) Reduce by fifty per cent the proportion of people living in extreme poverty and suffering from hunger;

(2) Achieve universal primary education by ensuring that all boys and girls complete primary school;

(3) Promote gender equality and empower women by eliminating disparities in primary and secondary education at all levels;

(4) Reduce child mortality by two-thirds among children under five years old;

(5) Improve maternal health by reducing the ratio of women's death during childbirth by seventy-five per cent;

(6) Combat HIV/AIDS, malaria, and other diseases by reversing the spread of HIV/AIDS, malaria, and other major diseases;

Whereas, it is critical that initiatives and programs funding through the Millennium Challenge Account include activities that enable women to play active roles in the economic and civic activities of their countries; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, the Senate concurring, That the United States Congress is urged to fully fund the Millennium Challenge Account to enable poor and hungry people around the globe become self-reliant; and

Be it further resolved, That as the Millennium Challenge Account is implemented, it is crucial that our leaders understand and require that women be involved in all phases of establishment and implementation of programs funded to achieve the Millennium Development goals; and

Be it further resolved, That adequate funding and meaningful participation of women and girls are essential for successful development assistance programs in poor nations; and

Be it further resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Hawaii's congressional delegation.

POM-135. A concurrent resolution adopted by the Legislature of the State of Hawaii relative to the establishment of State-Province relations between the State of Hawaii of the United States and the Province of Thua Thien-Hue of the Socialist Republic of Vietnam; to the Committee on Foreign Relations.

HOUSE RESOLUTION

Whereas, The State of Hawaii is actively seeking to expand its international ties and has an abiding interest in developing goodwill, friendship, and economic relations between the people of Hawaii and the people of Asian and Pacific countries; and

Whereas, as part of its effort to achieve this goal, the State has established a number of sister-state agreements with provinces in the Pacific region; and

Whereas, because of the historical relationship between the United States of America and the Socialist Republic of Vietnam, there are compelling reasons to promote international friendship and understanding for the mutual benefit of both countries to achieve lasting peace and prosperity, as it serves the common interests of both countries; and

Whereas, there are historical precedents exemplifying the common desire to maintain

a close cultural, commercial, and financial bridge between ethnic Vietnamese living in Hawaii with their relatives, friends, and business counterparts in Vietnam, such as the previously established sister-city relationship between the City and County of Honolulu and the city of Hue, which is the capital of the Province of Thua Thien-Hue; and

Whereas, a similar state-province relationship between the State and the Province of Thua Thien-Hue, whereby exchanges and cooperation could be established in the areas of business, trade, agriculture, environmentally and culturally sensitive tourism, sports, public health, education, economic development and humanitarian assistance would reinforce and cement this common bridge of understanding and mutual assistance between the ethnic Vietnamese of both the State and the Province of Thua Thien-Hue; and

Whereas, the Province of Thua Thien-Hue, like Hawaii, has an agricultural economy that is based upon sugar cane, fruits, and flowers, and aquaculture crops, such as shrimp; and

Whereas, the city of Hue, capital of the Province of Thua Thien-Hue has been designated as a World Heritage Site by the United Nations Educational, Scientific, and Cultural Organization because its cultural and natural properties are considered to be of outstanding universal value and must be protected; and

Whereas, the Province of Thua Thien-Hue's unique cultural and historical significance and natural beauty are important resources on which to base an environmentally and culturally sensitive tourism industry; and

Whereas, Hawaii's long experience and expertise in tourism, agriculture, and aquaculture could be shared with the Province of Thua Thien-Hue; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, That the Governor of the State of Hawaii or her designee is requested to take all necessary actions to establish a sister-state affiliation with the Province of Thua Thien-Hue in the Socialist Republic of Vietnam; and

Be it further resolved, That the Governor is requested to keep the Legislature fully apprised of any progress made in establishing the relationship in order that the Legislature may be involved in its formalization to the extent practicable; and

Be it further resolved, That the Province of Thua Thien-Hue be afforded the privileges and honors to which Hawaii extends to its other sister-states and provinces; and

Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States through the Secretary of State, the Governor of the State of Hawaii, the President of the United States Senate, the Speaker of the United States House of Representatives, Hawaii's congressional delegation, the President of the Socialist Republic of Vietnam through its San Francisco Consulate General, the Governor of the Province of Thua Thien-Hue, Socialist Republic of Vietnam, and the Director of Business, Economic Development, and Tourism.

POM-136. A resolution adopted by the House of the Legislature of the State of Hawaii relative to fully funding the Millennium Challenge Account; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 33

Whereas, in September 2000, the United Nations General Assembly adopted the United Nations Millennium Declaration, a resolution establishing international development

goals to reduce poverty and improve lives, now known as the Millennium Development Goals; and

Whereas, members of the United Nations, including the United States, pledged to meet established benchmarks for the Millennium Development Goals by 2015 to:

(1) Reduce by fifty percent the proportion of people living in extreme poverty and suffering from hunger;

(2) Achieve universal primary education by ensuring that all boys and girls complete primary school;

(3) Promote gender equality and empower women by eliminating disparities in primary and secondary education at all levels;

(4) Reduce child mortality by two-thirds among children under five years old;

(5) Improve maternal health by reducing the ratio of women's death during childbirth by seventy-five per cent;

(6) Combat HIV/AIDS, malaria, and other diseases by reversing the spread of HIV/AIDS, malaria, and other major diseases;

(7) Ensure environmental sustainability by introducing sustainable development principles to: reverse the loss of environmental resources; increase access to safe drinking water; and achieve significant improvements in the lives of at least one hundred million slum dwellers; and

(8) Develop a global partnership for development through reform of the trading system and financial system to allow poor nations to sell goods at fair prices to obtain financial resources to create stable economies and eliminate poverty; aiding to the special needs of least developed countries; addressing debt problems of developing countries; creating productive work for youth; increase access to affordable drugs; and make benefits of new technologies available; and

Whereas, in March 2002, President George W. Bush unveiled the Millennium Challenge Account, a plan to increase significantly development assistance to poor, developing countries by an additional \$10,000,000,000 in foreign assistance over fiscal years 2004-2006, ultimately doubling United States poverty-focused assistance when fully implemented; and

Whereas, initiatives to be funded through the Millennium Challenge Account have the potential to improve the nutrition, health care, education, and drinking water for millions of people in poor nations only if the Millennium Challenge Account is fully funded by Congress; and

Whereas, although studies uniformly report that the most effective use of international aid is the investment in women, the reports also indicate that women do not benefit from international development efforts unless they are included in all aspects of a development initiative from its beginning; and

Whereas, the involvement of women in any economic growth plan is critical because women and girls are more than half of the world's population and represent significantly more than half of the population in areas particularly devastated by prolonged conflict like Afghanistan; and

Whereas, it is critical that initiatives and programs funded through the Millennium Challenge Account include activities that enable women to play active roles in the economic and civic activities of their countries; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, That the United States Congress is urged to fully fund the Millennium Challenge Account to enable poor and hungry people around the globe become self-reliant; and

Be it further resolved, That as the Millennium Challenge Account is implemented, it

is crucial that our leaders understand and require that women be involved in all phases of establishment and implementation of programs funded to achieve the Millennium Development goals; and

Be it further resolved, That adequate funding and meaningful participation of women and girls are essential for successful development assistance programs in poor nations; and

Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Hawaii's congressional delegation.

POM-137. A resolution adopted by the House of the Legislature of the State of Hawaii relative to International Women's Day; to the Committee on Foreign Relations.

Whereas, International Women's Day, celebrated throughout the world on March 8, is a time to: reflect on the status of women in the United States and around the world; assess progress made and remaining challenges; and recommit to women's human rights and the full empowerment of the world's women as the basis for truly sustainable social, economic, and political development of nations and communities; and

Whereas, 228,000,000 women are in need of effective contraceptive methods; and

Whereas, a woman dies every minute as a result of pregnancy and childbirth-related causes (approximately five hundred thousand women a year) and for every woman who dies, thirty other women are injured or disabled; and

Whereas, between seven hundred thousand and four million people—mainly women and children—are trafficked annually across international borders for sexual exploitation and forced labor; and

Whereas, fifty thousand to one hundred thousand women and girls are trafficked annually for sexual exploitation into the United States; and

Whereas, HIV/AIDS is a women's epidemic worldwide—with 19,200,000 women worldwide currently living with HIV/AIDS and 1,200,000 women dying of AIDS in 2002; and

Whereas, for the last several years, HIV/AIDS has been the fifth leading cause of death for women ages twenty-five to forty-four in the United States and the third leading cause of death for African American women in this same age group; and

Whereas, gender-based violence against women—including prenatal sex selection, female infanticide, sexual abuse, female genital mutilation, school and workplace sexual harassment, sexual trafficking and exploitation, prostitution, dowry-killings, domestic violence, battering, and marital rape—causes more death and disability among women in the fifteen to forty-four age group than cancer, malaria, traffic accidents, and even war; and

Whereas, approximately 4,800,000 rapes and physical assaults are perpetrated annually against women in the United States; and

Whereas, women in many countries lack rights to own land and inherit property, obtain credit, attend and stay in school, earn income, work free from job discrimination, and have access to services that meet their sexual and reproductive health needs; and

Whereas, 2,100,000,000 women around the globe live on less than two dollars a day, and women in the United States earn seventy-three cents on average for every dollar earned by men; and

Whereas, two-thirds of the 960,000,000 illiterate adults in the world are women and two-thirds of the 130,000,000 children not enrolled in primary school are girls; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, That this body urges the United States Senate to demonstrate our nation's commitment to human rights by ratifying the Convention on the Elimination of All Forms of Discrimination Against Women, joining one hundred seventy other nations in endorsing the most comprehensive treaty ensuring the fundamental human rights and equality of women; and

Be it further resolved, That the United States Congress is urged to affirm women's fundamental right to reproductive health, including the ability to choose the number of children they will have and the timing of their births, by funding high quality, voluntary family planning and reproductive health services that enable women to exercise this right; and

Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and members of Hawaii's congressional delegation.

POM-138. A resolution adopted by the House of the Legislature of the State of Hawaii relative to the Global Gag Rule imposed on International Family Planning Organizations; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 34

Whereas, approximately 120 million couples in the third world lack access to modern contraception; and

Whereas, the United States provides family planning assistance funds to non-governmental organizations in fifty-nine countries; and

Whereas, these nations have a right to inform their own people about legal family planning options and to discuss changes in their family planning laws, in order to form their own policy and development, without interference by the United States; and

Whereas, the United States has interfered with these non-governmental organizations through the "global gag rule," by which the United States refuses to fund non-governmental organizations that provide legal abortion services, lobby their own governments for abortion law reform, or even provide accurate medical counseling or referrals regarding abortion, even if no United States money is used for those purposes; and

Whereas, in almost sixty per cent of these countries, abortion in some form is legal, yet the global gag rule prevents their non-governmental organizations from discussing the option of performing abortions, even if this is done with the non-governmental organizations' own funds and not with any United States funds; and

Whereas, in the countries where abortion is not legal, the global gag rule prevents the non-governmental organizations from speaking publicly about these issues to foster informed debate on abortion, even if this free speech is done with the non-governmental organizations' own funds; and

Whereas, in rural areas, often these non-governmental organizations are the only health care providers, so restricting their funding affects the health of all people in the community and forces the non-governmental organizations to make an immoral choice: either give up desperately needed funds for family planning services, or give up their right to free speech and to provide their patients with full and accurate medical information; and

Whereas, the "global gag rule" process hurts good family-planning work that has little to do with the rights of an unborn

child, as these family planning services address other health problems such as sexually transmitted diseases, which indirectly helps with economic stability in developing countries; and

Whereas, through the global gag rule, the United States government not only stifles free speech, but affirmatively discriminates against viewpoints it does not like, something that would be unconstitutional in its own country; and

Whereas, this gag rule was created by executive order of President Reagan in 1984; and

Whereas, President Clinton canceled the gag order in 1993, but reluctantly restored it for one year in 1999 in exchange for the Republicans in Congress agreeing to pay the United States' back dues to the United Nations; and

Whereas, President Bush reimposed the global gag rule by executive order in January 2001 and reaffirmed his opposition to reproductive rights in his state of the union address; and

Whereas, the gag order is consistent with the United States administration's recent announcement at an international conference that they support the "rhythm method" of contraception; and

Whereas, the global gag rule: undermines the human right to free speech, a right so vigorously championed by our government that it is part of our constitution; undercuts our foreign policy; and damages women's reproductive health; and

Whereas, this misguided policy would be illegal were it to be imposed in our own country, and it is unconscionable for the United States to force it on other countries; jeopardizing the health of millions of women and children; and

Whereas, the Legislature has already demonstrated its support for women's rights in the family context when it adopted House Resolution No. 15 during the 1999 Regular Session entitled "Urging the United States Senate to Ratify the United Nations Convention on the Elimination of All Forms of Discrimination Against Women"; and

Whereas, legislation is pending in Congress to remove the global gag rule and permit the non-governmental organizations to provide appropriate and legal family planning service and information in their home countries; now, therefore,

Be it resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2003, That the United States Congress is hereby urged to support a ban on the global gag rule; and

Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States, Speaker of the United States House of Representatives, the President of the United States Senate, and the members of Hawaii's congressional delegation.

POM-139. A joint resolution adopted by the Legislature of the State of Washington relative to the Federal Energy Regulatory Commission; to the Committee on Energy and Natural Resources.

Whereas, The Federal Energy Regulatory Commission proposal establishing a standard market design (SMD) for electricity proceeds from the premise that a single market model will work for the entire nation, as a result it would fundamentally change the way the transmission system is operated, expand the Commission's authority in state decisions regarding resource adequacy and demand response, and dismantle the regional benefits derived from public power; and

Whereas, Washington state has a comprehensive electricity policy, which encourages efficiency while reflecting our unique resource base; and

Whereas, The Northwest electricity system is different from most of the rest of the nation, including substantial differences in the transmission ownership, a hydro-based system where the amount of energy generated is limited by the amount of water in the rivers and behind the dams, complex legal arrangements for multiple uses of the water to meet diverse goals (power, irrigation, fisheries, recreation, and treaty obligations), and a hydro-based system that requires substantial coordination among plant owners and utilities, rather than the competitive market-based structure the SMD promotes; and

Whereas, The Northwest electricity system has produced affordable, cost-based rates and reliable service for our region; and

Whereas, Deregulation broke up traditional regulated utilities in order to create trading markets with the promise of lower costs, more consumer choice, more reliability, and fewer government bailouts. It in fact produced higher prices, more manipulation of consumers, volatility, brownouts, and bailouts running into the tens of billions; and

Whereas, The SMD would harm consumers in our region through increased costs and decreased reliability;

Now, therefore, Your Memorialists respectfully pray that the Federal Energy Regulatory Commission leave the Northwest electricity system in place and withdraw the Notice of Proposed Rulemaking establishing a Standard Market Design (SMD) for electricity; and

Your Memorialists further pray that in the event that the Federal Energy Regulatory Commission does not withdraw its proposal, the President and Congress take action to prevent the Federal Energy Regulatory Commission from proceeding with their proposal.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the Honorable Spencer Abraham, the Secretary of the United States Department of Energy, the Members of the Federal Energy Regulatory Commission, Chairman Patrick Wood, III, Commissioner Nora M. Brownell, and Commissioner William L. Massey, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM-140. A resolution adopted by the Legislature of the State of Washington relative to the Federal Energy Regulatory Commission; to the Committee on Energy and Natural Resources.

SENATE JOINT MEMORIAL 8012

Whereas, The Federal Energy Regulatory Commission recently proposed a new pricing policy for the rates of transmission owners that transfer operational control of their transmission facilities to a Regional Transmission Organization. (RTO), form independent transmission companies within RTOs, or pursue additional measures that promote efficient operation and expansion of the transmission grid; and

Whereas, The proposed policy would create rate incentives based on an unproven theory that it will improve grid performance, reduce wholesale transmission and transactions costs, improve electric reliability, and make electric wholesale competition more effective; and

Whereas, The proposal offers a single model for the entire nation and fails to recognize regional differences in electricity generation and transmission or the benefits derived from public power; and

Whereas, Washington state has a comprehensive electricity policy, which encourages efficiency while reflecting our unique resource base; and

Whereas, The Northwest electricity system is different from most of the rest of the nation and has produced affordable, cost-based rates and reliable service for our region; and

Whereas, We believe the proposed pricing incentives would harm consumers in our region through increased costs without any positive cost-benefit analysis; and

Whereas, We believe the proposed pricing incentives will harm the investment climate for new electricity infrastructure in the region due to the Commission's inability to ensure delivery of the promised incentives, and because the incentives first apply to existing transmission and second to new investment, but only if a utility is a member of an RTO; and

Whereas, We believe the proposed pricing incentives will make more difficult the formation of any new regional transmission organization that is, in fact, well-designed to fit Northwest regional circumstances because the generic incentive is a new cost that outweigh any benefits of such an organization;

Now, therefore, Your Memorialists respectfully pray that the Federal Energy Regulatory Commission leave the Northwest electricity system in place and withdraw its proposed new pricing policy for the rates of transmission owners until such time as a cost-benefit analysis is completed that indicates a positive benefit from Northwest consumers, and the region expresses its desire to form a new transmission organizations; and

Your Memorialists further pray that in the event that the Federal Energy Regulatory Commission does not withdraw its proposal, the President and Congress take action to prevent the Federal Energy Regulatory Commission from proceeding with their proposal.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the Honorable Spencer Abraham, the Secretary of the United States Department of Energy, the Members of the Federal Energy Regulatory Commission, Chairman Patrick Wood, III, Commissioner Nora M. Brownell, and Commissioner William L. Massey, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM-141. A concurrent resolution adopted by the Legislature of the State of Michigan relative to fuel cell research projects; to the Committee on Energy and Natural Resources.

SENATE CONCURRENT RESOLUTION NO. 14

Whereas, In his State of the Union address, President Bush identified fuel cell research as a national priority. While this move holds great significance for our entire country, the urgency for developing a new energy source is most acutely understood in Michigan; and

Whereas, Through the resources of the automotive industry, smaller companies across our state, and university research being conducted at numerous locales, the drive to develop the fuel cell as the next generation energy source has been in high gear in Michigan for many years. The human and technological resources Michigan has as the home of the auto industry indicates both our state's capacity for fuel cell research and its stake in advancing the next generation of energy. Michigan's efforts include innovative approaches to virtually all aspects of the infrastructure necessary to develop fuel cells, including work on the storage and transportation of hydrogen; and

Whereas, In addition to well-known efforts within the auto industry, Michigan is also the site of research seeking to develop fuel cell applications for homes and businesses.

Michigan businesses are working closely with university researchers on these projects; and

Whereas, Michigan has made a significant commitment to encouraging enterprise in the field of emerging energy development. The Ninety-first Legislature enacted the "NextEnergy" package of legislation to promote energy research, especially fuel cell technology. These acts created a series of tax credits, exemptions, and deductions for businesses working on alternative energy technologies, in addition to providing for alternative energy zones to spur investment. The Next Energy Authority created in the Department of Management and Budget reflects the depth of the state's commitment. Clearly, Michigan is uniquely suited for research devoted to establishing a hydrogen-based means of generating energy for our cars, homes, and businesses; now, therefore, be it

Resolved by the Senate (the House of Representative concurring), That we memorialize the President and Congress of the United States to pursue and support fuel cell research projects in Michigan; and be it further

Resolved, That copies of this resolution be transmitted to the Office of the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-142. A joint resolution adopted by the Senate of the Legislature of the State of Montana relative to Arctic National Wildlife Refuge; to the Committee on Energy and Natural Resources.

SENATE JOINT RESOLUTION NO. 22

Whereas, stable, affordable energy is vital to the economy and security of the people of the State of Montana and the United States of America; and

Whereas, the United States has become increasingly dependent on foreign supplies of crude oil to meet our energy needs and is now importing more than 55% of the nation's crude oil needs; and

Whereas, dependence on imports is rising and could exceed 65% by the year 2020 due to growth in demand and falling production; and

Whereas, the recent events in Venezuela and other international problems have caused uncertainty in the commodities markets about the future supply of oil; and

Whereas, these among other factors have resulted in an increase in the price of crude oil to over \$33 per barrel and, with crude oil costs being the largest component of the retail price of petroleum products, has resulted in a significant increase in the national average price of gasoline and has similarly increased the price of other petroleum products vital to the economy of the United States and the lives of its citizens; and

Whereas, the U.S. Department of Energy estimates the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) contains between 5.7 and 16 billion barrels of recoverable oil; and

Whereas, production from the Coastal Plain of ANWR could produce up to 1.5 million barrels of oil per day for at least 25 years, which is comparable to the volumes the United States is expected to import from Iraq for the next 25 years and which represents nearly 25% of current daily U.S. production, and could save \$14 billion dollars per year in oil imports; and

Whereas, ANWR consists of 19 million acres, of which 8 million are classified as wilderness, 9.5 million are designated as national refuge lands, and 8% or 1.5 million

acres comprise the Coastal Plain for which the potential for oil and gas production was acknowledged by Congress in the Alaska National Interest Lands Conservation Act of 1980; and

Whereas, oil and natural gas development and wildlife are successfully coexisting and advanced technology has greatly reduced the "footprint" of Arctic oil development; and

Whereas, the Alaska State AFL-CIO and the Alaska Federation of Natives support responsible oil and gas development on the Coastal Plain of ANWR; and

Whereas, environmentally responsible exploration, development, and production of oil on the Coastal Plain of ANWR will provide incomes to federal and state governments and general jobs and business opportunities for residents in all 50 states; and

Whereas, the people of Montana, while in general and qualified support of continued development of fossil fuels, recognize that further development of fossil fuels addresses the short-term needs of our nation's energy independence; and

Whereas, the people of Montana agree with the comments of President Bush during the 2003 State of the Union Address that the development of alternative energy sources, which would make America truly independent, is the preferred path for our country; and

Whereas, the people of Montana recognize that development of alternative energy sources, including solar, hydrogen, wind, fuel cell, ethanol, and biodiesel fuels, constitutes a preferred alternative to long-term energy development; and

Whereas, people of Montana understand that development of certain alternative energy sources, such as ethanol and biodiesel fuel, would enhance the economic and agricultural base of our great state; and

Whereas, people of Montana further acknowledge that the efficient use of our existing energy resources in a critical and strategic priority in order to ensure our energy independence; and

Whereas, America has demonstrated the ability to dramatically reduce the energy consumption in past times of national crisis through fuel efficiency standards for automobiles, installation of industrial efficiency measures, and a conservation ethic among consumers.

Now, therefore, be it resolved by the Senate and the House of Representatives of the State of Montana:

(1) That the Congress of the United States be urged to take action to stabilize domestic crude oil supplies through facilitating additional production, to decrease our nation's need for foreign oil from undependable sources, to increase federal and state revenue from oil and gas leasing, and, subject to prioritizing those efforts described in subsection (2), to support the economy through addition of good paying jobs by opening the Coastal Plain of the Arctic National Wildlife Refuge to oil and gas leasing and environmentally responsible exploration, development, and production of the petroleum reserved.

(2) That the Congress of the United States be urged to:

(a) increase support for development of new sources of renewable energy, such as biofuels (including biodiesel and ethanol), wind, and solar;

(b) pursue development and use of fuel efficient vehicles and development of new technologies such as fuel cells and other potential applications of emerging hydrogen technology; and

(c) develop programs and standards to encourage efficient use of existing resources in transportation, industrial and commercial processes, and consumer end uses.

Be it further resolved, That the Secretary of State send copies of this resolution to the Governor, the Montana Congressional Delegation, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and the U.S. Secretary of the Interior.

POM—143. A resolution adopted by the Legislature of the State of Alaska relative to the Arctic National Wildlife Refuge; to the Committee on Energy and Natural Resources.

LEGISLATIVE RESOLVE NO. 4

Whereas, in sec. 1002 of the Alaska National Interest Lands Conservation Act (ANILCA) the United States Congress reserved the right to permit further oil and gas exploration, development, and production within the coastal plain of the Arctic National Wildlife Refuge, Alaska; and

Whereas the oil industry, the state, the United States Department of the Interior consider the coastal plain to have the highest potential for discovery of very large oil and gas accumulations on the continent of North America, estimated to be as much as 10,000,000 barrels of recoverable oil; and

Whereas the "1002 study area" is part of the coastal plain located within the North Slope Borough, and residents of the North Slope Borough, who are predominantly Inupiat Eskimo, are supportive of development in the "1002 study area"; and

Whereas oil and gas exploration and development of the coastal plain of the refuge and adjacent land could result in major discoveries that would reduce our nation's future need for imported oil, help balance the nation's trade deficit, and significantly increase the nation's security; and

Whereas domestic demand for oil continues to rise while domestic crude production continues to fall with the result that the United States imports additional oil from foreign sources; and

Whereas development of oil at Prudhoe Bay, Kuparuk, Endicott, Lisburne, and Milne Point has resulted in thousands of jobs throughout the United States, and projected job creation as a result of coastal plain oil development will have a positive effect in all 50 states; and

Whereas Prudhoe Bay production is declining by approximately 10 percent a year; and

Whereas, while new oil field developments on the North Slope of Alaska, such as Alpine, Badami, and West Sak, may slow or temporarily stop the decline in production, only giant coastal plain fields have the theoretical capability of increasing the production volume of Alaska oil to a significant degree; and

Whereas opening the coastal plain of the Arctic National Wildlife Refuge now allows sufficient time for planning environmental safeguards, development, and national security review; and

Whereas the 1,500,000-acre coastal plain of the refuge makes up only eight percent of the 19,000,000-acre refuge, and the development of the oil and gas reserves in the refuge's coastal plain would affect an area of 2,000 to 7,000 acres, which is less than one-half of one percent of the area of the coastal plain; and

Whereas 8,000,000 of the 19,000,000 acres of the refuge have already been set aside as wilderness; and

Whereas the oil industry has shown at Prudhoe Bay, as well as at other locations along the Arctic coastal plain, that it can safely conduct oil and gas activity without adversely affecting the environment or wildlife populations; and

Whereas the state will ensure the continued health and productivity of the Porcupine Caribou herd and the protection of land,

water, and wildlife resources during the exploration and development of the coastal plain of the Arctic National Wildlife Refuge, Alaska; and

Whereas the oil industry is using innovative technology and environmental practices in the new field developments at Alpine and Northstar, and those techniques are directly applicable to operating on the coastal plain and would enhance environmental protection beyond traditionally high standards;

Be it resolved by the Alaska State Legislature, That the Congress of the United States is urged to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production, and that the Alaska State Legislature is adamantly opposed to further wilderness or other restrictive designation in the areas of the coastal plain of the Arctic National Wildlife Refuge, Alaska; and be it

Further resolved, That that activity be conducted in a manner that protects the environment and the naturally occurring population levels of the Porcupine Caribou herd, and that uses the state's work force to the maximum extent possible; and be it

Further resolved, That the Alaska State Legislature opposes any unilateral reduction in royalty revenue from exploration and development of the coastal plain of the Arctic National Wildlife Refuge, Alaska, and any attempt to coerce the State of Alaska into accepting less than the 90 percent of the oil, gas, and mineral royalties from the federal lands in Alaska that was promised to the state at statehood.

Copies of this resolution shall be sent to the Honorable George W. Bush, President of the United States; the Honorable Richard B. Cheney, Vice-President of the United States and President of the U.S. Senate; the Honorable Gale Norton, United States Secretary of the Interior; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; the Honorable Bill Frist, Majority Leader of the U.S. Senate; the Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and to all other members the U.S. Senate and the U.S. House of Representatives serving in the 108th United States Congress.

POM-144. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to the fuel cell research; to the Committee on Energy and Natural Resources.

SENATE RESOLUTION NO. 17

Whereas, In his State of the Union address, President Bush identified fuel cell research as a national priority. While this move holds great significance for our entire country, the urgency for developing a new energy source is most acutely understood in Michigan; and

Whereas, Through the resources of the automotive industry, smaller companies across our state, and university research being conducted at numerous locales, the drive to develop the fuel cell as the next generation energy source has been in high gear in Michigan for many years. The human and technological resources Michigan has as the home of the auto industry indicates both our state's capacity for fuel cell research and its stake in advancing the next generation of energy. Michigan's efforts include innovative approaches to virtually all aspects of the infrastructure necessary to develop fuel cells, including work on the storage and transportation of hydrogen; and

Whereas, In addition to well-known efforts within the auto industry, Michigan is also the site of research seeking to develop fuel

cell applications for homes and businesses. Michigan businesses are working closely with university researchers on these projects; and

Whereas, Michigan has made a significant commitment to encouraging enterprise in the field of emerging energy development. The Ninety-first Legislature enacted the "NextEnergy" package of legislation to promote energy research, especially fuel cell technology. These acts created a series of tax credits, exemptions, and deductions for businesses working on alternative energy technologies, in addition to providing for alternative energy zones to spur investment. The Next Energy Authority created in the Department of Management and Budget reflects the depth of the state's commitment. Clearly, Michigan is uniquely suited for research devoted to establishing a hydrogen-based means of generating energy for our cars, homes, and businesses; now, therefore, be it

Resolved by the Senate, That we memorialize the President and Congress of the United States to pursue and support fuel cell research projects in Michigan; and be it further

Resolved, That copies of this resolution be transmitted to the Office of the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-145. A resolution adopted by the Senate of the Legislature of the State of Kansas relative to the F/A-22 Raptor; to the Committee on Armed Services.

SENATE RESOLUTION NO. 1871

Whereas, The Kansas Senate is pleased to join citizens across our great state, our nation, and the world in congratulating our troops on their recent victory in Iraq, as well as the hard working men and women across our state who design and assemble essential equipment and weaponry for our military; and

Whereas, Air dominance has become a signature of our armed forces and a determining factor when our military is drawn into combat throughout the world; and

Whereas, Kansas's defense and aerospace industry invests millions of dollars and employs thousands of highly skilled workers in Kansas; and

Whereas, Defense and aerospace companies in Kansas provide our military with cutting edge technological components that are used to assemble vital military products, like the United States Air Force's new generation fighter, the Lockheed Martin F/A-22 Raptor; and

Whereas, Projects like the F/A-22 Raptor will bring more than \$32 million dollars to the Kansas economy while providing thousands of Kansans with high quality jobs, thus stimulating the aerospace industry in the state; and

Whereas, The State of Kansas has a tradition of constructing both commercial and military aviation products and is the home of important components of our military's air capabilities, such as the 22nd Air Refueling Wing, as well as dedicated soldiers, sailors, marines and airmen flying and maintaining those aircraft at bases across the country; Now, therefore, be it

Resolved by the Senate of the State of Kansas, That the members of this body recognize that the F/A-22 Raptor is critical to the Kansas economy and that the members of this body implore the Congress of the United States to fully fund the F/A-22 program, thus providing our military heroes with the vital resources they need and invigorating our economy; and be it further

Resolved, That the Secretary of the Senate be directed to send enrolled copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Kansas Legislative delegation.

POM-146. A resolution by the Legislature of the State of Arizona relative to weapons of mass destruction; to the Committee on Armed Services.

SENATE CONCURRENT RESOLUTION 1021

Whereas, the people of the State of Arizona view with growing concern the proliferation of nuclear, chemical and biological weapons of mass destruction and the missile delivery capabilities of these weapons in the hands of unstable foreign regimes; and

Whereas, the tragedy of September 11, 2001 shows that America is vulnerable to attack by foreign enemies; and

Whereas, the people of the State of Arizona wish to affirm their support of the United States government in taking all actions necessary to protect the people of America and future generations from attacks by missiles capable of causing mass destruction and loss of American lives; therefore, be it *resolved by the senate of the State of Arizona*, the house of representatives concurring:

1. That the Members of the Legislature support the President of the United States in directing the considerable scientific and technological capabilities of this nation and in taking all actions necessary to protect the states and their citizens, our allies and our armed forces abroad from the threat of missile attack.

2. That the Members of the Legislature convey to the President and Congress of the United States that a coast-to-coast, effective missile defense system will require the deployment of a robust, multi-layered architecture consisting of integrated land-based, sea-based and space-based capabilities to deter evolving future threats from missiles as weapons of mass destruction and to meet and destroy them when necessary.

3. That the Members of the Legislature appeal to the President and Congress of the United States to plan and fund a missile defense system beyond 2005 that would consolidate technological advancement and expansion from current limited applications.

4. That the Secretary of State of the State of Arizona transmit copies of this Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and each member of Congress from the State of Arizona.

POM-147. A resolution adopted by the House of the Legislature of the State of Kansas relative to the F/A-22 Raptor; to the Committee on Armed Services.

HOUSE RESOLUTION NO. 6027

Whereas, The Kansas House of Representatives is pleased to join citizens across our great state, our nation, and the world in congratulating our troops on their recent victory in Iraq, as well as the hard working men and women across our state who design and assemble essential equipment and weaponry for our military; and

Whereas, Air dominance has become a signature of our armed forces and a determining factor when our military is drawn into combat throughout the world; and

Whereas, Kansas' defense and aerospace industry invest millions of dollars and employs thousands of highly skilled workers in Kansas; and

Whereas, Defense and aerospace companies in Kansas provide our military with cutting edge technological components that are used to assemble vital military products, like the

United States Air Force's new generation fighter, the Lockheed Martin F/A-22 Raptor; and

Whereas, Projects like the F/A-22 Raptor will bring more than \$32 million dollars to the Kansas economy while providing thousands of Kansans with high quality jobs, thus stimulating the aerospace industry in the state; and

Whereas, The State of Kansas has a tradition of constructing both commercial and military aviation products and is the home of important components of our military's air capabilities, such as the 22nd Air Refueling Wing, as well as dedicated soldiers, sailors, marines and airmen flying and maintaining those aircraft at bases across the country; Now, therefore,

Be it resolved by the house of representatives of the State of Kansas, That the members of this body recognize that the F/A-22 Raptor is critical to the Kansas economy and that the members of this body implore the Congress of the United States to fully fund the F/A-22 program, thus providing our military heroes with the vital resources they need and invigorating our economy; and

Be it further resolved, That the Chief Clerk of the house of representatives be directed to send enrolled copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Kansas legislative delegation.

POM-148. A resolution adopted by the House of the Legislature of the Commonwealth of Virginia relative to missile defense programs; to the Committee on Armed Services.

HOUSE RESOLUTION NO. 40

Whereas, Virginia, the Old Dominion, located in the upper South region of the United States and populated by more than 7,000,000 persons, is noted for its contribution to the founding of the United States through leadership and political thought, maintains distinguished centers of higher education and research, is the site of advanced information and defense technology, is the center of national naval force concentration, and is the foremost shipbuilder on its coast, while possessing natural endowments of mountains and forests on its western limits and agriculture on its southern tier; and

Whereas, the people of Virginia are conscious of these assets of the Old Dominion and desire a favorable future for their children and future generations; and

Whereas, Virginia provided leadership in the Revolutionary War, was the location of the surrender of Great Britain that ended it, and has contributed notably to national defense through its citizenry both in the military and industry ever since; and

Whereas, the people of Virginia are aware of the global proliferation of short-range, medium-range, and long-range ballistic missiles as weapons of mass destruction and their threat to our nation, our allies, and our armed forces abroad; and

Whereas, the United States does not possess an effective defense against such missiles launched by hostile states, by terrorist organizations within the borders of such states, or from ships anywhere on the world's seas and oceans, including near the coastal cities of America; and

Whereas, the President of the United States has withdrawn from the treaty with the now-extinct Soviet Union that prohibited effective American self-defense against ballistic missile attack and has announced the deployment of a ground-based and sea-based limited missile defense system by the year 2005 as a beginning toward a robust system that will be multilayered, meaning land, sea, air, and space interception components; and

Whereas, short-range and medium-range ballistic missiles launched from ships off the East Coast of the United States would be outside the protective reach of the Pacific Ocean-based and Alaska-based system, and the population of Virginia's Tidewater, as well as the preponderant national naval presence located there, are now vulnerable and will be still vulnerable to such a missile attack with warheads of mass destruction after planned deployment in 2005 of missile defenses in Alaska and California; and

Whereas, missile defense interceptors based in Alaska and California may not be able to protect the population of Virginia's Tidewater and other East Coast areas from long-range ballistic missiles launched from threatening states in the Middle East and North Africa; and

Whereas, the United States Navy has demonstrated its capability to use ships that can be based in Virginia's Tidewater area to intercept short-range and medium-range ballistic missiles while they are rising from their launchers, which could be on nearby ships, and this capability can be improved to intercept long-range ballistic missiles; now, therefore, be it

Resolved, That the Virginia House of Delegates hereby urge the President of the United States to continue to take all actions necessary, directing the considerable scientific and technological capability of this great Union, to protect all 50 states and their people, our allies, and our armed forces abroad from the threat of missile attack; and, be it

Resolved further, That the Virginia House of Delegates hereby convey to the President of the United States and the United States Congress that an ocean-to-ocean, effective missile defense system will require the deployment of a robust, multilayered architecture consisting of integrated land-based, sea-based, air-based, and space-based capabilities to deter evolving future threats and to meet and destroy them when necessary; and

Resolved further, That the Virginia House of Delegates urge the President of the United States and the United States Congress to plan and provide funding for a Tidewater Virginia and East ***

* * * * *

POM-149. A concurrent resolution adopted by the Senate of the Legislature of the State of Michigan relative to homeland security; to the Committee on Environment and Public Works.

SENATE CONCURRENT RESOLUTION NO. 20

Whereas, As our country continues to put in place stronger defenses against terrorism through homeland security measures, a key component will be the establishment of regional headquarters for the United States Department of Homeland Security. The President has called for regional centers in his 2004 budget proposal; and

Whereas, In the Midwest, an excellent site for a regional headquarters is the Selfridge Air National Guard Base in Macomb County. The advantages this location offers range from low costs, unsurpassed strategic significance, and facilities that can provide for a swift and smooth transition to the responsibilities of homeland security work; and

Whereas, Located at the heart of the nation's freshwater network and near several of the busiest international points of entry along our northern border, Selfridge is well positioned to handle quickly any type of task to protect America's people, resources, and infrastructure. Clearly, this location offers opportunities for enhanced responsiveness to the challenges before us in safeguarding our nation in the years ahead; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we urge the United States Department of Homeland Security to locate its Midwestern headquarters at the Selfridge Air National Guard Base in Macomb County; and be it further

Resolved, That copies of this resolution be transmitted to the Secretary of the United States Department of Homeland Security, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-150. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to Medicare; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 52

Whereas, Mental health and emotional stability are key components of every person's overall health and well-being. The correlation between mental health and physical health is well established. However, there are numerous situations in which mental health and mental health services are considered far differently than physical maladies; and

Whereas, Under the current practices of our Medicare system, several types of mental health and counseling services are not covered. This omission is especially inappropriate in view of the fact that senior citizens often face more challenges to their emotional and mental well-being than other age groups. Senior citizens suffer from depression at higher rates than other age groups, for example; and

Whereas, Congress has before it a measure that would address this gap in Medicare coverage. The Seniors Mental Health Access Improvement Act, S. 310, would amend the Medicare system to provide for the coverage of marriage and family therapist services and mental health counselor services under Part B of Medicare. The impact of adding this coverage would be beneficial not only to countless individuals and families, but also to the Medicare system through the improved overall health it would encourage. Now, therefore, be it.

Resolved by the Senate, That we memorialize the Congress of the United States to enact legislation to include the services of licensed professional counselors and marriage and family therapists among services covered under Medicare; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegations.

POM-151. A resolution adopted by the town of New Castle of the State of New York relative to the Indian Point Nuclear Power Plants; to the Committee on Environment and Public Works

Whereas, the Town of New Castle seeks to ensure the public health and safety of those who live and/or work within the town, and

Whereas, the Town of New Castle has been coordinating efforts with the Westchester County Board of Legislators for the past three years to monitor the County's Emergency Evacuation Plan that would be put into effect in the event of a radiological incident at the Indian Point Nuclear Power Plants, and

Whereas, the Town of New Castle has supported the Westchester County Board of Legislator's efforts to obtain an independent, non-governmental assessment of the ability of the County's Emergency Evacuation Plan to achieve its goals to ensure public health and safety, and

Whereas, as a result of serious questions raised regarding the Westchester County's Emergency Evacuation Plan at the Indian Point Nuclear Power Plants, an independent, non-governmental assessment was made of the ability of Plan to achieve its goals of protecting public health and ensuring public safety, and

Whereas, under contract with the State of New York such as assessment has been made by James Lee Witt associates, LLC and their finding included: (1) The plans are built on compliance with regulations, rather than a strategy that leads to structures and systems to protect from radiation exposure; (2) The plans appear based on the premise that people will comply with official government directions rather than acting in accordance with what they perceive to be their best interest; (3) The plans do not consider the possible additional ramifications of a terrorist caused release; (4) The plans do not consider the reality and impacts of spontaneous evacuation; and (5) Response exercises designed to test the plans are of limited use in identifying inadequacies and improving subsequent responses; and

Whereas, these deficiencies have, in turn, called into question the ability of the Plan to achieve the goals of protecting public health and ensuring public safety: Now therefore be it

Resolved, That security at the Indian Point Nuclear Power Plants needs to be placed under the control of the United States military and that this be done without further delay, and be it further

Resolved, That the New Castle Town Board calls upon the County, State and Federal Governments to immediately begin to implement those recommendations of the Witt Report relevant to their respective responsibilities in and for the Emergency Evacuation Plan, and be it further

Resolved, That the New Castle Town Board calls upon the County Executive or any other official and/or employee of the County of Westchester to not issue a radiological emergency preparedness activities form or any other official communication that would in any way state or imply that the Emergency Evacuation Plan as it currently exists is capable of achieving its goals of protecting public health and ensuring public safety in the event of a radiological incident, and be it further

Resolved, That the New Castle Town Board calls upon the Governor of the State of New York, in recognition of the refusal of the County Executives of all four affected Counties to issue letters of certification (also known as checklists) concerning the efficiency of the Emergency Evacuation Plan, to refuse to certify said Plan to the Federal Emergency Management Agency, and be it further

Resolved, That the New Castle Town Board calls upon the Federal Emergency Management Agency to decertify the Emergency Evacuation Plan as inadequate to protect the public health and to ensure public safety, and be it further

Resolved, That the New Castle Town Board calls upon the Nuclear Regulatory Commission, in recognition of the inadequacies of the Emergency Evacuation Plan to protect the public health and to ensure public safety, to order an immediate shutdown of the Indian Point Nuclear Power Plants until such time as it can be demonstrated that a revised emergency evacuation plan, which addresses all the inadequacies of the current Emergency Evacuation Plan as described in the James Lee Witt Associates, LLC Report, can achieve its goals of protecting the public health and ensuring public safety. Such revised emergency evacuation plan should pay particular attention to the recommendation

that the emergency evacuation plan of "any plant adjacent to high population areas should have different requirements than plants otherwise situated, because protective actions are more difficult and the consequences of failure or delay are higher," and be it further

Resolved, That the New Castle Town Board calls upon the Nuclear Regulatory Commission to begin the decommissioning process to reduce the vulnerability of the Indian Point Nuclear Power Plants at the earliest possible date, and be it further

Resolved, That the New Castle Town Board hereby directs that its will and its desire as expressed through this Resolution be transmitted to all appropriate parties within the County, State and Federal governments empowered to act upon and effect the provisions as stated herein.

POM-152. A resolution adopted by the House of the Legislature of the State of Michigan relative to the transportation funds; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 9

Whereas, For several decades, Michigan has sent much more federal highway tax money to Washington than it has received in return. This imbalance has helped our nation build the country's highway infrastructure. With the national infrastructure largely completed, the continuation of the imbalance has created a serious challenge for Michigan and other "donor states"; and

Whereas, Michigan, which typically loses between \$150 million and \$400 million each year by sending more to Washington than it receives, is severely hampered. The unfair practice of contributing hundreds of millions of dollars beyond the amount we receive to fund projects in other parts of the country makes it far more difficult for Michigan to maintain the quality of its highways. The loss of funding also represents a serious loss of economic activity; and

Whereas, The chairman of the House Transportation and Infrastructure Committee and the chairman of the Senate Environment and Public Works Committee in Congress have proposed a major change in how federal highway funds are distributed. They have called for a funding formula that would guarantee that all states receive a minimum of 95 percent of what they each contribute to the federal highway program; and

Whereas, The potential impact for Michigan of a guarantee of at least 95 percent of this funding would be very significant. Even as the economy calls for more careful public expenditures, this proposed policy change would help Michigan and bring greater fairness to the issue of transportation spending. Citizens, visitors, and businesses of this state would benefit enormously from this long overdue policy: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to provide that all states receive a minimum of 95 percent of transportation funds sent to the federal government and to urge Congress to make the return of transportation money to the states a higher priority within existing federal revenues; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-153. A resolution adopted by the House of the Legislature of the State of Michigan relative to the Solid Waste; to the

Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 10

Whereas, In 1992, the United States Supreme Court, in *Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources*, ruled that states could not ban the importation of solid waste because Congress has the ultimate authority to regulate interstate commerce. Since that time, Michigan has become the dumping ground for increasing amounts of solid waste from out of our state and our country; and

Whereas, Michigan is the third-largest importer of solid waste in the country. Approximately 20 percent of all trash in Michigan landfills now originate outside of Michigan. The amounts have increased significantly in the past several years, and recent reports of a major contract with Ontario and of the closing of the nation's largest landfill in New York seem to indicate this issue will loom larger in the future; and

Whereas, An agreement between the city of Vaughan, Ontario, and Carleton Farms in Wayne County's Sumpter Township will thrust Michigan into being the second-largest importer of solid waste in the country next year, as Michigan will be accepting a large majority of the city of Toronto's municipal solid waste; and

Whereas, Accepting unlimited volumes of trash from outside our state has serious long-term consequences. Long after the money from the contracts has been spent, a potential environmental threat continues, as does an obligation to monitor disposal sites to protect water and public health from toxic releases. Clearly, any state accepting these long-term risks should be able to regulate the creation of that risk, regardless of where it originates; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to give states the authority to ban importation of out-of-state solid waste; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-154. A resolution adopted by the Legislature of the Commonwealth of Virginia relative to funding nitrogen reduction technology (NRT); to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 38

Whereas, the Chesapeake Bay and its tributaries are national treasures that play a vital role in many sectors of Virginia's economy including the commercial seafood, recreational fishing, and tourism industries; and

Whereas, while significant progress has been made in restoring the Chesapeake Bay and its tributaries, they remain in a significantly degraded condition; and

Whereas, nitrogen pollution, the most serious problem facing water quality in the Bay today, results in excessive algae growth that clouds water, depletes oxygen, and severely impacts vital bay grasses, young fish, and crabs; and

Whereas, the Commonwealth is a signatory to the Chesapeake 2000 Agreement, in which Virginia pledged to significantly reduce pollution sufficient to remove the Chesapeake Bay from the United States Environmental Protection Agency's impaired waters list by 2010; and

Whereas, upgrading sewage treatment plants, which currently contribute 61 million pounds of nitrogen annually to the Bay, is one of the most cost-effective steps that can

be taken to significantly reduce nitrogen pollution; and

Whereas, sewage treatment plants in Virginia discharge up to 25 milligrams of nitrogen per liter of wastewater, while current technology allows the nitrogen content of treated wastewater to be reduced to only 3 milligrams per liter; and

Whereas, United States Senators of Virginia and the United States House of Representatives from the 1st, 3rd, 4th, 6th, 8th, 10th, and 11th Virginia Congressional Districts have introduced legislation to provide cost-share grant funding to allow Bay watershed sewage treatment plants to substantially reduce their nitrogen pollution by installing NRT; now, therefore, be it

Resolved by the House of Delegates, That the Congress of the United States be urged to adopt legislation in support of funding for nitrogen reduction technology (NRT) in the 108th Congress; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the House of Delegates of Virginia in this matter.

POM-155. A joint resolution adopted by the Legislature of the State of Washington relative to the Forest Service; to the Committee on Agriculture, Nutrition, and Forestry.

SUBSTITUTE SENATE JOINT MEMORIAL 8002

Whereas, Wildfires in forest areas are increasing at an alarming rate with the 2002 fire season one of the most severe since the 1940s; and

Whereas, There are over 180 million acres of public land near communities with a high risk of fire; and

Whereas, Forest health both in Washington state and throughout the nation has been on a steady decline in many forests over the last thirty years; and

Whereas, Forest insect infestations, disease, overly dense forests, weeds, and brush and shrub build-up are increasing problems; and address all forest health issues in order to stem the tide of forest and grazing land wildfire, insect infestations, disease, and environmental degradation; and

Be it further resolved, That federal and state agencies work with all stakeholders to promote efforts that provide policy solutions and to conduct field operations so that our nation's public forests' health issues can be addressed; and

Be it further resolved, That Congress provide adequate funding levels for the United States Forest Service and continually assess the progress towards a healthy forest environment;

Be it further resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the Honorable Ann M. Veneman, Secretary of the Department of Agriculture, Dale Bosworth, Chief of the Forest Service, and the Honorable Gail A. Norton, Secretary of the Department of the Interior, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM-156. A joint resolution adopted by the Legislature of the State of Washington relative to the government involvement in the wheat market; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE JOINT MEMORIAL 8015

Whereas, Wheat farming is the major industry in many rural regions of Washington

State and thus the health of the industry is inextricably linked to the economic health of the populations in these rural regions; and

Whereas, Approximately one hundred fifty million bushels of wheat is produced annually on two and one-half million acres by five thousand farms and generates four hundred fifty million dollars in gross crop value, placing Washington State third in the nation among wheat producing states; and

Whereas, Washington is one of the largest and most heavily reliant of the wheat exporting states with up to ninety percent of the state's production being exported each year; and

Whereas, The wheat production in Washington State is predominantly by family farm operations that are as efficient and productive as any growers in the world and that produce the highest quality product possible; and

Whereas, Despite being the most efficient producers of the highest quality product, low prices received by farmers in recent years, especially for those farmers with loan obligations, have resulted in the continual erosion in many farmers' net worths and a loss of farming operations; and

Whereas, Because prices for wheat in recent years, including funds from government programs, have frequently been at or below the cost of production, the wheat farming community is very sensitive to significant government actions that affect supply and demand and depress wheat prices; and

Whereas, The price of the soft white wheat predominately grown in Washington reached a high in early fall of four dollars and eighty cents per bushel at the Portland grain terminal but has fallen dramatically by over one dollar per bushel due to a combination of factors, including large sales over a short period of time from federally held grain reserves and the labor dispute causing the cessation in the shipment of grain at export facilities; and

Whereas, A bushel of wheat makes forty-two pounds of flour, which makes sixty-six loaves of bread, and comprises only six cents of the one dollar and thirty cents average retail price per loaf;

Now, therefore, Your Memorialists respectfully pray that new federal procedures be established to assure that future sales of wheat stocks from federally held grain reserves be conducted in a manner that such sales will not unduly disrupt the market while also fulfilling the original intent of providing for emergency humanitarian food needs in developing countries.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the Honorable Ann M. Veneman, Secretary of the United States Department of Agriculture, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM-157. A concurrent resolution adopted by the Legislature of the State of Louisiana relative to the cotton production insurance; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE CONCURRENT RESOLUTION NO. 90

Whereas, the majority of cotton producers in the state of Louisiana are in support of crop insurance based on the cost of production; and

Whereas, Louisiana has experienced several consecutive years with natural disasters that have reduced actual production history; and

Whereas, many producers have found that their level of coverage is either too high, eroded, or unavailable as a result of consecutive years with natural disasters; and

Whereas, cost of production insurance will provide producers and lending institutions more coverage and reliability and reduce the need for ad hoc disaster spending to cover production costs in the event of catastrophic natural disasters; and

Whereas, the taxpayers of this state and country deserve a more fiscally responsible plan than off-budget emergency spending to deal with catastrophic agricultural losses; and

Whereas, cost of production insurance is a concept that allows producers of cotton to insure between seventy and ninety percent of their documented variable costs of production; and

Whereas, cost of production insurance would greatly enhance each producer's ability to survive natural disasters and economic crises; and

Whereas, the United States Department of Agriculture's Risk Management Agency has received a proposal for implementation of a cost of production insurance pilot program from AgriLogic, Inc., and the Coalition of American Agriculture Producers, but has not yet implemented such a program, although the United States Congress has requested them to do so.

Therefore, be it resolved, That the Legislature of Louisiana does hereby urge and request the United States Secretary of Agriculture to expeditiously implement and expand cost of production insurance for cotton that is based on a producer's actual production cost history and to implement a cost of production insurance pilot program.

Be it further resolved, That a copy of this Resolution be transmitted to the President of the United States, the Secretary of the United States Department of Agriculture, the Speaker of the United States House of Representatives, the President of the United States Senate and to each member of the Louisiana Congressional Delegation.

POM-158. A resolution adopted by the House of the Legislature of the State of Michigan relative to Emerald Ash Borer; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE RESOLUTION No. 36

Whereas, In an amazingly short period of time, an important species of tree in Michigan faces a devastating infestation from an insect known as the emerald ash borer. This beetle, which has also been found in Ontario and Ohio, is thought to have entered Michigan in 1997. Already, this insect has killed 5 million trees in the six-county area of southeastern Michigan. In response, the state has quarantined the six counties, where approximately 28 million ash trees are at risk; and

Whereas, The potential economic and ecosystem impact of this invading species would be dramatic across our state and potentially the entire country. In addition to what the loss of all ash trees would mean to the appearance of our homes, communities, and the entire state, ash trees constitute an important and versatile lumber resource that may be lost without swift and certain actions. As with any type of plant so widespread, the loss of Michigan's estimated one billion ash trees clearly could have unforeseen effects on our forest ecology; and

Whereas, The United States Department of Agriculture (USDA) must establish a federal quarantine for the emerald ash borer. Such action would provide uniform rules for slowing or containing the northern advance of the insect; guarantee sufficient protections for international commerce with Canada, which is also experiencing infestation; and allow for the compensation of a number of growers, distributors, retailers, and contractors within the quarantine area who have lost crops and sales without warning; and

Whereas, In an effort to save this species of tree, Michigan has asked Congress to provide financial assistance to state and municipal officials. In addition, these officials need technical assistance to develop a sound strategy of combating this destructive vermin, which clearly has the potential to cause great damage not only in Michigan, but across the country; Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to establish a quarantine for the emerald ash borer and provide assistance to help Michigan combat the infestation; and be it further

Resolved That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Department of Agriculture, and the members of the Michigan congressional delegation.

POM-159. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to Emerald Ash Borer; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE RESOLUTION No. 49

Whereas, With alarming swiftness, the emerald ash borer, an aggressive Asian insect, is threatening virtually all of the ash trees in this state and region. In spite of a quarantine in 6 southeastern Michigan counties, this beetle has killed 5 million of the 28 million ash trees in the quarantined area. Overall, the emerald ash borer, an invasive species that is causing similar devastation in Ontario and Ohio, threatens as many as 700 million trees in our state; and

Whereas, Ash trees are very important to the ecology of our state. They are also used for many products in several sectors of the economy. Beyond these factors, the ash trees that grace our communities and neighborhoods are beloved shade trees that contribute enormously to the character and beauty of Michigan; and

Whereas, The Governor is working to secure quick help from the federal government to deal with this swiftly escalating problem. Michigan badly needs technical and financial assistance in the face of this emergency. The state has taken decisive actions to deal with this invasive species, but the magnitude of the problem and the immediacy of the issue make it clear that we need the swift assistance of Congress and the United States Department of Agriculture; now therefore, be it

Resolved by the senate, That we memorialize the Congress of the United States and the United States Department of Agriculture to provide assistance, including financial assistance, in the effort to deal with the infestation of the emerald ash borer; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-160. A resolution adopted by the House of the Legislature of the Commonwealth of the Northern Marianas relative to a constitutional amendment to prohibit Federal Judges from Ordering states, or local units of government, to increase or levy taxes; to the Committee on the Judiciary.

HOUSE RESOLUTION No. 12-109

Whereas, several State legislatures in the United States are adopting resolutions addressing a clear violation of the United States Constitution and the legislative process; and

Whereas, in 1990 the U.S. Supreme Court issued an opinion in the case of Missouri v.

Jenkins declaring that federal judges have a constitutionally based authority and power to levy or increase taxes; and

Whereas, many believe that this opinion is contrary to the intent and beliefs of our Forefathers, wherein, the three branches of the United States government are to be separate in power and responsibilities; and

Whereas, Alexander Hamilton, Federalist No. 78, states, "(T)here is no liberty, if the power of judging be not separated from the legislative and executive powers"; and

Whereas, the CNMI Legislature is in accord with these several states who are looking to the U.S. Congress to put an end to this dangerous practice of exercising legislative authority by the Supreme Court; and

Whereas, this is an effort to maintain our Forefathers intent of establishing a democratic body with principles that ensure our freedom and liberty, moreover, to protect the integrity of the U.S. Constitution and its intent to separate, and not duplicate, the powers of the Executive Branch, Legislative Branch, and Judicial Branch; now, therefore

Be it resolved, by the House of Representatives, Twelfth Northern Marianas Commonwealth Legislature, That the House is requested the U.S. Congress to pass a resolution calling for the adoption of an amendment to the United States Constitution which shall read: "Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision, thereof, or any official of such state or political subdivision, to levy or increase taxes."; and

Be it further resolved, That the Speaker of the House shall certify and the House Clerk shall attest to the adoption of this resolution and thereafter transmit copies to the Honorable Richard B. "Dick" Cheney, Vice-President of the United States and Presiding Officer of the U.S. Senate; to the Honorable Denny Hastert, Speaker of the U.S. House of Representatives; and the Honorable Walt Mueller, Senator, 15th District, State of Missouri.

POM-161. A resolution adopted by the House of the Legislature of the State of Michigan relative to Bovine Tuberculosis; to the Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION No. 58

Whereas, Bovine tuberculosis is an infectious disease that poses a significant risk to domestic livestock, wildlife, companion animals, and humans throughout the world; and

Whereas, Bovine tuberculosis has many severe impacts beyond the disease itself. It increases costs, limits markets for livestock producers nationally and internationally, depresses interest in the state's hunting and tourism industries, and requires state resources for its eradication. These factors have impacted the families of northeastern Lower Michigan significantly; and

Whereas, Since the discovery of bovine tuberculosis in wild white-tailed deer in Michigan in 1995, and in cattle in 1998, the state of Michigan, in a partnership with Michigan State University, the livestock industry, the hunting and outdoors community, and local and federal officials, has worked diligently to control, contain, and eradicate the disease; and

Whereas, Through an aggressive testing plan for livestock and wildlife, Michigan is able to demonstrate to other states and the world that this disease is not present throughout the entire state of Michigan and that the tremendous efforts undertaken with both livestock and wildlife are moving the state toward eradication; and

Whereas, Federal assistance on technical, financial, and staff levels has been critical to

Michigan's efforts to eradicate bovine tuberculosis; and

Whereas, With many other current and emerging plant and animal diseases, resources are challenged at both the federal and state levels to address these diseases adequately; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to continue providing assistance to Michigan to help eradicate bovine tuberculosis; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the United States Department of Agriculture.

POM-162. A resolution adopted by the Senate of the Legislature of the State of Iowa relative to Best Buddies program; to the Committee on Health, Education, Labor, and Pensions.

SENATE RESOLUTION NO. 22

Whereas, there are more than 7.5 million people with intellectual disabilities in the United States and as many as 250 million worldwide; and

Whereas, individuals with intellectual disabilities often experience isolation and exclusion from community activities because of limited opportunities to associate with persons other than their immediate family and paid workers; and

Whereas, Best Buddies is a nonprofit organization dedicated to enhancing the lives of people with intellectual disabilities by providing opportunities for one-to-one friendships and integrated employment; and

Whereas, Best Buddies has grown from one chapter on one college campus to a vibrant, international organization involving participants annually on more than 750 middle school, high school, and college campuses in the United States, Canada, Cuba, Egypt, Greece, Ireland, and Sweden; and

Whereas, Best Buddies has touched the lives of over 175,000 individuals in its 13-year existence; and

Whereas, Best Buddies Iowa currently serves nine college chapters and nine high school chapters within our state and has a long-term goal of involving all schools within Iowa in its mission to bring friendship to individuals with intellectual disabilities; now therefore,

Be it resolved by the Senate, That the Iowa Senate appreciates the work that Best Buddies Iowa performs and urges the federal government to continue to fund this program; and

Be it further resolved, That the Iowa Senate encourages state agencies, county central points of coordination, education providers, and area education agencies to work with Best Buddies Iowa to find additional funding for a middle school program and to further expand its current programs into additional communities; and

Be it further resolved, That copies of this Resolution be sent by the Secretary of the Senate to the President of the United States, the President of the Senate of the United States, the Speaker of the United States House of Representatives; the majority and minority leaders of the United States Senate, the majority and minority leaders of the United States House of Representatives, and each member of Iowa's congressional delegation.

POM-163. A resolution adopted by the House of the Legislature of the State of Kansas relative to the Health Insurance Portability Accountability Act (HIPAA); to the

Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION NO. 6028

Whereas, The provisions of HIPAA are now in force with the stated purpose of simplifying health care administrative processes, and in the process, protecting individual privacy rights. Simplification is to be accomplished through the use of standardized, electronic transmission of administrative and financial data—which if successful should simplify health care record keeping and enhance the ability of private health insurance providers to process claims; and

Whereas, While the health and insurance industries may be aware of and executing the requirements of HIPAA, the recipients of health care, and individuals concerned of their condition, are confused and having difficulty comprehending the restrictions of the new procedures; and

Whereas, While patients have a right to their own health information, and while information regarding patients may be obtained by personal representatives or establishment of "significant other" relationships, it is urged information regarding whether a person is a patient at a facility, without disclosure of reason or condition, should be available to interested parties: now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we urge the Congress of the United States and implementing federal agencies to consider the provision of the information which does not disclose medically sensitive information to be available to inquiring persons; and

Be it further resolved: That the Chief Clerk of the House of Representatives be directed to send an enrolled copy of this resolution to the President of the United States Senate, the Speaker of the United States House of Representative and to each member of the Kansas legislative delegation.

POM-164. A joint resolution adopted by the House of the Legislature of the Commonwealth of Virginia relative to the Carl D. Perkins Vocational and Applied Technology Act of 2003; to the Committee on Health, Education, Labor, and Pensions.

HOUSE JOINT RESOLUTION NO. 752

Whereas, funding for career and technical education, which was formerly known as vocational/technical education, was initiated in 1917 by Congress with the passage of the Smith-Hughes Vocational Education Act and an appropriation of \$1.7 million in support of state programs across the country; and

Whereas, Congressional funding for career and technical education has been continuous since 1917 and was extended by the Carl D. Perkins Vocational and Applied Technology Act of 1984; and

Whereas, total federal funding for career and technical education in the 2003 fiscal year was \$1.3 billion, of which Virginia is receiving nearly \$25 million in basic grant funds and another \$2.5 million in tech prep grant funds; and

Whereas, 85 percent of Virginia's state grant or nearly \$18 million is being distributed to local school divisions, while more than \$3.1 million is being distributed to the Virginia Community College System and the remaining \$3.7 million is allocated to the Department of Education for state administration of career and technical education programs, including assessment, training, professional development, and improvement of academic skills; and

Whereas, local school divisions depend on the federal funding of career and technical education to accomplish many goals, including, but not limited to, strengthening students' academic, vocational, and technical

skills, implementing industry certification programs, expanding the use of technology, providing professional development to career and technical teachers, involving parents, local businesses, and labor and industry leaders in the design, implementation, and evaluation of career and technical programs in order to meet the needs of the local economy and to comply with nationally adopted standards; and

Whereas, career and technical education programs benefit Virginia's economy by providing crucial training to students of various ability levels and economic backgrounds, including gifted and talented students, traditional high school students, students with disabilities, and students who are bound for college and those who are bound for the world of work; and

Whereas, the Virginia Standards of Quality require career and technical education programs in the public schools that are "infused into the K through 12 curricula that promote knowledge of careers and all types of employment opportunities," and "competency-based career and technical education programs, which integrate academic outcomes, career guidance and job-seeking skills for all secondary students"; and

Whereas, Congress will take up reauthorization of this important law in the coming year and several proposals have been put forth that are troubling to local school divisions and suggest that consideration may be given to diverting the federal dollars to other priorities; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Congress of the United States be urged to continue the funding for career and technical education in public secondary and postsecondary schools when reauthorizing the Carl D. Perkins Vocational and Applied Technology Act of 2003. The Congress also shall be urged, in order to maintain the vitality and success of Virginia's career and technical education programs in the Commonwealth's public secondary and postsecondary schools, to continue the funding of public career and technical education in an amount that will continue Virginia's \$27 million in funding or will increase this amount; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia in this matter.

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. HOLLINGS (for himself and Mr. STEVENS):

S. 1218. A bill to provide for Presidential support and coordination of interagency ocean science programs and development and coordination of a comprehensive and integrated United States research and monitoring program; to the Committee on Commerce, Science, and Transportation.

By Mr. EDWARDS (for himself, Mr. SMITH, and Mrs. CLINTON):

S. 1219. A bill to amend the national and Community Service Act of 1990 to establish a Community Corps, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALLARD (for himself, Mr. WYDEN, Mr. SMITH, Mr. INOUE, Mr.

AKAKA, Mr. COLEMAN, Mrs. HUTCHISON, and Mr. CAMPBELL):

S. 1220. A bill to amend title XVIII of the Social Security Act to extend reasonable cost contracts under the medicare program, to expand the area in which plans offered under such contracts may operate, to apply certain provisions of the Medicare+Choice program to such plans, and for other purposes; to the Committee on Finance.

By Mr. SCHUMER:

S. 1221. A bill to provide telephone number portability for wireless telephone service; to the Committee on Commerce, Science, and Transportation.

By Mr. NELSON of Nebraska (for himself, Mr. BUNNING, and Mr. HAGEL):

S. 1222. A bill to amend title XVIII of the Social Security Act to require the Secretary of Health and Human Services, in determining eligibility for payment under the prospective payment system for inpatient rehabilitation facilities, to apply criteria consistent with rehabilitation impairment categories established by the Secretary for purposes of such prospective payment system; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. JEFFORDS, and Mr. DODD):

S. 1223. A bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1224. A bill to expand the powers of the Attorney General to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Attorney General to include firearm products and nonpowder firearms; to the Committee on the Judiciary.

By Mr. GREGG (for himself, Mr. SCHUMER, Mr. MCCAIN, and Mr. KENNEDY):

S. 1225. A bill entitled the "Greater Access to Affordable Pharmaceuticals Act"; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. CLINTON (for herself, Ms. COLLINS, Mrs. MURRAY, and Mr. BINGAMAN):

S. 1226. A bill to coordinate efforts in collecting and analyzing data on the incidence and prevalence of developmental disabilities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM (for himself and Mrs. LINCOLN):

S. 1227. A bill to amend title XVIII of the Social Security Act to provide for coverage of substitute adult day services under the medicare program; to the Committee on Finance.

By Mrs. CLINTON (for herself and Mr. DEWINE):

S. 1228. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance.

By Mr. AKAKA (for himself, Mr. LEVIN, Mr. LEAHY, Mr. DURBIN, and Mr. DAYTON):

S. 1229. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRAHAM of South Carolina (for himself and Mr. HOLLINGS):

S. Res. 163. A resolution commending the Francis Marion University Patriots men's golf team for winning the 2003 National Collegiate Athletic Association Division II Men's Golf Championship; to the Committee on the Judiciary.

By Mr. ENSIGN (for himself, Mr. CORZINE, Mr. EDWARDS, Mr. BAYH, Mr. SARBANES, Mr. CONRAD, Mr. REED, Ms. LANDRIEU, Mr. JEFFORDS, Mr. KOHL, Mr. LIEBERMAN, Mr. KENNEDY, Mr. ALLEN, Mr. BIDEN, Mr. SANTORUM, Mrs. DOLE, Mrs. BOXER, and Mr. DURBIN):

S. Res. 164. A resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; to the Committee on the Judiciary.

By Mr. FRIST:

S. Res. 165. A resolution commending Bob Hope for his dedication and commitment to the Nation; considered and agreed to.

By Mr. HARKIN (for himself, Mr. CHAFEE, and Mr. KENNEDY):

S. Con. Res. 52. A concurrent resolution expressing the sense of Congress that the United States Government should support the human rights and dignity of all persons with disabilities by pledging support for the drafting and working toward the adoption of a thematic convention on the human rights and dignity of persons with disabilities by the United Nations General Assembly to augment the existing United Nations human rights system, and for other purposes; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 221

At the request of Mr. FEINGOLD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 221, a bill to amend the Communications Act of 1934 to facilitate an increase in programming and content on radio that is locally and independently produced, to facilitate competition in radio programming, radio advertising, and concerts, and for other purposes.

S. 271

At the request of Mr. SMITH, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 271, a bill to amend the Internal Revenue Code of 1986 to allow an additional advance refunding of bonds originally issued to finance governmental facilities used for essential governmental functions.

S. 274

At the request of Mr. GRASSLEY, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 300

At the request of Mr. KERRY, the name of the Senator from Virginia (Mr.

ALLEN) was added 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. 451

At the request of Ms. SNOWE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 518

At the request of Ms. COLLINS, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 518, a bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy.

S. 557

At the request of Ms. COLLINS, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 595

At the request of Mr. HATCH, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from California (Mrs. BOXER) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 610

At the request of Mr. VOINOVICH, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 610, a bill to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics

and Space Administration, and for other purposes.

S. 623

At the request of Mr. WARNER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 623, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 640

At the request of Mr. LEAHY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 640, a bill to amend subchapter III of chapter 83 and chapter 84 of title 5, United States Code, to include Federal prosecutors within the definition of a law enforcement officer, and for other purposes.

S. 664

At the request of Mr. HATCH, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 665

At the request of Mr. GRASSLEY, the names of the Senator from Nebraska (Mr. NELSON) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 665, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, and for other purposes.

S. 678

At the request of Mr. AKAKA, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 678, a bill to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

S. 684

At the request of Mr. SMITH, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 684, a bill to create an office within the Department of Justice to undertake certain specific steps to ensure that all American citizens harmed by terrorism overseas receive equal treatment by the United States Government regardless of the terrorists' country of origin or residence, and to ensure that all terrorists involved in such attacks are pursued, prosecuted, and punished with equal vigor, regardless of the terrorists' country of origin or residence.

S. 740

At the request of Mr. LIEBERMAN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 740, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of,

the colorectal cancer screening benefit under the medicare program.

S. 756

At the request of Mr. THOMAS, the name of the Senator from Minnesota (Mr. COLEMAN) 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. 763

At the request of Mr. ENSIGN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 763, a bill to designate the Federal building and United States courthouse located at 46 Ohio Street in Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse".

S. 780

At the request of Mr. LOTT, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 780, a bill to award a congressional gold medal to Chief Phillip Martin of the Mississippi Band of Choctaw Indians.

S. 786

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 786, a bill to amend the temporary assistance to needy families program under part A of title IV of the Social Security Act to provide grants for transitional jobs programs, and for other purposes.

S. 805

At the request of Mr. LEAHY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 805, a bill to enhance the rights of crime victims, to establish grants for local governments to assist crime victims, and for other purposes.

S. 818

At the request of Ms. SNOWE, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 818, a bill to ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.

S. 874

At the request of Mr. TALENT, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 877

At the request of Mr. BURNS, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

S. 894

At the request of Mr. WARNER, the names of the Senator from South Caro-

lina (Mr. GRAHAM), the Senator from New York (Mrs. CLINTON) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 894, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center.

S. 973

At the request of Mr. NICKLES, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 973, a bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain restaurant buildings.

S. 982

At the request of Mrs. BOXER, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 1010

At the request of Mr. HARKIN, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1010, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities.

S. 1046

At the request of Mr. HOLLINGS, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1046, a bill to amend the Communications Act of 1934 to preserve localism, to foster and promote the diversity of television programming, to foster and promote competition, and to prevent excessive concentration of ownership of the nation's television broadcast stations.

S. 1046

At the request of Mr. STEVENS, the names of the Senator from Maine (Ms. COLLINS), the Senator from Michigan (Mr. LEVIN), the Senator from Nevada (Mr. REID) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1046, *supra*.

S. 1083

At the request of Mr. LUGAR, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1083, a bill to give States the flexibility to reduce bureaucracy by streamlining enrollment processes for the medicaid and State children's health insurance programs through better linkages with programs providing nutrition and related assistance to low-income families.

S. 1091

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr.

WYDEN) was added as a cosponsor of S. 1091, a bill to provide funding for student loan repayment for public attorneys.

S. 1116

At the request of Mr. LEVIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1116, a bill to amend the Federal Water Pollution Control Act to direct the Great Lakes National Program Office of the Environmental Protection Agency to develop, implement, monitor, and report on a series of indicators of water quality and related environmental factors in the Great Lakes.

S. 1125

At the request of Mr. HATCH, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1125, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

S. 1153

At the request of Mr. SPECTER, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1153, a bill to amend title 38, United States Code, to permit medicare-eligible veterans to receive an out-patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, and for other purposes.

S. 1182

At the request of Mr. MCCONNELL, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Ohio (Mr. VOINOVICH), the Senator from Minnesota (Mr. DAYTON), the Senator from Oregon (Mr. SMITH), the Senator from Vermont (Mr. JEFFORDS), the Senator from North Carolina (Mrs. DOLE), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1182, a bill to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

S. 1182

At the request of Mr. REID, his name was added as a cosponsor of S. 1182, *supra*.

S. 1201

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1201, a bill to promote healthy lifestyles and prevent unhealthy, risky behaviors among teenage youth.

S. 1203

At the request of Mr. ENZI, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Wyo-

ming (Mr. THOMAS) were added as cosponsors of S. 1203, a bill to amend the Higher Education Act of 1965 regarding distance education, and for other purposes.

S. 1215

At the request of Mr. MCCONNELL, the names of the Senator from Nevada (Mr. REID), the Senator from Ohio (Mr. VOINOVICH) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. 1215, a bill to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

S. CON. RES. 3

At the request of Mr. MILLER, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. Con. Res. 3, a concurrent resolution recognizing, applauding, and supporting the efforts of the Army Aviation Heritage Foundation, a nonprofit organization incorporated in the State of Georgia, to utilize veteran aviators of the Armed Forces and former Army Aviation aircraft to inspire Americans and to ensure that our Nation's military legacy and heritage of service are never forgotten.

S. RES. 140

At the request of Mr. CAMPBELL, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Res. 140, a resolution designating the week of August 10, 2003, as "National Health Center Week".

AMENDMENT NO. 865

At the request of Mr. DORGAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of amendment No. 865 proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself and Mr. STEVENS):

S. 1218. A bill to provide for Presidential support and coordination of interagency ocean science programs and development and coordination of a comprehensive and integrated United States research and monitoring program; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, today I am introducing legislation to spur the advent of an exciting new field of research, one that explores the role of the oceans in human health. I am pleased to be joined in this effort by the distinguished Senator from Alaska, TED STEVENS, who is cosponsoring this bill. The Oceans and Human Health Act proposes to establish a national interagency program that will coordinate research efforts and ensure the availability of an adequate Federal investment in this critical area. It also would

establish a program at the National Oceanic and Atmospheric Administration to strengthen and coordinate its work in this very important arena.

In recent years, we have gained a renewed appreciation for the importance of the ocean to our future and well-being. We now recognize that human health is one area in which the oceans exert major influences that are both positive and negative. However, studying this relationship is challenging. To be successful, a research program must integrate disciplines, bringing together oceanographers and biomedical researchers to better understand marine processes, reduce public health risks and enhance our biomedical capabilities. Pioneering scientists are needed to tackle marine environmental issues that affect human and marine life alike, such as ocean pollution, marine pathogens and potential drug discoveries. A number of Federal agencies would share responsibility and expertise for such a program, requiring that capabilities be harnessed across such diverse entities as the National Oceanic and Atmospheric Administration, the National Science Foundation and the National Institute for Environmental Health Sciences.

The rich biodiversity of marine organisms represent an important biomedical resource, a promising source of novel compounds with therapeutic potential, and a potentially significant contribution to the national economy. A 1999 National Research Council report, *From Monsoons to Microbes*, noted that nature has been the traditional source of new pharmaceuticals and found that over 50 percent of the marketed drugs are extracted from natural sources or produced using natural products. Virtually every type of life that exists on this planet is found in the sea and many types of plants and animals are exclusively marine. While the oceans are a repository for much of our biodiversity, little of it has been catalogued or studied. One important aspect that we have yet to explore is the potential of marine life to produce chemicals for treating diseases. There are only three marine compounds now in clinical use—and these were developed in the 1950s. While there are some new compounds in the pipeline, we need to speed this effort up to ensure we get more approved sooner.

But our relationship to the sea also has a darker side. The oceans drive climate and weather factors causing severe weather events and shifts in temperature and rainfall patterns. These changes in turn affect the density and distribution of disease-causing organisms and the ability of public health systems to address them. In addition, the oceans act as a route of exposure for human disease and illnesses through ingestion of contaminated seafood and direct contact with seawater containing toxins and disease-causing organisms. We need to know more about how our health is affected by the

marine environment. We must ensure that the sea maintains its capacity to sustain itself without becoming a "Dead Zone." We must find ways to monitor and reduce the occurrence of ocean toxins that kill marine mammals and taint seafood. As with cancer, our goal must be understanding and prevention, rather than relying exclusively on treatment.

Research on the health of marine organisms, including marine mammals and other sentinel species, can assist scientists in their efforts to investigate and understand human physiology and biochemical processes, as well as providing a means for monitoring the health of marine ecosystems. Unfortunately such research often does not fall clearly within a single federal agency's mission. The dolphins of Florida's Indian River Lagoon provide an example of a marine population that is the victim of contaminated habitat and food. The result is unusually high mortality rates and harmful health effects. Not only is the population at risk, but it provides a clear indicator of environmental pollution concerns for its human neighbors. We must harness the sciences of genomics, forensics and ecology and put them to work in the marine world, creating an ocean Center for Disease Control—a "CDC for the Oceans".

An exciting example of this new interdisciplinary and medically-oriented approach to ocean research can be found at NOAA's two marine laboratories in Charleston, including a unique research partnership among NOAA, the National Institute for Standards and Technology (NIST), the State of South Carolina, the Medical University of South Carolina, and the College of Charleston, formerly known as the Marine Environmental Health Research Laboratory, and now referred to as the Hollings Marine Laboratory (HML). HML works with a variety of Federal, State, and academic partners around the Nation and is on the front lines of discovery and prevention, particularly in the emerging field of marine genomics. They are hard at work on today's important public and marine environmental health issues. Their exciting dolphin health research will for the first time utilize a traditional medical approach to diagnosing and documenting dolphin health, which will help us learn more about dolphins in the wild than we have ever known. In addition, HML scientists, important partners in the Coral Disease and Health Consortium, are already analyzing samples from the two Florida coral reefs "quarantined" by NOAA today because of a fast-spreading coral disease.

The HML epitomizes the variety of important disciplines that must work side-by-side if we are to make progress in this area. It is home to cutting-edge research involving algal toxins, natural products with potential pharmaceutical applications, and viral and bacterial pathogens that cause disease

in marine animals, with potential links to human illness and disease processes and natural product chemistry. Scientists at HML and its partner NOAA facility use unique medical tools such as nuclear magnetic resonators to help "map" cellular and genetic structure of marine organisms and have developed methods for detecting pesticides in water, sediments, fish and marine mammals that may potentially affect both the health of the marine environment and human health. They also are developing exposure, toxicology and disease models to assess their effects on a variety of marine organisms. Their work will better define ocean health and bridge the gap with existing human health models.

A number of Federal agencies are now recognizing the importance of understanding health-related ocean research and to make needed investments. Last year, initiatives began both through our ocean agency, the National Oceanic and Atmospheric Administration, as well as two of our Federal research institutions, the National Institute for Environmental Health Sciences, NIEHS, and the National Science Foundation, NSF.

This past year, the National Oceanic and Atmospheric Administration, NOAA, received appropriations of \$8 million to develop an oceans and human health initiative. Within NOAA, many programs and laboratories perform research and related activities that could contribute significantly to a national research effort, but such efforts have not realized their potential. Establishment of this coordinated, interdisciplinary program consisting of nationally-recognized research centers and an external interdisciplinary research grant program will enhance the NOAA program. In addition, last November, the National Institute for Environmental Health Sciences, NIEHS, National Science Foundation, NSF, invited applications for research programs to explore the relationship between marine processes and public health. The joint initiative commits \$6 million annually to establish centers of excellence focusing on harmful algal blooms, water and vector-borne diseases, and marine pharmaceuticals and probes.

Taken together, the NIEHS-NSF and NOAA research initiatives offer an excellent basis for building a comprehensive national program. In addition, a number of other Federal agencies are poised to make significant contributions.

The Oceans and Human Health Act provides the legislative framework for a coordinated national investment to improve understanding of marine ecosystems, address marine public health problems and tap into the ocean's potential contribution to new biomedical treatments and advances. The legislation would amend the 1976 Science and Technology Act to clarify the role of the National Science and Technology Council in coordinating interagency re-

search efforts. It would also establish an interagency committee on oceans and human health to develop a research plan and coordinate participation by NOAA, NSF, NIEHS and other agencies. Governing NOAA's contribution to the interagency effort, the bill would establish a new NOAA program on oceans and human health. At the heart of this legislation and key to its success is our commitment to building new partnerships—among Federal health, science and ocean agencies, among diverse scientific disciplines, and among academic researchers and government experts.

A more detailed summary of the legislation follows:

SECTION-BY-SECTION ANALYSIS OCEANS AND HUMAN HEALTH ACT

The Oceans and Human Health Act would authorize the establishment of a coordinated federal research program to aid in understanding and responding to the role of oceans in human health. The bill would establish a Federal interagency Oceans and Human Health initiative coordinated through the National Science and Technology Council, NSTC, as well as create an Oceans and Human Health program at the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). The bill also directs the Secretary of Commerce to establish a coordinated public information and outreach program with the Food and Drug Administration, FDA, the Environmental Protection Agency, EPA, the Centers for Disease Control CDC, and the States to provide information on potential ocean-related human health risks.

SECTION 1. SHORT TITLE

Section 1 provides the short title of the Act is the "Oceans and Human Health Act."

SECTION 2. FINDINGS

Section 2 sets forth findings and purposes for the Act.

SECTION 3. NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

Section 3 would amend the National Science and Technology Policy, Organization, and Priorities Act of 1976, 42 U.S.C. 6616, to codify the responsibilities of the National Science and Technology Council NSTC, which was established by executive Order in 1993, and whose functions have superceded the Federal Coordinating Council for Science, Engineering, and Technology, FCCSET, the functions of which were transferred to the President under a 1977 executive order. The Act is also amended to clarify the director of the Office of Science and Technology Policy, OSTP, serves as chair of the NSTC.

Subsection b replaces existing section 401 of the Act (42 U.S.C. 6651) with new text specifying NSTC functions, which focus on prompting domestic and international coordination among government, industry and university scientists. Subsection b sets forth the following as NSTC functions: 1. promote interagency efforts and communication with respect to the planning and administration of Federal scientific, engineering, and technology program. 2. identify research needs; achieve more effective use of Federal facilities and resources; 3. further international cooperation in science, engineering and technology; and 4. develop long-range and coordinated research plans. The NSTC is directed to carry out these and other related duties with the assistance of the Federal agencies represented on the Council. This subsection also authorizes the NSTC Chairman to establish standing committees and working

groups to assist in developing interagency plans, conduct studies and make reports for the Chairman.

SECTION 4. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM

Interagency Program. Section 4 provides for the establishment of an Interagency Oceans and Human Health Research Program, Interagency OHH Program, to be coordinated and supported by the NSTC. Subsection (a) directs the NSTC to establish a Committee on Oceans and Human Health comprised of at least one representative from NOAA, the National Science Foundation, NSF, the National Institutes of Health, NIH, CDC, EPA, FDA, Department of Homeland Security, DHS, and other agencies and department deemed appropriate by the NSTC. This section also provides for the biennial selection of a Chairman of the Committee, who shall represent an agency that contributes substantially to the Interagency OHH Program.

10-Year Implementation Plan. Subsection b directs the NSTC, through the Committee on the Oceans and Human Health, to submit to Congress within one year of enactment a 10-year implementation plan for coordinated federal activities under the Interagency OHH Program. In developing the plan, the Committee is required to consult with the Interagency Task Force on Harmful Algal Blooms and Hypoxia. The implementation plan will complement the ongoing activities of NOAA, NSF, the NIH National Institute of Environmental Health Sciences, NIEHS, and other departments and agencies, and: 1. establish the goals and priorities for Federal research related to oceans and human health; 2. describe specific activities required to achieve such goals; 3. identify relevant Federal programs and activities that would contribute to the Interagency OHH Program; 4. consider and use reports and studies conducted by Federal agencies and departments, the National Research Council, the Ocean Research Advisory Panel, the U.S. Commission on Ocean Policy and other entities; 5. make recommendations for the coordination of national and international programs; and 6. estimate Federal funding for research activities to be conducted under the Interagency OHH Program.

Scope of Interagency Program. Subsection c outlines the scope of the Interagency OHH Program, as follows:

1. Interdisciplinary and coordinated research and activities to improve our understanding of how ocean processes and marine organisms can relate to human health and contribute to medicine and research;
2. Coordination with the National Ocean Leadership Council (established under 10 U.S.C. 7902(a)) to ensure any ocean and coastal observing system provides information necessary to monitor, predict and reduce marine public health problems;
3. Development of new technologies and approaches for detecting and reducing hazards to human health from ocean sources and to strengthen understanding of the value of marine biodiversity to biomedicine; and
4. Support for scholars, trainees and education opportunities that encourage a multidisciplinary approach to exploring the diversity of life in the oceans.

SECTION 5. NOAA OCEANS AND HUMAN HEALTH PROGRAM

Establishment of NOAA Program. Section 5 would establish a NOAA program on Oceans and Human Health that would coordinate NOAA activities with the Interagency OHH Program. Subsection (a) directs the Secretary of Commerce to develop an Oceans and Human Health Program, consistent with the interagency program developed under Section 4, that will coordinate

and implement research and activities within NOAA related to the role of the oceans in human health. In establishing the program, the Secretary is required to consult with other Federal agencies conducting integrated ocean health research or research in related areas, including the CDC, NSF, and NIEHS. The NOAA Oceans and Human Health Program will provide support for the following components: 1. a Program and Research Coordination Office; 2. an Advisory Panel; 3. National Center(s) of Excellence; 4. Research grants and 5. Distinguished scholars and traineeships.

Program Office. Subsection (b) directs the Secretary to establish a program to coordinate oceans and human health-related research and activities within NOAA and to carry out the elements of the program. In cooperation with the Oceans and Human Health Advisory Panel established under subsection (c), the program office will serve as liaison with academic institutions and other agencies participating in the Interagency OHH Program established under Section 3.

Advisory Panel. Under subsection (c), the Secretary will establish an Oceans and Human Health Advisory Panel to assist in the development and implementation of the NOAA Oceans and Human Health Program. Membership of the Advisory Group will include a balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The subsection provides that Federal Advisory Committee Act, 5 U.S.C. App. 1, shall not apply to the Panel.

Centers of Excellence. Subsection (d) provides that the Secretary shall, through a competitive process, establish and support Centers of Excellence that strengthen NOAA's capabilities to carry out programs and activities related to the ocean's role in human health. These NOAA Centers of Excellence shall complement and be in addition to any centers of excellence for oceans and human health established through NSF or NIEHS. Centers selected for funding and support under Section 4 would focus on areas related to NOAA missions, including: 1. use of marine organisms as indicators for marine environmental health; 2. ocean pollutants; 3. marine toxins and pathogens, harmful algal blooms, seafood testing, drug discovery, biology and pathobiology of marine mammals; and 4. such disciplines as marine genomics, marine environmental microbiology, ecological chemistry and conservation medicine. The Secretary will consider the need for geographic representation and will encourage proposals that have strong scientific and interdisciplinary merit.

Research Grants. Subsection (e) authorizes the Secretary of Commerce to provide grants for research and projects that explore the relationship between the oceans and human health, and that complement or strengthen NOAA-related programs and activities. In implementing this subsection, the Secretary is directed to consult with the Oceans and Human Health Advisory Panel and the National Sea Grant College Program, and may work cooperatively with other agencies in the Interagency OHH Program to establish joint criteria for such research projects. This subsection specifies that the grants shall be awarded through a peer-review or other competitive process and that such a process may be conducted jointly with other agencies participating in the Interagency OHH Program or under the National Oceanographic Partnership Program, 10 U.S.C. 7901.

Distinguished Scholars. Subsection (f) directs the Secretary to provide financial assistance to support distinguished scholars working in collaboration with NOAA scientists and facilities. The Secretary is also

authorized to establish a training program, in consultation with NIEHS and NSF, for scientists early in their careers who are interested in oceans and human health.

SECTION 6. PUBLIC INFORMATION AND RISK ASSESSMENT

This section directs the Secretary of Commerce, in consultation with the CDC, FDA, EPA, and the States, to design and implement a national public information and outreach program on potential ocean-related human health risks. The outreach program will collect and analyze information, disseminate the results, to relevant Federal, State, public, industry or other interested parties, provide advice regarding precautions against illness or hazards, and make recommendations on observing systems that would support the program.

Subsection (b) requires the Secretary, in consultation with the same agencies, to assess health hazards associated with the human consumption of seafood. Under this subsection, the Secretary, in consultation with CDC, FDA, EPA, and the states, would assess risks associated with domestically harvested and processed seafood as compared with imported seafood harvested and processed outside the United States; commercially harvested seafood as compared with recreational and subsistence harvest; and contamination due to handling and preparation of seafood.

SECTION 7. AUTHORIZATION OF APPROPRIATIONS

Section 7 provides the authorization of appropriations for the NOAA Oceans and Human Health Program established under Section 5, and the public information and risk assessment program established under Section 6.

Subsection (a) provides that there are authorized to be appropriated to the Secretary of Commerce to carry out the program under Section 5, \$8,000,000 for FY 2003, \$15,000,000 for FY 2004, and \$20,000,000 for FY2005-2007.

Subsection (b) provides authorizations of appropriations of \$5,000,000 for each of fiscal years 2004 through 2007 for the public information and risk assessment program established under Section 6.

I am extremely proud to sponsor this legislation, and hope that this will mark the beginning of a new century of ocean research that will reveal how integral and important the oceans are to our daily lives and our health, whether we live by the edge of the sea or in the heartland.

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. 1218

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 "Oceans and Human Health Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) The rich biodiversity of marine organisms provides society with an essential biomedical resource, a promising source of novel compounds with therapeutic potential, and a potentially important contribution to the national economy.

(2) The diversity of ocean life and research on the health of marine organisms, including marine mammals and other sentinel species, helps scientists in their efforts to investigate and understand human physiology and biochemical processes, as well as providing a

means for monitoring the health of marine ecosystems.

(3) The oceans drive climate and weather factors causing severe weather events and shifts in temperature and rainfall patterns that affect the density and distribution of disease-causing organisms and the ability of public health systems to address them.

(4) The oceans act as a route of exposure for human disease and illnesses through ingestion of contaminated seafood and direct contact with seawater containing toxins and disease-causing organisms.

(5) During the past two decades, the incidence of harmful blooms of algae has increased around the world, contaminating shellfish, causing widespread fish kills, threatening marine environmental quality and resulting in substantial economic losses to coastal communities.

(6) Existing Federal programs and resources support research in a number of these areas, but gaps in funding, coordination, and outreach have impeded national progress in addressing ocean health issues.

(7) National investment in a coordinated program of research and monitoring would improve understanding of marine ecosystems, allow prediction and prevention of marine public health problems and assist in realizing the potential of the oceans to contribute to the development of effective new treatments of human diseases and a greater understanding of human biology.

(b) PURPOSES.—The purposes of this Act are to provide for—

(1) Presidential support and coordination of interagency ocean science programs; and

(2) development and coordination of a comprehensive and integrated United States research and monitoring program that will assist this Nation and the world to understand, use and respond to the role of the oceans in human health.

SEC. 3. NATIONAL SCIENCE AND TECHNOLOGY COUNCIL.

(a) DIRECTOR OF OFFICE OF SCIENCE AND TECHNOLOGY POLICY TO CHAIR COUNCIL.—Section 207(a) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6616(a)) is amended—

(1) by striking “CHAIRMAN OF FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY” in the subsection heading and inserting “CHAIR OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL”; and

(2) by striking paragraph (1) and inserting the following:

“(1) serve as Chair of the National Science and Technology Council; and”.

(b) FUNCTIONS.—Section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) is amended to read as follows:

“SEC. 401. FUNCTIONS OF COUNCIL.

“(a) IN GENERAL.—The National Science and Technology Council (hereinafter referred to as the ‘Council’) shall consider problems and developments in the fields of science, engineering, and technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designed to—

“(1) provide more effective planning and administration of Federal scientific, engineering, and technology programs;

“(2) identify research needs, including areas requiring additional emphasis;

“(3) achieve more effective use of the scientific, engineering, and technological resources and facilities of Federal agencies, including elimination of unwarranted duplication; and

“(4) further international cooperation in science, engineering and technology.

“(b) COORDINATION.—The Council may be assigned responsibility for developing long-

range and coordinated plans for scientific and technical research which involve the participation of more than 2 agencies. Such plans shall—

“(1) identify research approaches and priorities which most effectively advance scientific understanding and provide a basis for policy decisions;

“(2) provide for effective cooperation and coordination of research among Federal agencies; and

“(3) encourage domestic and, as appropriate, international cooperation among government, industry and university scientists.

“(c) OTHER DUTIES.—The Council shall perform such other related advisory duties as shall be assigned by the President or by the Chair of the Council.

“(d) ASSISTANCE OF OTHER AGENCIES.—For the purpose of carrying out the provisions of this section, each Federal agency represented on the Council shall furnish necessary assistance to the Council. Such assistance may include—

“(1) detailing employees to the Council to perform such functions, consistent with the purposes of this section, as the Chairman of the Council may assign to them; and

“(2) undertaking upon the request of the Chair, such special studies for the Council as come within the scope of authority of the Council.

“(e) STANDING COMMITTEES; WORKING GROUPS.—For the purpose of developing interagency plans, conducting studies, and making reports as directed by the Chairman, standing committees and working groups of the Council may be established.”.

SEC. 4. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM.

(a) ESTABLISHMENT OF COMMITTEE.—

(1) The National Science and Technology Council shall coordinate and support a national research program to improve understanding of the role of the oceans in human health. In planning the program, the Council shall establish a Committee on Oceans and Human Health that shall consist of representatives from those agencies with programs or missions that could contribute to or benefit from the program. The Committee shall consist of at least one representative from—

(A) the National Oceanic and Atmospheric Administration;

(B) the National Science Foundation;

(C) the National Institute of Environmental Health Sciences and other institutes within the National Institutes of Health;

(D) the Centers for Disease Control;

(E) the Environmental Protection Agency;

(F) the Food and Drug Administration;

(G) the Department of Homeland Security; and

(H) such other agencies and departments as the Council deems appropriate.

(2) The members of the Committee biennially shall select one of its members to serve as Chair. The Chair shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the interagency program.

(b) IMPLEMENTATION PLAN.—Within one year after the date of enactment of this Act, the Chair of the National Science and Technology Council, through the Committee on the Oceans and Human Health, shall develop and submit to the Congress a plan for coordinated Federal activities under the program. In developing the plan, the Committee will consult with the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia. Such plan will build on and complement the ongoing activities of the National Oceanic and Atmospheric Administration, the National

Science Foundation, the National Institute of Environmental Health Sciences, and other departments and agencies and shall—

(1) establish, for the 10-year period beginning in the year it is submitted, the goals and priorities for Federal research which most effectively advance scientific understanding of the connections between the oceans and human health, provide usable information for the prediction and prevention of marine public health problems and use the biological potential of the oceans for development of new treatments of human diseases and a greater understanding of human biology;

(2) describe specific activities required to achieve such goals and priorities, including establishment of national centers of excellence, the funding of competitive research grants, ocean and coastal observations, training and support for scientists, and participation in international research efforts;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to the program;

(4) consider and use, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, the Ocean Research Advisory Panel, the Commission on Ocean Policy and other entities;

(5) make recommendations for the coordination of program activities with ocean and human health-related activities of other national and international organizations; and

(6) estimate Federal funding for research activities to be conducted under the program.

(c) PROGRAM SCOPE.—The program shall include the following activities related to the role of oceans in human health:

(1) Interdisciplinary research among the ocean and medical sciences, and coordinated research and activities to improve understanding of processes within the ocean that may affect human health and to explore the potential contribution of marine organisms to medicine and research, including—

(A) vector- and water-borne diseases of humans and marine organisms, including marine mammals and fish;

(B) harmful algal blooms;

(C) marine-derived pharmaceuticals;

(D) marine organisms as models for biomedical research and as indicators of marine environmental health;

(E) marine environmental microbiology;

(F) bioaccumulative and endocrine-disrupting chemical contaminants; and

(G) predictive models based on indicators of marine environmental health.

(2) Coordination with the National Ocean Research Leadership Council (10 U.S.C. 7902(a)) to ensure that any integrated ocean and coastal observing system provides information necessary to monitor, predict and reduce marine public health problems including—

(A) baseline observations of physical ocean properties to monitor climate variation;

(B) measurement of oceanic and atmospheric variables to improve prediction of severe weather events;

(C) compilation of global health statistics for analysis of the effects of oceanic events on human health;

(D) documentation of harmful algal blooms; and

(E) development and implementation of sensors to measure biological processes, acquire health-related data on biological populations and detect contaminants in marine waters and seafood.

(3) Development through partnerships among Federal agencies, States, or academic institutions of new technologies and approaches for detecting and reducing hazards

to human health from ocean sources and to strengthen understanding of the value of marine biodiversity to biomedicine, including—

(A) genomics and proteomics to develop genetic and immunological detection approaches and predictive tools and to discover new biomedical resources;

(B) biomaterials and bioengineering;

(C) in situ and remote sensors to detect and quantify contaminants in marine waters and organisms and to identify new genetic resources;

(D) techniques for supplying marine resources, including chemical synthesis, culturing and aquaculturing marine organisms, new fermentation methods and recombinant techniques; and

(E) adaptation of equipment and technologies from human health fields.

(4) Support for scholars, trainees and education opportunities that encourage an interdisciplinary and international approach to exploring the diversity of life in the oceans.

SEC. 5. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OCEANS AND HUMAN HEALTH PROGRAM.

(a) **ESTABLISHMENT.**—As part of the interagency program planned and coordinated under section 4, the Secretary of Commerce shall establish an Oceans and Human Health Program to coordinate and implement research and activities of the National Oceanic and Atmospheric Administration related to the role of the oceans in human health. In establishing the program, the Secretary shall consult with other Federal agencies conducting integrated oceans and human health research and research in related areas, including the Centers for Disease Control, the National Science Foundation, and the National Institute of Environmental Health Sciences. The Oceans and Human Health Program shall provide support for—

(1) a program and research coordination office;

(2) an advisory panel;

(3) one or more National Oceanic and Atmospheric Administration national centers of excellence;

(4) research grants; and

(5) distinguished scholars and traineeships.

(b) **PROGRAM OFFICE.**—The Secretary shall establish a program office to identify and coordinate oceans and human health-related research and activities within the National Oceanic and Atmospheric Administration and carry out the elements of the program. The program office will provide support for administration of the program and, in cooperation with the oceans and human health advisory panel, will serve as liaison with academic institutions and other agencies participating in the interagency oceans and human health research program planned and coordinated under section 3.

(c) **ADVISORY PANEL.**—The Secretary shall establish an oceans and human health advisory panel to assist in the development and implementation of the Oceans and Human Health Program. Membership of the advisory group shall provide for balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oceans and human health advisory panel.

(d) **NATIONAL CENTERS.**—

(1) The Secretary shall identify and provide financial support through a competitive process to develop, within the National Oceanic and Atmospheric Administration, for one or more centers of excellence that strengthen the capabilities of the Administration to carry out programs and activities related to the oceans' role in human health. Such centers shall complement and be in addition to the centers established by the Na-

tional Science Foundation and the National Institute of Environmental Health Sciences.

(2) The centers shall focus on areas related to agency missions, including use of marine organisms as indicators for marine environmental health, ocean pollutants, marine toxins and pathogens, harmful algal blooms, seafood testing, drug discovery, and biology and pathobiology of marine mammals, and on disciplines including marine genomics, marine environmental microbiology, ecological chemistry and conservation medicine.

(3) In selecting centers for funding, the Secretary will consider the need for geographic representation and give priority to proposals with strong interdisciplinary scientific merit that encourage educational opportunities and provide for effective partnerships among the Administration, other Federal entities, State, academic, medical, and industry participants.

(e) **RESEARCH GRANTS.**—

(1) The Secretary is authorized to provide grants of financial assistance for critical research and projects that explore the relationship between the oceans and human health and that complement or strengthen Administration programs and activities related to the ocean's role in human health. The Secretary shall consult with the oceans and human health advisory panel established under subsection (c) and the National Sea Grant College Program and may work cooperatively with other agencies participating in the interagency program under section 3 to establish joint criteria for such research and projects.

(2) Grants under this subsection shall be awarded through a peer-review process that may be conducted jointly with other agencies participating in the interagency program established in section 3 or under the National Oceanographic Partnership Program under section 7901 of title 10, United States Code.

(f) **DISTINGUISHED SCHOLARS AND TRAINEESHIPS.**—

(1) The Secretary shall designate and provide financial assistance to support distinguished scholars from academic institutions, industry or State governments for collaborative work with scientists and facilities of the Administration.

(2) In consultation with the Directors of the National Institutes of Health and the National Science Foundation, the Secretary of Commerce may establish a program to provide training and experience to scientists at the beginning of their careers who are interested in the role of the oceans in human health.

SEC. 6. PUBLIC INFORMATION AND OUTREACH.

(a) **ESTABLISHMENT.**—The Secretary of Commerce, in consultation with the Centers for Disease Control, the Food and Drug Administration, the Environmental Protection Agency and the States, shall design and implement a national public information and outreach program on potential ocean-related human health risks, including health hazards associated with the human consumption of seafood. Under such program, the Secretary shall—

(1) collect and analyze information on ocean-related health hazards and illnesses, including information on the number of individuals affected, causes and geographic location of the hazard or illness;

(2) disseminate the results of the analysis to any appropriate Federal or State agency, the public, involved industries, and other interested persons;

(3) provide advice regarding precautions that may be taken to safeguard against the hazard or illness; and

(4) assess and make recommendations for observing systems to support the program.

(b) **SEAFOOD SAFETY.**—To address health hazards associated with human consumption of seafood, the Secretary, in consultation with the Centers for Disease Control, the Food and Drug Administration, the Environmental Protection Agency and the States, shall assess risks related to—

(1) seafood that is domestically harvested and processed as compared with imported seafood that is harvested and processed outside the United States;

(2) seafood that is commercially harvested and processed as compared with that harvested for recreational or subsistence purposes and not prepared commercially; and

(3) contamination originating from certain practices that occur both prior to and after sale of seafood to consumers, especially those connected to the manner in which consumers handle and prepare seafood.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) **NOAA OCEANS AND HUMAN HEALTH PROGRAM.**—There are authorized to be appropriated to the Secretary of Commerce to carry out the NOAA Oceans and Human Health program established under section 5, \$8,000,000 for fiscal year 2004, \$15,000,000 for fiscal year 2005, and \$20,000,000 annually for fiscal year 2006 through fiscal year 2008.

(b) **PUBLIC INFORMATION.**—There are authorized to be appropriated to the Secretary to carry out the public information and outreach program established under section 6, \$5,000,000 for each of fiscal years 2004 through 2007.

By Mr. EDWARDS (for himself,
Mr. SMITH, and Mrs. CLINTON):

S. 1219: A bill to amend the national and Community Service Act of 1990 to establish a Community Corps, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, today I rise to introduce the School Service Act of 2003.

Across our Nation, as more and more people participate in national service programs, young people, too, are making real contributions to their communities. These students are learning lessons that are more valuable than any taught in the classroom, lessons about what it means to be a part of a community and what it means to be an American.

In my home State, schools and communities have seen the benefit of student service. High school kids have built community centers in run-down neighborhoods. They've cleaned up polluted ponds. They've helped small children learn to read, and offered comfort to the elderly and sick.

And the students have learned that their efforts matter, a lesson that they'll carry with them their whole lives. The research shows this. In one study, adults who had completed service projects more than 15 years earlier were still more likely to be volunteers and voters than adults who hadn't. In another program, kids who served had a 60 percent lower drop-out rate and 18 percent lower rate of school suspension than kids who didn't.

I applaud these students' dedication, as well as the dedication of the teachers, parents and administrators who support them. But we should do more than simply applaud these efforts—we

should provide the resources to support and expand them.

That is why I am introducing, together with Senator GORDON SMITH and Senator CLINTON, the School Service Act of 2003. The proposal is very simple: We say to a limited number of States and cities, if you have schools that will make sure students engage in high-quality service before graduation, we will support those schools' efforts. All that we ask is that you ensure that students are engaging in meaningful service with real benefits to communities. We want kids seeing these experiences not as another chore, but as an exciting initiation into long lives of active citizenship.

Here in Congress, it is our responsibility to give opportunities for service to our young people. We do not want to create a new national mandate, and we will not require any State or city to do anything. But for those State and school districts with schools that are ready, we ought to make sure every child has the opportunity and the responsibility to engage in service. When we do, our country will be richly rewarded in the years and decades to come.

By Mr. ALLARD (for himself, Mr. WYDEN, Mr. SMITH, Mr. INOUE, Mr. AKAKA, Mr. COLEMAN, Mrs. HUTCHISON, and Mr. CAMPBELL):

S. 1220. A bill to amend title XVIII of the Social Security Act to extend reasonable cost contracts under the Medicare program, to expand the area in which plans offered under such contracts may operate, to apply certain provisions of the Medicare+Choice program to such plans, and for other purposes; to the Committee on Finance.

Mr. ALLARD. Mr. President, currently approximately 19,500 Colorado seniors are beneficiaries of Medicare health plans called "cost contracts." Under current law, cost contracts will expire. Along with Senator WYDEN, Senator SMITH, Senator INOUE, Senator AKAKA, and Senator COLEMAN, I am pleased to introduce the Medicare Cost Contract Extension and Refinement Act of 2003 to refine and to allow seniors to continue using these valued health plans.

Medicare cost contracts are managed care plans that are reimbursed at the cost of providing health benefits. Currently, seniors have three Medicare plans to choose from: basic Medicare fee-for-service, Medicare+Choice, and Medicare cost contracts.

Cost contract plans offer more benefits than basic Medicare and is available in more areas than Medicare+Choice. Cost contracts also offer lower out-of-pocket expenses and more benefits than supplemental Medigap, such as preventive care and prescription drug benefits. In addition, cost contract premiums cover Medicare deductibles and additional benefits not covered by basic Medicare. Further, for the costs of a normal Medicare fee-for-

service copayment, seniors with cost contracts can use any Medicare provider whether they participate in the health plan's network.

Cost contracts are especially important in rural Colorado. Of the 19,500 Coloradans with cost contract plans, about 90 percent live in rural Colorado, where few basic Medicare and Medicare+Choice providers operate. If Medicare cost contracts are eliminated, then thousands of seniors will be forced into these other Medicare programs.

Seniors with cost contracts value them. According to the 1999 Medicare Managed Care Consumer Assessment of Health Plans Study, conducted by the U.S. Department of Health and Human Services, Medicare beneficiaries gave Medicare cost contract health insurers higher ratings than non-cost contract providers. Beneficiaries noted cost contracting HMOs solved problems, provided care, and provided customer service better than the majority of non-cost contracting providers. These ratings demonstrate that cost contract plans provide the quality service seniors want and need.

Unfortunately, under current law cost contracts soon will terminate. In 1997, in an effort to refine Medicare+Choice, Congress passed the Balanced Budget Act. Among other provisions, this bill terminated the Medicare cost contract program effective December 31, 2002. To prevent the termination of this valuable plan, in 1999 I introduced legislation to extend cost contracts. That year Congress passed the Balanced Budget and Refinement Act, which extended cost contracts for two years through 2004.

Congress should extend Medicare cost contracts further. Legislation I am introducing, the Cost Contracting Extension and Refinement Act, would accomplish this by extending by ten years the cost contract sunset date of December 31, 2004 to December 31, 2014.

While the goal of Congress in the Balanced Budget Act of 1997 was to provide an alternative to basic Medicare through Medicare+Choice, Medicare+Choice has not yet met this goal in rural Colorado. Until Medicare+Choice coverage is readily available to rural cost contract recipients, Congress should extend the current cost contract sunset for an additional 10 years.

This legislation would provide another reform. It would apply certain existing requirements under the Medicare+Choice program to Medicare cost contract plans in order to allow better administration, education, and protections to patients, providers, and insurers. The legislation would allow beneficiaries to be informed and educated about the option of cost contracts, apply quality assurance requirements, prevent plans from discriminating against certain patients by offering lower premiums, and prohibit States from taxing cost contract premiums. These provisions help refine

and strengthen the Medicare cost contract program, and they help streamline the dual administration of Medicare+Choice and cost contracts.

Last, the Medicare Cost Contract Extension and Refinement Act would allow certain health plans, called group model health plans, to offer Medicare patients a cost contract plan. These group model health plans have traditionally been shown to provide care efficiently and at a cost lower than the costs that would be incurred if the services are furnished under the Medicare fee-for-service program. Group health plans are health insurers that offer health care through providers that are employed by the insurer, such as the Kaiser Foundation Health Plan. If, for example, Kaiser provides Medicare patients the cost contract option, then Colorado's approximate 50,000 seniors, who are now enrolled in Kaiser's Medicare+Choice plans, would be eligible to obtain a cost contract plan.

Medicare beneficiaries deserve a choice in how they receive their health care. Congress should allow one of these choices to remain Medicare cost contracts. On behalf of the 19,500 Colorado Medicare beneficiaries who obtain their health care from cost contract plans, I am pleased to sponsor the Medicare Cost Contract Extension Act.

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. 1220

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 "Medicare Cost Contract Extension and Refinement Act of 2003".

SEC. 2. EXTENSION OF REASONABLE COST CONTRACTS.

(a) TEN-YEAR EXTENSION.—Section 1876(h)(5)(C) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)) is amended by striking "2004" and inserting "2014".

(b) TEN-YEAR EXTENSION OF PERIOD DURING WHICH COST CONTRACTS MAY EXPAND SERVICE AREAS.—Section 1876(h)(5)(B)(i) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(B)(i)) is amended by striking "2003" and inserting "2013".

SEC. 3. APPLICATION OF CERTAIN MEDICARE+CHOICE REQUIREMENTS TO COST CONTRACTS EXTENDED OR RENEWED AFTER 2003.

Section 1876(h) of the Social Security Act (42 U.S.C. 1395mm(h)), as amended by subsections (a) and (b), is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

"(5)(A) Any reasonable cost reimbursement contract with an eligible organization under this subsection that is extended or renewed on or after the date of enactment of the Medicare Cost Contract Extension and Refinement Act of 2003 or that is entered into pursuant to paragraph (6)(C) for plan years beginning on or after January 1, 2004, shall provide that the provisions of the Medicare+Choice program under part C described in subparagraph (B) shall apply to

such organization and such contract in a substantially similar manner as such provisions apply to Medicare+Choice organizations and Medicare+Choice plans under such part.

“(b) The provisions described in this subparagraph are as follows:

“(i) Section 1851(d) (relating to the provision of information to promote informed choice).

“(ii) Section 1851(h) (relating to the approval of marketing material and application forms).

“(iii) Section 1852(a)(3)(A) (regarding the authority of organizations to include supplemental health care benefits under the plan subject to the approval of the Secretary).

“(iv) Paragraph (1) of section 1852(e) (relating to the requirement of having an ongoing quality assurance program) and paragraph (2)(B) of such section (relating to the required elements for such a program).

“(v) Section 1852(e)(4) (relating to treatment of accreditation).

“(vi) Section 1852(j)(4) (relating to limitations on physician incentive plans).

“(vii) Section 1854(c) (relating to the requirement of uniform premiums among individuals enrolled in the plan).

“(viii) Section 1854(g) (relating to restrictions on imposition of premium taxes with respect to payments to organizations).

“(ix) Section 1856(b)(3) (relating to relation to State laws).

“(x) Section 1857(i) (relating to Medicare+Choice program compatibility with employer or union group health plans).

“(xi) The provisions of part C relating to timelines for contract renewal and beneficiary notification.”.

SEC. 4. PERMITTING DEDICATED GROUP PRACTICE HEALTH MAINTENANCE ORGANIZATIONS TO PARTICIPATE IN THE MEDICARE COST CONTRACT PROGRAM.

Section 1876(h)(6) of the Social Security Act (42 U.S.C. 1395mm(h)(6)), as redesignated and amended by section 2, is amended—

(1) in subparagraph (A), by striking “After the date of the enactment” and inserting “Except as provided in subparagraph (C), after the date of the enactment”;

(2) in subparagraph (B), by striking “subparagraph (C)” and inserting “subparagraph (D)”;

(3) by redesignating subparagraph (C) as subparagraph (D); and

(4) by inserting after subparagraph (B), the following new subparagraph:

“(C) Subject to paragraph (5) and subparagraph (D), the Secretary shall approve an application to enter into a reasonable cost contract under this section if—

“(i) the application is submitted to the Secretary by a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act) that, as of January 1, 2004, and except as provided in section 1301(b)(3)(B) of such Act, provides at least 85 percent of the services of a physician which are provided as basic health services through a medical group (or groups), as defined in section 1302(4) of such Act; and

“(ii) the Secretary determines that the organization meets the requirements applicable to such organizations and contracts under this section.”.

By Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. JEFFORDS, and Mr. DODD):

S. 1223. A bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes; to the

Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today because there is a crisis in our country that begs our attention. This crisis is the overwhelming lack of adequate mental health services available to the children and adolescents in our Nation and it is time that we address it. As I speak, over 13,700,000 young people are suffering from diagnosable psychiatric disorders. Sadly, fewer than one-third of these have access to mental healthcare. Today I am introducing the “Child Healthcare Crisis Relief Act” along with Senators COLLINS, JEFFORDS, and DODD in an effort to reduce the disparity between the need for mental health services and resources available to meet that need.

The landmark report “Mental Health: A Report of the Surgeon General” illuminated the crisis in 1999. 13,700,000 young people have diagnosable mental disorders including 6-9,000,000 children and adolescents who meet the definition for having a serious emotional disturbance and 5-9 percent of youth who meet the definition for having severe functional impairment. Unfortunately, few of these young people have access to adequate mental health services. The resulting lack of treatment leads to a lifetime cycle of difficulties from unresolved mental health issues. These difficulties are often as severe as school failure, substance abuse, job and relationship instability, and even criminal behavior or suicide. In many cases, young people who do not receive the mental health treatment that they need end up in foster care or even in the juvenile justice system. In my state of New Mexico, a 2002 report concluded that 1 in 7 incarcerated youth is currently in a detention center solely because there is no appropriate treatment option available. These youth are actually cleared to leave as soon as they have adequate treatment in place. In fact, from January 2001 to December of 2001 an estimated 718 New Mexico youth were collectively incarcerated for 31.3 years waiting for a treatment opening. Most other States are facing similar situations. In fact, studies have found that nationally more than 1 in 3 youth in detention centers have a mental health disorder. Clearly, this is an issue that demands our immediate attention.

One of the key barriers to treatment is the shortage of available specialists trained in the identification, diagnosis, and treatment of children and adolescents with emotional and behavioral disorders. The 1999 Surgeon General’s Report stated, “there is a dearth of child psychiatrists, appropriately trained clinical child psychologists, and social workers.” There are particularly acute shortages in the number of mental health service professionals serving children and adolescents with serious emotional disorders as well as those serving rural areas. Nationwide, 4,358 urban, suburban, and rural localities have been designated mental

health Professional Shortage Areas by the Federal Government. The President’s New Freedom Commission has recognized the shortage and has made a recommendation to develop a strategic plan to address it. The Council on Graduate Medical Education and the State Mental Health Commissioners have also recognized this shortage of mental health professionals.

The Child Healthcare Crisis Relief Act will help remove one of the key barriers to treatment for children and adolescents with mental illnesses: the lack of available specialists trained in this field. This bill creates incentives to help recruit and retain child mental health professionals providing direct clinical care and to improve, expand, or help create programs to train child mental health professionals through several mechanisms. The bill provides loan repayment and scholarships for child mental health and school-based service professionals to help pay back educational loans. It provides grants to graduate schools to provide for internships and field placements in child mental health services. It provides grants to help with the preservice and inservice training of paraprofessionals who work in the children’s mental health clinical settings. It also provides grants to graduate schools to help develop and expand child and adolescent mental health programs. Finally, the bill allows for an increase in the number of child and adolescent psychiatrists permitted under the Medicare Graduate Medical Education Program, extends the Board Eligibility period for residents and fellows from 4 years to 6 years, and instructs the secretary to prepare a report on the distribution and need for child mental health and school-based professionals.

I ask my colleagues in the Senate to join me along with Senators COLLINS, JEFFORDS, and DODD in supporting this essential legislation. Over 13 million children in our country are counting on us.

As Walt Disney once said, “Our Nation’s greatest national resource is the minds of our children.” Let us not fail these 13 million people.

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. 1223

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 “Child Health Care Crisis Relief Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Center for Mental Health Services estimates that 20 percent or 13,700,000 of the Nation’s children and adolescents have a diagnosable mental health disorder, and about ⅓ of these children and adolescents do not receive mental health care.

(2) According to “Mental Health: A Report of the Surgeon General” in 1999, there are

approximately 6,000,000 to 9,000,000 children and adolescents in the United States (accounting for 9 to 13 percent of all children and adolescents in the United States) who meet the definition for having a serious emotional disturbance.

(3) According to the Center for Mental Health Services, approximately 5 to 9 percent of children and adolescents in the United States meet the definition for extreme functional impairment.

(4) According to the Surgeon General's Report, there are particularly acute shortages in the numbers of mental health service professionals serving children and adolescents with serious emotional disorders.

(5) According to the National Center for Education Statistics in the Department of Education, there are approximately 513 students for each school counselor in United States schools, which ratio is more than double the recommended ratio of 250 students for each school counselor.

(6) According to a year 2000 estimate of the Bureau of Health Professions, the demand for the services of child and adolescent psychiatry is projected to increase by 100 percent by 2020.

(7) The development and application of knowledge about the impact of disasters on children, adolescents, and their families has been impeded by critical shortages of qualified researchers and practitioners specializing in this work.

(8) According to the Bureau of the Census, the population of children and adolescents in the United States under the age of 18 is projected to grow by more than 40 percent, from 70,000,000 to more than 100,000,000 by 2050.

SEC. 3. LOAN REPAYMENTS, SCHOLARSHIPS, AND GRANTS TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

Part B of title VII of the Public Health Service Act (42 U.S.C. 293 et seq.) is amended by adding at the end the following:

"SEC. 742. LOAN REPAYMENTS, SCHOLARSHIPS, AND GRANTS TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

"(a) LOAN REPAYMENTS FOR CHILD AND ADOLESCENT MENTAL HEALTH SERVICE PROFESSIONALS.—

"(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program of entering into contracts on a competitive basis with eligible individuals (as defined in paragraph (2)) under which—

"(A) the eligible individual agrees to be employed full-time for a specified period of at least 2 years in providing mental health services to children and adolescents; and

"(B) the Secretary agrees to make, during the period of employment described in subparagraph (A), partial or total payments on behalf of the individual on the principal and interest due on the undergraduate and graduate educational loans of the eligible individual.

"(2) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means an individual who—

"(A) is receiving specialized training or clinical experience in child and adolescent mental health in psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling and has less than 1 year remaining before completion of such training or clinical experience; or

"(B)(i) has a license in a State to practice allopathic medicine, osteopathic medicine, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; and

"(ii)(I) is a mental health service professional who completed (but not before the end of the calendar year in which this section is enacted) specialized training or clinical experience in child and adolescent mental health services described in subparagraph (A); or

"(II) is a physician who graduated from (but not before the end of the calendar year in which this section is enacted) an accredited child and adolescent psychiatry residency or fellowship program in the United States.

"(3) ADDITIONAL ELIGIBILITY REQUIREMENTS.—The Secretary may not enter into a contract under this subsection with an eligible individual unless the individual—

"(A) is a United States citizen or a permanent legal United States resident; and

"(B) if enrolled in a graduate program (including a medical residency or fellowship), has an acceptable level of academic standing as determined by the Secretary.

"(4) PRIORITY.—In entering into contracts under this subsection, the Secretary shall give priority to applicants who—

"(A) are or will be working with high priority populations;

"(B) have familiarity with evidence-based methods in child and adolescent mental health services;

"(C) demonstrate financial need; and

"(D) are or will be—

"(i) working in the publicly funded sector;

"(ii) working in organizations that serve underserved populations; or

"(iii) willing to provide patient services—

"(I) regardless of the ability of a patient to pay for such services; or

"(II) on a sliding payment scale if a patient is unable to pay the total cost of such services.

"(5) MEANINGFUL LOAN REPAYMENT.—If the Secretary determines that funds appropriated for a fiscal year to carry out this subsection are not sufficient to allow a meaningful loan repayment to all expected applicants, the Secretary shall limit the number of contracts entered into under paragraph (1) to ensure that each such contract provides for a meaningful loan repayment.

"(6) AMOUNT.—

"(A) MAXIMUM.—For each year of the employment period described in paragraph (1)(A), the Secretary shall not, under a contract described in paragraph (1), pay more than \$35,000 on behalf of an individual.

"(B) CONSIDERATION.—In determining the amount of payments to be made on behalf of an eligible individual under a contract described in paragraph (1), the Secretary shall consider the income and debt load of the eligible individual.

"(7) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338E and 338F shall apply to the program established under paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III.

"(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$10,000,000 for each of fiscal years 2004 through 2008.

"(b) SCHOLARSHIPS FOR STUDENTS STUDYING TO BECOME CHILD AND ADOLESCENT MENTAL HEALTH SERVICE PROFESSIONALS.—

"(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program to award scholarships on a competitive basis to eligible students who agree to enter into full-time employment (as described in paragraph (4)(C)) as a child and adolescent mental health service professional after graduation or completion of a residency or fellowship.

"(2) ELIGIBLE STUDENT.—For purposes of this subsection, the term 'eligible student' means a United States citizen or a permanent legal United States resident who—

"(A) is enrolled or accepted to be enrolled in a graduate program that includes specialized training or clinical experience in child and adolescent mental health in psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; or

"(B) is enrolled or accepted to be enrolled in an accredited graduate training program of allopathic or osteopathic medicine in the United States and intends to complete an accredited residency or fellowship in child and adolescent psychiatry.

"(3) PRIORITY.—In awarding scholarships under this subsection, the Secretary shall give—

"(A) highest priority to applicants who previously received a scholarship under this subsection and satisfy the criteria described in subparagraph (B); and

"(B) second highest priority to applicants who—

"(i) demonstrate a commitment to working with high priority populations;

"(ii) have familiarity with evidence-based methods in child and adolescent mental health services;

"(iii) demonstrate financial need; and

"(iv) are or will be—

"(I) working in the publicly funded sector;

"(II) working in organizations that serve underserved populations; or

"(III) willing to provide patient services—

"(aa) regardless of the ability of a patient to pay for such services; or

"(bb) on a sliding payment scale if a patient is unable to pay the total cost of such services.

"(4) REQUIREMENTS.—The Secretary may award a scholarship to an eligible student under this subsection only if the eligible student agrees—

"(A) to complete any graduate training program, internship, residency, or fellowship applicable to that eligible student under paragraph (2);

"(B) to maintain an acceptable level of academic standing (as determined by the Secretary) during the completion of such graduate training program, internship, residency, or fellowship; and

"(C) to be employed full-time after graduation or completion of a residency or fellowship, for at least the number of years for which a scholarship is received by the eligible student under this subsection, in providing mental health services to children and adolescents.

"(5) USE OF SCHOLARSHIP FUNDS.—A scholarship awarded to an eligible student for a school year under this subsection may be used to pay for only tuition expenses of the school year, other reasonable educational expenses (including fees, books, and laboratory expenses incurred by the eligible student in the school year), and reasonable living expenses, as such tuition expenses, reasonable educational expenses, and reasonable living expenses are determined by the Secretary.

"(6) AMOUNT.—The amount of a scholarship under this subsection shall not exceed the total amount of the tuition expenses, reasonable educational expenses, and reasonable living expenses described in paragraph (5).

"(7) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338E and 338F shall apply to the program established under paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Scholarship Program established in subpart III of part D of title III.

“(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2004 through 2008.

“(c) CLINICAL TRAINING GRANTS FOR PROFESSIONALS.—

“(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, and in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, may establish a program to award grants on a competitive basis to accredited institutions of higher education to establish or expand internships or other field placement programs for students receiving specialized training or clinical experience in child and adolescent mental health in the fields of psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling.

“(2) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that—

“(A) have demonstrated the ability to collect data on the number of students trained in child and adolescent mental health and the populations served by such students after graduation;

“(B) have demonstrated familiarity with evidence-based methods in child and adolescent mental health services; and

“(C) have programs designed to increase the number of professionals serving high priority populations.

“(3) REQUIREMENTS.—The Secretary may award a grant to an applicant under this subsection only if the applicant agrees that—

“(A) any internship or other field placement program assisted under the grant will prioritize cultural competency;

“(B) students benefiting from any assistance under this subsection will be United States citizens or permanent legal United States residents;

“(C) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

“(D) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

“(4) APPLICATION.—Each institution of higher education desiring a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the experience of such institution in working with child and adolescent mental health issues.

“(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$10,000,000 for each of fiscal years 2004 through 2008.

“(d) PROGRESSIVE EDUCATION GRANTS FOR PARAPROFESSIONALS.—

“(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, and in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, may establish a program to award grants on a competitive basis to State-licensed mental health nonprofit and for-profit organizations, including accredited institutions of higher education, (in this subsection referred to as ‘organizations’) to enable such organizations to pay for programs for preservice or in-service training of paraprofessional child and adolescent mental health workers.

“(2) DEFINITION.—For purposes of this subsection, the term ‘paraprofessional child and adolescent mental health worker’ means an

individual who is not a mental health service professional, but who works at the first stage of contact with children and families who are seeking mental health services.

“(3) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to organizations that—

“(A) have demonstrated the ability to collect data on the number of paraprofessional child and adolescent mental health workers trained by the applicant and the populations served by these workers after the completion of the training;

“(B) have familiarity with evidence-based methods in child and adolescent mental health services; and

“(C) have programs designed to increase the number of paraprofessional child and adolescent mental health workers serving high priority populations.

“(4) REQUIREMENTS.—The Secretary may award a grant to an organization under this subsection only if the organization agrees that—

“(A) any training program assisted under the grant will prioritize cultural competency;

“(B) the organization will provide to the Secretary such data, assurances, and information as the Secretary may require; and

“(C) with respect to any violation of the agreement between the Secretary and the organization, the organization will pay such liquidated damages as prescribed by the Secretary by regulation.

“(5) APPLICATION.—Each organization desiring a grant under this subsection shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the experience of the organization in working with paraprofessional child and adolescent mental health workers.

“(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2004 through 2008.

“(e) CHILD AND ADOLESCENT MENTAL HEALTH PROGRAM DEVELOPMENT GRANTS.—

“(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program to increase the number of well-trained child and adolescent mental health service professionals in the United States by awarding grants on a competitive basis to accredited institutions of higher education to enable such institutions to establish or expand accredited graduate child and adolescent mental health programs.

“(2) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that—

“(A) demonstrate familiarity with the use of evidence-based methods in child and adolescent mental health services;

“(B) provide experience in and collaboration with community-based child and adolescent mental health services;

“(C) have included normal child development education in their curricula; and

“(D) demonstrate commitment to working with high priority populations.

“(3) USE OF FUNDS.—Funds awarded under this subsection may be used to establish or expand any accredited graduate child and adolescent mental health program in any manner deemed appropriate by the Secretary, including improving the coursework, related field placements, or faculty of such program.

“(4) REQUIREMENTS.—The Secretary may award a grant to an accredited institution of higher education under this subsection only if the institution agrees that—

“(A) any child and adolescent mental health program assisted under the grant will prioritize cultural competency;

“(B) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

“(C) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

“(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$15,000,000 for each of fiscal years 2004 through 2008.

“(f) DEFINITIONS.—In this section:

“(1) HIGH PRIORITY POPULATION.—The term ‘high priority population’ means a population that has a high incidence of children and adolescents who have serious emotional disturbances, are racial and ethnic minorities, or live in underserved urban or rural areas.

“(2) MENTAL HEALTH SERVICE PROFESSIONAL.—The term ‘mental health service professional’ means an individual with a graduate or postgraduate degree from an accredited institution of higher education in psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family counseling, school counseling, or professional counseling.

“(3) SPECIALIZED TRAINING OR CLINICAL EXPERIENCE IN CHILD AND ADOLESCENT MENTAL HEALTH.—The term ‘specialized training or clinical experience in child and adolescent mental health’ means training and clinical experience that—

“(A) is part of or occurs after completion of an accredited graduate program in the United States for training mental health service professionals;

“(B) consists of at least 500 hours of training or clinical experience in treating children and adolescents; and

“(C) is comprehensive, coordinated, developmentally appropriate, and of high quality to address the unique ethnic and cultural diversity of the United States population.”

SEC. 4. AMENDMENTS TO SOCIAL SECURITY ACT TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

(a) INCREASING NUMBER OF CHILD AND ADOLESCENT PSYCHIATRY RESIDENTS PERMITTED TO BE PAID UNDER THE MEDICARE GRADUATE MEDICAL EDUCATION PROGRAM.—Section 1886(h)(4)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(F)) is amended by adding at the end the following:

“(iii) INCREASE ALLOWED FOR TRAINING IN CHILD AND ADOLESCENT PSYCHIATRY.—In applying clause (i), there shall not be taken into account such additional number of full-time equivalent residents in the field of allopathic or osteopathic medicine who are residents or fellows in child and adolescent psychiatry as the Secretary determines reasonable to meet the need for such physicians as demonstrated by the 1999 report of the Department of Health and Human Services entitled ‘Mental Health: A Report of the Surgeon General’.”

(b) EXTENSION OF MEDICARE BOARD ELIGIBILITY PERIOD FOR RESIDENTS AND FELLOWS IN CHILD AND ADOLESCENT PSYCHIATRY.—

(1) IN GENERAL.—Section 1886(h)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(G)) is amended—

(A) in clause (i), by striking “and (v)” and inserting “(v), and (vi)”;

(B) by adding at the end the following:

“(vi) CHILD AND ADOLESCENT PSYCHIATRY TRAINING PROGRAMS.—In the case of an individual enrolled in a child and adolescent psychiatry residency or fellowship program approved by the Secretary, the period of board eligibility and the initial residency period shall be the period of board eligibility for the specialty of general psychiatry, plus 2 years

for the subspecialty of child and adolescent psychiatry.”.

(2) CONFORMING AMENDMENT.—Section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)) is amended by striking “subparagraph (G)(v)” and inserting “clauses (v) and (vi) of subparagraph (G)”.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to residency training years beginning on or after July 1, 2003.

SEC. 5. CHILD MENTAL HEALTH PROFESSIONAL REPORT.

(a) STUDY.—The Administrator of the Health Resources and Services Administration (in this section referred to as the “Administrator”) shall study and make findings and recommendations on the distribution and need for child mental health service professionals, including—

- (1) the need for specialty certifications;
- (2) the breadth of practice types;
- (3) the adequacy of locations;
- (4) the adequacy of education and training; and
- (5) an evaluation of best practice characteristics.

(b) DISAGGREGATION.—The results of the study required by subsection (a) shall be disaggregated by State.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of Congress and make publicly available a report on the study, findings, and recommendations required by subsection (a).

(d) REVISION.—Each year the Administrator shall revise the report required under subsection (c).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2008.

SEC. 6. REPORTS.

(a) TRANSMISSION.—The Secretary of Health and Human Services shall transmit a report described in subsection (b) to Congress—

- (1) not later than 3 years after the date of the enactment of this Act; and
- (2) not later than 5 years after the date of the enactment of this Act.

(b) CONTENTS.—The reports transmitted to Congress under subsection (a) shall address each of the following:

(1) The effectiveness of the amendments made by, and the programs carried out under, this Act in increasing the number of child and adolescent mental health service professionals and paraprofessional child and adolescent mental health workers.

(2) The demographics of the individuals served by such increased number of child and adolescent mental health service professionals and paraprofessional child and adolescent mental health workers.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1224. A bill to expand the powers of the Attorney General to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Attorney General to include firearm products and nonpowder firearms; to the Committee on the Judiciary.

Mr. CORZINE. Mr. President, I rise today to introduce the Firearms Safety and Consumer Protection Act of 2003, legislation to protect gun owners and the public by establishing safety standards for firearms such as those currently in place for other consumer products.

Because of a loophole in current law, firearms are virtually the only consumer product not subject to any Federal health and safety standards. Yet firearms are the second leading cause of product-related death in America. In 2000 alone, 28,663 Americans died by gunfire and nearly twice that number were treated in emergency rooms for non-fatal gunshot injuries.

Of course, all firearms are lethal. But many guns are much more dangerous than they have to be. First, many firearms are manufactured poorly or with components of inadequate quality. These guns can pose a severe threat to gun owners, as well as members of the public. For example, one firearm manufacturer settled a class action suit for more than \$31 million in 1995, and thereafter improved the quality of their guns, after gun owners alleged that their firearms were produced from steel that was too weak, and thus prone to explode.

Unfortunately, the lack of safety standards in current law means that many defective firearms remain in circulation, with the government largely unable to do anything about it. We cannot recall such firearms. We cannot require that warning labels be attached to them. We can do very little to protect gun owners and the public from the threat they pose.

Beyond the need to better regulate firearms that are manufactured defectively, we also need to do more to ensure that firearms are designed properly, with features that reduce unreasonable risks. Unfortunately, too many firearms lack readily available features that could make them much less likely to be involved in an accident. For example, many guns lack so-called magazine disconnects, which disable a firearm when its magazine is removed. This feature could prevent many accidental deaths caused when a firearm user, seeing that the magazine has been removed, wrongly concludes that a gun is not loaded. Along the same lines, too few firearms include a load indicator, which allows an individual to readily see whether the gun is loaded. Both of these features would address the most common scenario for unintentional shootings, which involves a person who does not realize that there is still a round in a gun's chamber.

By regulating the manufacture and design of firearms, we can significantly reduce the number of accidental shootings, and the serious injuries and deaths they cause. However, better safety regulation also holds the promise of reducing the number of deaths from homicides and suicides.

In recent years, firearm manufacturers have taken a number of steps to make firearms more likely to be used in crimes, and more deadly if they are. For example, many guns are being produced in a manner that makes them readily concealable, and thus more attractive to criminals. In addition, many manufacturers have increased

the number of rounds that a gun can fire without reloading, and have increased the size of their ammunition, making the firearms far more lethal.

Given the threat posed by unreasonably dangerous firearms to gun owners and the general public, there is no excuse for exempting firearms from health and safety standards applicable to most other consumer products. In fact, there is evidence that the public would support such regulation. A 1999 National Opinion Research Center survey found that two-thirds of Americans want the Federal Government to regulate the safety design of guns.

The Firearms Safety and Consumer Protection Act would do just that. The bill would give the Department of Justice the authority to: set minimum safety standards for the manufacture, design and distribution of firearms; issue recalls and warnings; collect data on gun-related death and injury; and limit the sale of products when no other remedy is sufficient. It is important to emphasize that the bill would not limit the public's access to guns for hunting and other legitimate sporting purposes.

More than 120 national, state and local organizations support this bill, including: the American Academy of Pediatrics, American Bar Association, American Jewish Congress, American Public Health Association, Brady Campaign to Prevent Gun Violence, Coalition to Stop Gun Violence, Consumer Federation of America, the NAACP, National Coalition Against Domestic Violence, United Church of Christ Justice and Witness Ministries, and the Violence Policy Center.

There simply is no reason to maintain the existing loophole that exempts firearms from basic health and safety protections. This loophole is creating a serious public safety problem, especially for gun owners themselves.

In conclusion, I hope my colleagues will consider this: under current law, the safety of toy guns is regulated. The safety of real guns is not. Even if my colleagues in the Senate cannot agree on much else when it comes to guns, surely we should all agree that this makes no sense.

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. 1224

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Firearms Safety and Consumer Protection Act of 2003”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.

TITLE I—REGULATION OF FIREARM PRODUCTS

- Sec. 101. Regulatory authority.
Sec. 102. Orders; inspections.

TITLE II—PROHIBITIONS

Sec. 201. Prohibitions.

Sec. 202. Inapplicability to governmental authorities.

TITLE III—ENFORCEMENT

SUBTITLE A—CIVIL ENFORCEMENT

Sec. 301. Civil penalties.

Sec. 302. Injunctive enforcement and seizure.

Sec. 303. Imminently hazardous firearms.

Sec. 304. Private cause of action.

Sec. 305. Private enforcement of this Act.

Sec. 306. Effect on private remedies.

SUBTITLE B—CRIMINAL ENFORCEMENT

Sec. 351. Criminal penalties.

TITLE IV—ADMINISTRATIVE PROVISIONS

Sec. 401. Firearm injury information and research.

Sec. 402. Annual report to Congress.

TITLE V—RELATIONSHIP TO OTHER LAW

Sec. 501. Subordination to the Arms Export Control Act.

Sec. 502. Effect on State law.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) protect the public against unreasonable risk of injury and death associated with firearms and related products;

(2) develop safety standards for firearms and related products;

(3) assist consumers in evaluating the comparative safety of firearms and related products;

(4) promote research and investigation into the causes and prevention of firearm-related deaths and injuries; and

(5) restrict the availability of weapons that pose an unreasonable risk of death or injury.

SEC. 3. DEFINITIONS.

(a) SPECIFIC TERMS.—In this Act:

(1) FIREARMS DEALER.—The term “firearms dealer” means—

(A) any person engaged in the business (as defined in section 921(a)(21)(C) of title 18, United States Code) of dealing in firearms at wholesale or retail;

(B) any person engaged in the business (as defined in section 921(a)(21)(D) of title 18, United States Code) of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; and

(C) any person who is a pawnbroker.

(2) FIREARM PART.—The term “firearm part” means—

(A) any part or component of a firearm as originally manufactured;

(B) any good manufactured or sold—

(i) for replacement or improvement of a firearm; or

(ii) as any accessory or addition to the firearm; and

(C) any good that is not a part or component of a firearm and is manufactured, sold, delivered, offered, or intended for use exclusively to safeguard individuals from injury by a firearm.

(3) FIREARM PRODUCT.—The term “firearm product” means a firearm, firearm part, non-powder firearm, and ammunition.

(4) FIREARM SAFETY REGULATION.—The term “firearm safety regulation” means a regulation prescribed under this Act.

(5) FIREARM SAFETY STANDARD.—The term “firearm safety standard” means a standard promulgated under this Act.

(6) IMMINENTLY HAZARDOUS FIREARM PRODUCT.—The term “imminently hazardous firearm product” means any firearm product with respect to which the Attorney General determines that—

(A) the product poses an unreasonable risk of injury to the public; and

(B) time is of the essence in protecting the public from the risks posed by the product.

(7) NONPOWDER FIREARM.—The term “non-powder firearm” means a device specifically

designed to discharge BBs, pellets, darts, or similar projectiles by the release of stored energy.

(8) QUALIFIED FIREARM PRODUCT DEFINED.—The term “qualified firearm product” means a firearm product—

(A) that—

(i) is being transported;

(ii) having been transported, remains unsold;

(iii) is sold or offered for sale; or

(iv) is imported or is to be exported; and

(B) that—

(i) is not in compliance with a regulation prescribed or an order issued under this Act; or

(ii) with respect to which relief has been granted under section 303.

(b) OTHER TERMS.—Each term used in this Act that is not defined in subsection (a) shall have the meaning (if any) given that term in section 921(a) of title 18, United States Code.

TITLE I—REGULATION OF FIREARM PRODUCTS

SEC. 101. REGULATORY AUTHORITY.

(a) IN GENERAL.—The Attorney General shall prescribe such regulations governing the design, manufacture, and performance of, and commerce in, firearm products, consistent with this Act, as are reasonably necessary to reduce or prevent unreasonable risk of injury resulting from the use of those products.

(b) MAXIMUM INTERVAL BETWEEN ISSUANCE OF PROPOSED AND FINAL REGULATION.—Not later than 120 days after the date on which the Attorney General issues a proposed regulation under subsection (a) with respect to a matter, the Attorney General shall issue a regulation in final form with respect to the matter.

(c) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Attorney General to—

(A) issue, amend, or repeal a regulation prescribed under subsection (a) of this section; or

(B) require the recall, repair, or replacement of a firearm product, or the issuance of refunds with respect to a firearm product.

(2) DEADLINE FOR ACTION ON PETITION.—Not later than 120 days after the date on which the Attorney General receives a petition referred to in paragraph (1), the Attorney General shall—

(A) grant, in whole or in part, or deny the petition; and

(B) provide the petitioner with the reasons for granting or denying the petition.

SEC. 102. ORDERS; INSPECTIONS.

(a) AUTHORITY TO PROHIBIT MANUFACTURE, SALE, OR TRANSFER OF FIREARM PRODUCTS MADE, IMPORTED, TRANSFERRED, OR DISTRIBUTED IN VIOLATION OF REGULATION.—The Attorney General may issue an order prohibiting the manufacture, sale, or transfer of a firearm product which the Attorney General finds has been manufactured, or has been or is intended to be imported, transferred, or distributed in violation of a regulation prescribed under this Act.

(b) AUTHORITY TO REQUIRE THE RECALL, REPAIR, OR REPLACEMENT OF, OR THE PROVISION OF REFUNDS WITH RESPECT TO FIREARM PRODUCTS.—The Attorney General may issue an order requiring the manufacturer of, and any dealer in, a firearm product which the Attorney General determines poses an unreasonable risk of injury to the public, is not in compliance with a regulation prescribed under this Act, or is defective, to—

(1) provide notice of the risks associated with the product, and of how to avoid or reduce the risks, to—

(A) the public;

(B) in the case of the manufacturer of the product, each dealer in the product; and

(C) in the case of a dealer in the product, the manufacturer of the product and the other persons known to the dealer as dealers in the product;

(2) bring the product into conformity with the regulations prescribed under this Act;

(3) repair the product;

(4) replace the product with a like or equivalent product which is in compliance with those regulations;

(5) refund the purchase price of the product, or, if the product is more than 1 year old, a lesser amount based on the value of the product after reasonable use;

(6) recall the product from the stream of commerce; or

(7) submit to the Attorney General a satisfactory plan for implementation of any action required under this subsection.

(c) AUTHORITY TO PROHIBIT MANUFACTURE, IMPORTATION, TRANSFER, DISTRIBUTION, OR EXPORT OF UNREASONABLY RISKY FIREARM PRODUCTS.—The Attorney General may issue an order prohibiting the manufacture, importation, transfer, distribution, or export of a firearm product if the Attorney General determines that the exercise of other authority under this Act would not be sufficient to prevent the product from posing an unreasonable risk of injury to the public.

(d) INSPECTIONS.—When the Attorney General has reason to believe that a violation of this Act, or of a regulation or order issued under this Act, is being, or has been, committed, the Attorney General may, at reasonable times—

(1) enter any place in which firearm products are manufactured, stored, or held, for distribution in commerce, and inspect those areas where the products are manufactured, stored, or held; and

(2) enter and inspect any conveyance being used to transport a firearm product.

TITLE II—PROHIBITIONS

SEC. 201. PROHIBITIONS.

(a) FAILURE OF MANUFACTURER TO TEST AND CERTIFY FIREARM PRODUCTS.—It shall be unlawful for the manufacturer of a firearm product to transfer, distribute, or export a firearm product unless—

(1) the manufacturer has tested the product in order to ascertain whether the product is in conformity with the regulations prescribed under section 101;

(2) the product is in conformity with those regulations; and

(3) the manufacturer has included in the packaging of the product, and furnished to each person to whom the product is distributed, a certificate stating that the product is in conformity with those regulations.

(b) FAILURE OF MANUFACTURER TO PROVIDE NOTICE OF NEW TYPES OF FIREARM PRODUCTS.—It shall be unlawful for the manufacturer of a new type of firearm product to manufacture the product, unless the manufacturer has provided the Attorney General with—

(1) notice of the intent of the manufacturer to manufacture the product; and

(2) a description of the product.

(c) FAILURE OF MANUFACTURER OR DEALER TO LABEL FIREARM PRODUCTS.—It shall be unlawful for a manufacturer of or dealer in firearms to transfer, distribute, or export a firearm product unless the product is accompanied by a label that is located prominently in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label and that contains—

(1) the name and address of the manufacturer of the product;

(2) the name and address of any importer of the product;

(3) the model number of the product and the date the product was manufactured;

(4) a specification of the regulations prescribed under this Act that apply to the product; and

(5) the certificate required by subsection (a)(3) with respect to the product.

(d) FAILURE TO MAINTAIN OR PERMIT INSPECTION OF RECORDS.—It shall be unlawful for an importer of, manufacturer of, or dealer in a firearm product to fail to—

(1) maintain such records, and supply such information, as the Attorney General may require in order to ascertain compliance with this Act and the regulations and orders issued under this Act; and

(2) permit the Attorney General to inspect and copy those records at reasonable times.

(e) IMPORTATION AND EXPORTATION OF UNCERTIFIED FIREARM PRODUCTS.—It shall be unlawful for any person to import into the United States or export a firearm product that is not accompanied by the certificate required by subsection (a)(3).

(f) COMMERCE IN FIREARM PRODUCTS IN VIOLATION OF ORDER ISSUED OR REGULATION PRESCRIBED UNDER THIS ACT.—It shall be unlawful for any person to manufacture, offer for sale, distribute in commerce, import into the United States, or export a firearm product—

(1) that is not in conformity with the regulations prescribed under this Act; or

(2) in violation of an order issued under this Act.

(g) STOCKPILING.—It shall be unlawful for any person to manufacture, purchase, or import a firearm product, after the date a regulation is prescribed under this Act with respect to the product and before the date the regulation takes effect, at a rate that is significantly greater than the rate at which the person manufactured, purchased, or imported the product during a base period (prescribed by the Attorney General in regulations) ending before the date the regulation is so prescribed.

SEC. 202. INAPPLICABILITY TO GOVERNMENTAL AUTHORITIES.

Section 201 does not apply to any department or agency of the United States, of a State, or of a political subdivision of a State, or to any official conduct of any officer or employee of such a department or agency.

TITLE III—ENFORCEMENT

Subtitle A—Civil Enforcement

SEC. 301. CIVIL PENALTIES.

(a) AUTHORITY TO IMPOSE FINES.—

(1) IN GENERAL.—The Attorney General shall impose upon any person who violates section 201 a civil fine in an amount that does not exceed the applicable amount described in subsection (b).

(2) SCOPE OF OFFENSE.—Each violation of section 201 (other than of subsection (a)(3) or (d) of that section) shall constitute a separate offense with respect to each firearm product involved.

(b) APPLICABLE AMOUNT.—

(1) FIRST 5-YEAR PERIOD.—The applicable amount for the 5-year period immediately following the date of enactment of this Act is \$5,000, or \$10,000 if the violation is willful.

(2) AFTER 5-YEAR PERIOD.—The applicable amount during any time after the 5-year period described in paragraph (1) is \$10,000, or \$20,000 if the violation is willful.

SEC. 302. INJUNCTIVE ENFORCEMENT AND SEIZURE.

(a) INJUNCTIVE ENFORCEMENT.—The Attorney General may bring an action to restrain any violation of section 201 in the United States district court for any district in which the violation has occurred, or in which the defendant is found or transacts business.

(b) CONDEMNATION.—The Attorney General may bring an action in rem for condemnation of a qualified firearm product in the United States district court for any district in which the Attorney General has found and seized for confiscation the product.

SEC. 303. IMMINENTLY HAZARDOUS FIREARMS.

(a) IN GENERAL.—Notwithstanding the pendency of any other proceeding in a court of the United States, the Attorney General may bring an action in a United States district court to restrain any person who is a manufacturer of, or dealer in, an imminently hazardous firearm product from manufacturing, distributing, transferring, importing, or exporting the product.

(b) RELIEF.—In an action brought under subsection (a), the court may grant such temporary or permanent relief as may be necessary to protect the public from the risks posed by the firearm product, including—

(1) seizure of the product; and

(2) an order requiring—

(A) the purchasers of the product to be notified of the risks posed by the product;

(B) the public to be notified of the risks posed by the product; or

(C) the defendant to recall, repair, or replace the product, or refund the purchase price of the product (or, if the product is more than 1 year old, a lesser amount based on the value of the product after reasonable use).

(c) VENUE.—An action under subsection (a) may be brought in the United States district court for the District of Columbia or for any district in which any defendant is found or transacts business.

SEC. 304. PRIVATE CAUSE OF ACTION.

(a) IN GENERAL.—Any person aggrieved by any violation of this Act or of any regulation prescribed or order issued under this Act by another person may bring an action against such other person in any United States district court for damages, including consequential damages. In any action under this section, the court, in its discretion, may award to a prevailing plaintiff a reasonable attorney's fee as part of the costs.

(b) RULE OF INTERPRETATION.—The remedy provided for in subsection (a) shall be in addition to any other remedy provided by common law or under Federal or State law.

SEC. 305. PRIVATE ENFORCEMENT OF THIS ACT.

(a) IN GENERAL.—Any interested person may bring an action in any United States district court to enforce this Act, or restrain any violation of this Act or of any regulation prescribed or order issued under this Act.

(b) ATTORNEY'S FEE.—In any action under this section, the court, in its discretion, may award to a prevailing plaintiff a reasonable attorney's fee as part of the costs.

SEC. 306. EFFECT ON PRIVATE REMEDIES.

(a) IRRELEVANCY OF COMPLIANCE WITH THIS ACT.—Compliance with this Act or any order issued or regulation prescribed under this Act shall not relieve any person from liability to any person under common law or State statutory law.

(b) IRRELEVANCY OF FAILURE TO TAKE ACTION UNDER THIS ACT.—The failure of the Attorney General to take any action authorized under this Act shall not be admissible in litigation relating to the product under common law or State statutory law.

Subtitle B—Criminal Enforcement

SEC. 351. CRIMINAL PENALTIES.

Any person who has received from the Attorney General a notice that the person has violated a provision of this Act or of a regulation prescribed under this Act with respect to a firearm product and knowingly violates that provision with respect to the product shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.

TITLE IV—ADMINISTRATIVE PROVISIONS

SEC. 401. FIREARM INJURY INFORMATION AND RESEARCH.

(a) INJURY DATA.—The Attorney General shall, in coordination with the Secretary of Health and Human Services—

(1) collect, investigate, analyze, and share with other appropriate government agencies circumstances of death and injury associated with firearms; and

(2) conduct continuing studies and investigations of economic costs and losses resulting from firearm-related deaths and injuries.

(b) OTHER DATA.—The Attorney General shall—

(1) collect and maintain current production and sales figures for each licensed manufacturer, broken down by the model, caliber, and type of firearms produced and sold by the licensee, including a list of the serial numbers of such firearms;

(2) conduct research on, studies of, and investigation into the safety of firearm products and improving the safety of firearm products; and

(3) develop firearm safety testing methods and testing devices.

(c) AVAILABILITY OF INFORMATION.—On a regular basis, but not less frequently than annually, the Attorney General shall make available to the public the results of the activities of the Attorney General under subsections (a) and (b).

SEC. 402. ANNUAL REPORT TO CONGRESS.

(a) IN GENERAL.—The Attorney General shall prepare and submit to the President and Congress at the beginning of each regular session of Congress, a comprehensive report on the administration of this Act for the most recently completed fiscal year.

(b) CONTENTS.—Each report submitted under subsection (a) shall include—

(1) a thorough description, developed in coordination with the Secretary of Health and Human Services, of the incidence of injury and death and effects on the population resulting from firearm products, including statistical analyses and projections, and a breakdown, as practicable, among the various types of such products associated with the injuries and deaths;

(2) a list of firearm safety regulations prescribed that year;

(3) an evaluation of the degree of compliance with firearm safety regulations, including a list of enforcement actions, court decisions, and settlements of alleged violations, by name and location of the violator or alleged violator, as the case may be;

(4) a summary of the outstanding problems hindering enforcement of this Act, in the order of priority; and

(5) a log and summary of meetings between the Attorney General or employees of the Attorney General and representatives of industry, interested groups, or other interested parties.

TITLE V—RELATIONSHIP TO OTHER LAW

SEC. 501. SUBORDINATION TO ARMS EXPORT CONTROL ACT.

In the event of any conflict between any provision of this Act and any provision of the Arms Export Control Act, the provision of the Arms Export Control Act shall control.

SEC. 502. EFFECT ON STATE LAW.

(a) IN GENERAL.—This Act shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law regulating or prohibiting conduct with respect to a firearm product, except to the extent that such provision of law is inconsistent with any provision of this Act, and then only to the extent of the inconsistency.

(b) RULE OF CONSTRUCTION.—A provision of State law is not inconsistent with this Act if the provision imposes a regulation or prohibition of greater scope or a penalty of greater severity than any prohibition or penalty imposed by this Act.

By Mrs. CLINTON (for herself, Ms. COLLINS, Mrs. MURRAY, and Mr. BINGAMAN):

S. 1226. A bill to coordinate efforts in collecting and analyzing data on the incidence and prevalence of developmental disabilities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise today to discuss a rising epidemic that is preventing a growing number of children in our Nation from learning and contributing fully as members of our society.

Twelve million children under the age of eighteen now suffer from a developmental, learning or behavioral disability. Since 1977, enrollment in special education programs for children with learning disabilities has doubled. In New York, there are 206,000 learning disabled children—this is fifty percent of the special education population in New York.

While we know that developmental disabilities are affecting more children and costing us more money, we still know relatively little about the causes of developmental disabilities. A National Academy of Sciences study suggests that genetic factors explain only ten to twenty percent of developmental disabilities. Considerable research suggests that toxic chemicals such as mercury, pesticides, and dioxin contribute to these problems, but proving the exact role of environmental factors in these problems will take time and significant research dollars.

We can simply not stand back and watch our children suffer from this increasing epidemic. That is why I have worked hard to develop the 2003 Act to Prevent Developmental Disabilities in Education, which I am proud to introduce today with my colleague, Senator COLLINS. It would help us lower the costs of developmental disabilities by identifying the preventable, non-genetic causes that are affecting so many children in our nation.

Our legislation would require the Department of Education to coordinate with the CDC to improve data collection on environmental hazards that cause disabilities. At this time, the Department of Education collects information on the prevalence of disabilities among children in schools and the CDC collects information on environmental toxins, but the two data systems are not coordinated. If they were, policymakers and researchers could better identify where environmental hazards may be causing developmental disabilities and target resources to these areas for abatement. A National Academy of Sciences study suggests that 28 percent of developmental disabilities are due to environmental causes, and a recent study in the *New England Journal of Medicine* demonstrated that exposure to low levels of lead can result in a drop of 7.4 IQ points, which can turn a healthy child into one with a developmental disability.

I am working to incorporate this legislation into the reauthorization of the Individuals with Disabilities Education Act because I believe so strongly that our children and families, indeed our entire society, benefits when we prevent developmental diseases rather than treating them after they occur.

And thank you to my friend Senator COLLINS for her hard work and commitment to this important issue.

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. 1226

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 "2003 Act to Prevent Developmental Disabilities in Education".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Seventeen percent of children in the United States under 18 years of age have a developmental disability.

(2) Since 1977, enrollment in special education programs for children with learning disabilities has doubled.

(3) Federal and State education departments spend about \$43,000,000,000 each year on special education programs for individuals with developmental disabilities who are between 3 and 21 years of age.

(4) Research suggests that genetic factors explain only 10 to 20 percent of developmental diseases, and a National Academy of Sciences study suggests that at least 28 percent of developmental disabilities are due to environmental causes.

(b) PURPOSE.—It is the purpose of this Act to ensure a collaborative tracking effort between the Department of Education and the Centers for Disease Control and Prevention for developmental disabilities and potential environmental links.

SEC. 3. DEPARTMENT OF EDUCATION TRACKING ACTIVITIES.

(a) IN GENERAL.—The Secretary of Education (in this section referred to as the "Secretary") shall coordinate efforts with the Director of the National Center for Birth Defects and Developmental Disabilities of the Centers for Disease Control and Prevention (in this section referred to as the "Director") in collecting and analyzing data on the incidence and prevalence of developmental disabilities to determine localities with a high incidence of developmental disabilities and study possible causes of the increased incidence of these diseases, disorders, and conditions.

(b) EXISTING SURVEILLANCE SYSTEMS, REGISTRIES, AND SURVEYS.—To the maximum extent practicable in implementing the activities under this section, the Secretary and the Director shall develop methods for reconciling data collected in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) on the prevalence of developmental disabilities with existing surveillance and data collection systems, registries, and surveys that are administered by the Centers for Disease Control and Prevention, including—

(1) State birth defects surveillance systems as supported under section 317C of the Public Health Service Act (42 U.S.C. 247b-4); and

(2) environmental public health tracking program grants authorized under section 301

of the Public Health Service Act (42 U.S.C. 241).

(c) PRIVACY.—In pursuing activities under this section, the Secretary and the Director shall ensure the protection of individual health privacy consistent with regulations promulgated in accordance with section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note), the Family Educational Right to Privacy Act (20 U.S.C. 1232g), and State and local privacy regulations, as applicable.

By Mr. SANTORIUM (for himself and Mrs. LINCOLN):

S. 1227. A bill to amend title XVIII of the Social Security Act to provide for coverage of substitute adult day services under the medicare program; to the Committee on Finance.

Mr. SANTORIUM. Mr. President, I rise to join my colleague Mrs. LINCOLN of Arkansas to reintroduce bipartisan legislation aimed at improving long-term care health and rehabilitation options for Medicare beneficiaries, and also assisting family caregivers.

We all recognize that our Nation needs to address sooner rather than later the challenges of financing long-term care services for our growing aging population. The Congressional Budget Office has projected that national expenditures for long-term care services for the elderly will increase each year through 2040. But it is in just over a decade when we will see these challenges become even more pronounced, when the 76 million baby boomers begin to turn 65. Baby boomers are expected to live longer and greater numbers will reach 85 and older.

Congress' attention in this area is critical, given the expected growing costs of long-term care services, and the fact that so many American families are already serving as caregivers for aging or ailing seniors and providing a large portion of long-term care services. It is more important than ever that we have in place quality options in how to best care for our senior population about to dramatically increase.

This is why we are introducing the Medicare Adult Day Services Alternative Act. This legislation would offer home health beneficiaries more options for receiving care in a setting of their own choosing, rather than confining the provision of those benefits solely to the home.

This legislation would give beneficiaries the option to receive some or all of their Medicare home health services in an adult day setting. This would be a substitution, not an expansion, of services. The bill would not make new people eligible for Medicare home health benefits or expand the list of services paid for. In fact, this legislation may be designed to produce net savings for the Medicare program.

Permitting homebound patients to receive their home health care in a clinically-based senior day center, as an alternative to receiving it at home, could result in significant benefits to

the Medicare program, such as reduced cost-per-episode, reduced numbers of episodes, as well as mental and physical stimulation for patients.

Moreover, the Medicare Adult Day Services Alternative Act could well have a positive impact on our economy, as it would enable caregivers to attend to other facets in today's fast-paced family life, such as working a full- or part-time job and caring for children, knowing their loved ones are well cared for. It is unfortunate that today many caregivers have to choose between working or caring for a family member. It is estimated that the average loss of income to these caregivers is more than \$600,000 in wages, pension, and Social Security benefits. And by extension, the loss in productivity in United States businesses is pegged at more than \$10 billion annually.

But it does not have to be an either-or proposition. The Medicare Adult Day Services Alternative Act is a creative solution to health care delivery, which would adequately reimburse providers in a fiscally responsible way. Located in every state in the United States and the District of Columbia, adult day centers generally offer transportation, meals, personal care, and counseling in addition to the medical services and socialization benefits offered.

We can and should offer both our Medicare beneficiaries and family caregivers more and better options for health care delivery, and that is exactly what the Medicare Adult Day Services Alternative Act is designed to do. This legislation is bipartisan, and has been supported by more than 20 national non-profit organizations concerned with the well-being of America's older population and committed to representing their interests.

I hope our colleagues will join us in this cause. I again thank Senator LINCOLN for working with me in this effort, and 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. 1227

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 "Medicare Adult Day Services Alternative Act of 2003".

SEC. 2. FINDINGS.

Congress finds that—

(1) adult day services offers services, including medical care, rehabilitation therapies, dignified assistance with activities of daily living, social interaction, and stimulating activities, to seniors who are frail, physically challenged, or cognitively impaired;

(2) access to adult day services provides seniors and their familial caregivers support that is critical to keeping the senior in the family home;

(3) more than 22,000,000 families in the United States serve as caregivers for aging or ailing seniors, nearly 1 in 4 American families, providing close to 80 percent of the care to individuals requiring long-term care;

(4) nearly 75 percent of those actively providing such care are women who also maintain other responsibilities, such as working outside of the home and raising young children;

(5) the average loss of income to these caregivers has been shown to be \$659,130 in wages, pension, and Social Security benefits;

(6) the loss in productivity in United States businesses ranges from \$11,000,000,000 to \$29,000,000,000 annually;

(7) the services offered in adult day services facilities provide continuity of care and an important sense of community for both the senior and the caregiver;

(8) there are adult day services facilities in every State in the United States and the District of Columbia;

(9) these centers generally offer transportation, meals, personal care, and counseling in addition to the medical services and socialization benefits offered; and

(10) with the need for quality options in how to best care for our senior population about to dramatically increase with the aging of the baby boomer generation, the time to address these issues is now.

SEC. 3. MEDICARE COVERAGE OF SUBSTITUTE ADULT DAY SERVICES.

(a) SUBSTITUTE ADULT DAY SERVICES BENEFIT.—

(1) IN GENERAL.—Section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)) is amended—

(A) in the matter preceding paragraph (1), by inserting "or (8)" after "paragraph (7)";

(B) in paragraph (6), by striking "and" at the end;

(C) in paragraph (7), by adding "and" at the end; and

(D) by inserting after paragraph (7), the following new paragraph:

"(8) substitute adult day services (as defined in subsection (ww));".

(2) SUBSTITUTE ADULT DAY SERVICES DEFINED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Substitute Adult Day Services; Adult Day Services Facility

"(ww)(1)(A) The term 'substitute adult day services' means the items and services described in subparagraph (B) that are furnished to an individual by an adult day services facility as a part of a plan under subsection (m) that substitutes such services for some or all of the items and services described in subparagraph (B)(i) furnished by a home health agency under the plan, as determined by the physician establishing the plan.

"(B) The items and services described in this subparagraph are the following items and services:

"(i) Items and services described in paragraphs (1) through (7) of subsection (m).

"(ii) Meals.

"(iii) A program of supervised activities designed to promote physical and mental health and furnished to the individual by the adult day services facility in a group setting for a period of not fewer than 4 and not greater than 12 hours per day.

"(iv) A medication management program (as defined in subparagraph (C)).

"(C) For purposes of subparagraph (B)(iv), the term 'medication management program' means a program of services, including medicine screening and patient and health care provider education programs, that provides services to minimize—

"(i) unnecessary or inappropriate use of prescription drugs; and

"(ii) adverse events due to unintended prescription drug-to-drug interactions.

"(2)(A) Except as provided in subparagraphs (B) and (C), the term 'adult day serv-

ices facility' means a public agency or private organization, or a subdivision of such an agency or organization, that—

"(i) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

"(ii) provides the items and services described in paragraph (1)(B); and

"(iii) meets the requirements of paragraphs (2) through (8) of subsection (o).

"(B) Notwithstanding subparagraph (A), the term 'adult day services facility' shall include a home health agency in which the items and services described in clauses (i) through (iv) of paragraph (1)(B) are provided—

"(i) by an adult day services program that is licensed or certified by a State, or accredited, to furnish such items and services in the State; and

"(ii) under arrangements with that program made by such agency.

"(C) The Secretary may waive the requirement of a surety bond under paragraph (7) of subsection (o) in the case of an agency or organization that provides a comparable surety bond under State law."

(b) PAYMENT FOR SUBSTITUTE ADULT DAY SERVICES.—Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended by adding at the end the following new subsection:

"(f) PAYMENT RATE FOR SUBSTITUTE ADULT DAY SERVICES.—

"(1) PAYMENT RATE.—For purposes of making payments to an adult day services facility for substitute adult day services (as defined in section 1861(ww)), the following rules shall apply:

"(A) ESTIMATION OF PAYMENT AMOUNT.—The Secretary shall estimate the amount that would otherwise be payable to a home health agency under this section for all home health services described in paragraph (1)(B)(i) of such section under the plan of care.

"(B) AMOUNT OF PAYMENT.—Subject to paragraph (3)(B), the total amount payable for substitute adult day services under the plan of care is equal to 95 percent of the amount estimated to be payable under subparagraph (A).

"(2) LIMITATION ON BALANCE BILLING.—An adult day services facility shall accept as payment in full for substitute adult day services (including those services described in clauses (ii) through (iv) of section 1861(ww)(1)(B)) furnished by the facility to an individual entitled to benefits under this title the amount of payment provided under this subsection for home health services consisting of substitute adult day services.

"(3) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY SERVICES.—

"(A) MONITORING EXPENDITURES.—Beginning with fiscal year 2005, the Secretary shall monitor the expenditures made under this title for home health services, including such services consisting of substitute adult day services, for the fiscal year and shall compare such expenditures to expenditures that the Secretary estimates would have been made under this title for home health services for the fiscal year if the Medicare Adult Day Services Alternative Act of 2003 had not been enacted.

"(B) REQUIRED REDUCTION IN PAYMENT RATE.—If the Secretary determines, after making the comparison under subparagraph (A) and making such adjustments for changes in demographics and age of the Medicare beneficiary population as the Secretary determines appropriate, that expenditures for home health services under the this title, including such services consisting of substitute adult day services, for the fiscal year exceed expenditures that would have been made under this title for home health

services for the fiscal year if the Medicare Adult Day Services Alternative Act of 2003 not been enacted, then the Secretary shall adjust the rate of payment to adult day services facilities under paragraph (1)(B) for home health services consisting of substitute adult day services furnished in the fiscal year in order to eliminate such excess."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2004.

By Mrs. CLINTON (for herself and Mr. DEWINE):

S. 1228: A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance.

Mrs. CLINTON. Mr. President, I rise today to discuss a persistent, serious, and entirely preventable threat to our children's intelligence, behavior, and learning.

Lead poisoning affects 300,000 children in our Nation between the ages of one and five, and has been linked with developmental disabilities, behavioral problems, and anemia. One recent study from the New England Journal of Medicine also found that children suffered up to a 7.4 percent decrease in IQ at lead levels that CDC considers safe. At very high levels, lead poisoning can cause seizures, coma, and even death.

In New York State in 1999, over twelve thousand children suffered from lead poisoning, 9,533 of those children in New York City alone. In fact, we may even be underestimating the significance of this important public health problem.

I am glad that the Secretary of Health and Human Services considers lead poisoning to be a priority, and established a national goal of ending childhood lead poisoning by 2010. However, federal programs only have resources to remove lead-based paint hazards from less than 0.1 percent of the twenty-five million housing units that have these hazards. At this pace, we will not be able to end childhood lead poisoning by 2010, let alone 2010.

We will never stop childhood lead poisoning unless we get lead out of the buildings in which children live, work, and play. In Brooklyn, more than a third of the buildings in one community have a lead-based paint hazard. Parents of children with lead poisoning are being told that nothing can be done until their children's lead poisoning becomes worse. How can we ask children to watch and wait while their sons and daughters suffer from lead poisoning before we remove the lead from their homes?

That is why today, I am proud to introduce the Home Lead Safety Tax Credit Act of 2003 with my colleague, Senator MIKE DEWINE. This legislation would provide a tax credit to aide and encourage homeowners in removing lead-based paint hazards in their homes. Specifically, it would provide a tax credit for owners of residential properties built before 1978 that pay for abatement performed by a certified

lead abatement contractor. Owners would receive a maximum tax credit of 50 percent of the cost of the abatement, not to exceed \$1,500 per dwelling unit. In Massachusetts, a similar tax credit helped reduce the number of new cases of childhood lead poisoning by almost two-thirds in a decade.

The Home Lead Safety Tax Credit Act of 2003 would help homeowners make approximately 85,000 homes each year safe from lead, which is more than ten times the number of homes made lead safe by current Federal programs. It would greatly accelerate our progress in ridding our nation of the significant problem of childhood lead poisoning. I ask my colleagues to join me in supporting this legislation, which will help us achieve our common goal of protecting children from threats in our environment.

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. 1228

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the "Home Lead Safety Tax Credit Act of 2003".

(b) FINDINGS.—Congress finds that:

(1) Of the 98,000,000 housing units in the United States, 38,000,000 have lead-based paint.

(2) Of the 38,000,000 housing units with lead-based paint, 25,000,000 pose a hazard, as defined by Environmental Protection Agency and Department of Housing and Urban Development standards, due to conditions such as peeling paint and settled dust on floors and windowsills that contain lead at levels above Federal safety standards.

(3) Though the number of children in the United States ages 1 through 5 with blood levels higher than the Centers for Disease Control action level of 10 micrograms per deciliter has declined to 300,000, lead poisoning remains a serious, entirely preventable threat to a child's intelligence, behavior, and learning.

(4) The Secretary of Health and Human Services has established a national goal of ending childhood lead poisoning by 2010.

(5) Current Federal lead abatement programs, such as the Lead Hazard Control Grant Program of the Department of Housing and Urban Development, only have resources sufficient to make approximately 7,000 homes lead-safe each year. In many cases, when State and local public health departments identify a lead-poisoned child, resources are insufficient to reduce or eliminate the hazards.

(6) Approximately 15 percent of children are lead-poisoned by home renovation projects performed by remodelers who fail to follow basic safeguards to control lead dust.

(7) Old windows typically pose significant risks because wood trim is more likely to be painted with lead-based paint, moisture causes paint to deteriorate, and friction generates lead dust. The replacement of old windows that contain lead based paint significantly reduces lead poisoning hazards in addition to producing significant energy savings.

(c) PURPOSE.—The purpose of this section is to encourage the safe removal of lead haz-

ards from homes and thereby decrease the number of children who suffer reduced intelligence, learning difficulties, behavioral problems, and other health consequences due to lead-poisoning.

SEC. 2. LEAD ABATEMENT TAX CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

"SEC. 30B. HOME LEAD ABATEMENT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter an amount equal to 50 percent of the abatement cost paid or incurred by the taxpayer during the taxable year for each eligible dwelling unit of the taxpayer.

"(b) LIMITATION.—The amount of the credit allowed under subsection (a) for any eligible dwelling unit shall not exceed—

"(1) \$1,500, over

"(2) the aggregate cost taken into account under subsection (a) with respect to such unit for all preceding taxable years.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

"(1) ABATEMENT COST.—

"(A) IN GENERAL.—The term 'abatement cost' means, with respect to any eligible dwelling unit—

"(i) the cost for a certified risk assessor to conduct an assessment to determine the presence of a lead-based paint hazard,

"(ii) the cost for a certified lead abatement supervisor to perform the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil when lead-based paint hazards are present in such paint, dust, or soil,

"(iii) the cost for a certified lead abatement supervisor to perform all preparation, cleanup, disposal, and postabatement clearance testing activities associated with the activities described in clause (ii), and

"(iv) costs incurred by or on behalf of any occupant of such dwelling unit for any relocation which is necessary to achieve occupant protection (as defined under section 1345 of title 24, Code of Federal Regulations).

"(B) LIMITATION.—The term 'abatement cost' does not include any cost to the extent such cost is funded by any grant, contract, or otherwise by another person (or any governmental agency).

"(2) ELIGIBLE DWELLING UNIT.—

"(A) IN GENERAL.—The term 'eligible dwelling unit' means any dwelling unit—

"(i) placed in service before 1978,

"(ii) located in the United States, and

"(iii) determined by a certified risk assessor to have a lead-based paint hazard.

"(B) DWELLING UNIT.—The term 'dwelling unit' has the meaning given such term by section 280A(f)(1).

"(3) LEAD-BASED PAINT HAZARD.—The term 'lead-based paint hazard' has the meaning given such term under part 745 of title 40, Code of Federal Regulations.

"(4) CERTIFIED LEAD ABATEMENT SUPERVISOR.—The term 'certified lead abatement supervisor' means an individual certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

"(5) CERTIFIED INSPECTOR.—The term 'certified inspector' means an inspector certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

"(6) CERTIFIED RISK ASSESSOR.—The term 'certified risk assessor' means a risk assessor

certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

“(7) DOCUMENTATION REQUIRED FOR CREDIT ALLOWANCE.—No credit shall be allowed under subsection (a) with respect to any eligible dwelling unit unless—

“(A) after lead abatement is complete, a certified inspector or certified risk assessor provides written documentation to the taxpayer that includes—

“(i) a certification that the postabatement procedures (as defined by section 745.227 of title 40, Code of Federal Regulations) have been performed and that the unit does not contain lead dust hazards (as defined by section 745.227(e)(8)(viii) of title 40, Code of Federal Regulations), and

“(ii) documentation showing that the lead abatement meets the requirements of this section, and

“(B) the taxpayer files with the appropriate State agency—

“(i) the documentation described in subparagraph (A),

“(ii) a receipt from the certified risk assessor documenting the costs of determining the presence of a lead-based paint hazard,

“(iii) a receipt from the certified lead abatement supervisor documenting the abatement cost (other than the costs described in paragraph (1)(A)(i)), and

“(iv) a statement indicating the age of the dwelling unit.

“(8) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (d)).

“(d) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

“(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(2) the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30A for the taxable year.

“(e) CARRYFORWARD ALLOWED.—

“(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to as the ‘unused credit year’ in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

“(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking “and” in paragraph (27), by striking the period and inserting “, and” in paragraph (28), and by inserting at the end of the following new paragraph:

“(29) in the case of an eligible dwelling unit with respect to which a credit for lead abatement was allowed under section 30B, to the extent provided in section 30B(c)(8).”.

(2) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

“Sec. 30B. Home lead abatement.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to abatement costs incurred after December 31, 2003, in taxable years ending after that date.

By Mr. AKAKA (for himself, Mr. LEVIN, Mr. LEAHY, Mr. DURBIN, and Mr. DAYTON):

S. 1229. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

Mr. AKAKA. Mr. President. Today I rise to introduce the Federal Employee Protection of Disclosures Act with Senators LEVIN, LEAHY, DURBIN, and DAYTON to amend the Whistleblower Protection Act, WPA. These amendments are necessary to protect Federal employees from retaliation and protect the American people from government waste, fraud, and abuse. The Federal Employee Protection of Disclosures Act builds on the foundation laid in the 107th Congress with S. 995 and S. 3070, the latter of which was favorably reported by the Governmental Affairs Committee last year. The bill also incorporates recommendations received during a hearing I chaired on similar legislation in 2001.

Last year, Time magazine honored Sherron Watkins, Colleen Rowley, and Cynthia Cooper as its “persons of the year.” These brave women are whistleblowers—Colleen Rowley is the Minneapolis FBI agent who penned the memo on the FBI headquarter’s handling of the Zacarias Moussoui case. In 2002, Ms. Rowley and the two other women went public with disclosures of mismanagement and wrongdoing within their workplaces. They captured the nation’s attention and earned our respect in their roles as whistleblowers. Congress encourages Federal employees like Ms. Rowley to come forward with information of threats to public safety and health through the WPA, which has been amended twice in order to shore up congressional intent.

Once again, Congress must act to guarantee protections from retaliation for Federal whistleblowers. First and foremost, our bill would codify the repeated and unequivocal statements of congressional intent that Federal employees are to be protected when making “any disclosure” evidencing violations of law, gross mismanagement, or a gross waste of funds. The bill would also clarify the test that must be met to prove that a Federal employee reasonably believed that his or her disclosure was evidence of wrongdoing. Despite the clear language of the WPA that an employee is protected from disclosing information he or she reasonably believes evidences a violation, the Federal Circuit Court of Appeals, which has sole jurisdiction over whistleblower cases, ruled in 1999 that the reasonableness review must begin with the presumption that public officers perform their duties in good faith and that this presumption stands unless there is “irrefragable proof” to the contrary. By definition, irrefragable

means impossible to refute. To address this unreasonable burden placed on whistleblowers, our bill would replace the “irrefragable proof” standard with “substantial evidence.”

The bill would provide some method of relief for those whistleblowers who face retaliation by having their security clearance removed. According to former Special Counsel Elaine Kaplan, removal of a security clearance in this manner is a way of camouflaging retaliation. To address this issue, the bill would make it a prohibited personnel practice for a manager to suspend, revoke or take other action with respect to an employee’s security clearance in retaliation for whistleblowing and allow the Merit Systems Protection Board, MSPB, to review the action. Under an expedited review process, the MSPB may issue declaratory and other appropriate relief, but may not direct the President to restore a security clearance. MSPB and subsequent Congressional review of the agency’s action provides sound oversight for this process without encroaching upon the President’s authority in the national security arena.

The measure would also provide independent litigating authority to the Office of Special Counsel, OSC. Under current law, OSC has no authority to request MSPB to reconsider its decision or to seek review of a MSPB decision by the Federal Circuit. The limitation undermines both OSC’s ability to protect whistleblowers and the integrity of the WPA. As such, our bill would provide OSC authority to appear in any civil action brought in connection with the WPA and obtain review of any MSPB order where OSC determines MSPB erred and the case will impact the enforcement of the WPA. The bill would also help protect the integrity of the Act by removing sole jurisdiction of such cases from the Federal Circuit and provide for review of whistleblower cases in the same manner that is afforded in Equal Employment Opportunity Commission cases. This review system is designed to address holdings by the Federal Circuit which have repeatedly ignored congressional intent.

Enactment of the Federal Employee Protection of Disclosures Act will strengthen the rights and protections afforded to Federal whistleblowers and encourage the disclosure of information vital to an effective government. Congress should act quickly to assure whistleblowers that disclosing illegal activities within their agencies will not be met with retaliation. I urge my colleagues to join with me in protecting the dedicated Federal employees who come forward to disclose wrongdoing to help the American people.

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. 1229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Employee Protection of Disclosures Act”.

(b) **CLARIFICATION OF DISCLOSURES COVERED.**—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation”;

(2) in subparagraph (B)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation (other than a violation of this section)”; and

(3) by adding at the end the following:

“(C) a disclosure that—

“(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

“(I) any violation of any law, rule, or regulation;

“(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

“(III) a false statement to Congress on an issue of material fact; and

“(ii) is made to—

“(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

“(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

“(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.”.

(c) **COVERED DISCLOSURES.**—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking “This subsection” and inserting the following:

“This subsection”; and

(2) by adding at the end the following:

“In this subsection, the term ‘disclosure’ means a formal or informal communication or transmission.”.

(d) **REBUTTABLE PRESUMPTION.**—Section 2302(b) of title 5, United States Code, is amended by adding after the matter following paragraph (12) (as amended by subsection (c) of this section) the following:

“For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence.”.

(e) **NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.**—

(1) **PERSONNEL ACTION.**—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking “and” after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

“(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

“(xii) a suspension, revocation, or other determination relating to a security clearance;

“(xiii) an investigation of an employee or applicant for employment because of any activity protected under this section; and”.

(2) **PROHIBITED PERSONNEL PRACTICE.**—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking “or” at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

“(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”; or

“(14) conduct, or cause to be conducted, an investigation of an employee or applicant for employment because of any activity protected under this section.”.

(3) **BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.**—

(A) **IN GENERAL.**—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

“§ 7702a. Actions relating to security clearances

“(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance, the Merit Systems Protection Board or any reviewing court—

“(1) shall determine whether section 2302 was violated;

“(2) may not order the President to restore a security clearance; and

“(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

“(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regards to a security clearance was made in violation of section 2302, the affected agency shall conduct a review of that suspension, revocation, or other determination, giving great weight to the Board or court judgment.

“(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, or other determination was made in violation of section 2302, the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency’s security clearance suspension, revocation, or other determination. A report under this paragraph shall include any proposed agency action with regards to the security clearance.

“(c) An allegation that a security clearance was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.”.

(B) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

“7702a. Actions relating to security clearances.”.

(f) **EXCLUSION OF AGENCIES BY THE PRESIDENT.**—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

“(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or”.

(g) **ATTORNEY FEES.**—Section 1204(m)(1) of title 5, United States Code, is amended by striking “agency involved” and inserting “agency where the prevailing party is employed or has applied for employment”.

(h) **COMPENSATORY DAMAGES.**—Section 1214(g)(2) of title 5, United States Code, is amended by inserting “compensatory or” after “foreseeable”.

(i) **DISCIPLINARY ACTION.**—Section 1215 of title 5, United States Code, is amended in subsection (a), by striking paragraph (3) and inserting the following:

“(3)(A) A final order of the Board may impose—

“(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

“(ii) an assessment of a civil penalty not to exceed \$1,000; or

“(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

“(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under section 2302(b) (1), (8), or (9), the Board may order disciplinary action if the Board finds that the activity or status protected under section 2302(b) (1), (8), or (9) was a motivating factor for the employee’s decision to take, fail to take, or threaten to take or fail to take a personnel action, even if other factors also motivated the decision.”.

(j) **DISCLOSURES TO CONGRESS.**—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(f) Each agency shall establish a process that provides confidential advice to employees on making a lawful disclosure to Congress of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”.

(k) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.”.

(2) JUDICIAL REVIEW OF MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the court of appeals.”.

(l) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b) of title 5, United States Code, is amended by striking paragraph (1) and inserting the following:

“(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2) of this sub-

section, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

“(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2). Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.”.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703 of title 5, United States Code, is amended by striking subsection (d) and inserting the following:

“(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board’s decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board’s decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.”.

(m) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: “These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the Federal Government or a State or local government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(n) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (Public Law 107-296) is amended by adding at the end the following: “For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.”.

(o) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

Mr. LEVIN. Mr. President, I am pleased to join Senators AKAKA, LEAHY, DURBIN and DAYTON today in introducing the Federal Employees Protection of Disclosures Act. Our bill strengthens the law protecting employees who blow the whistle on fraud, waste, and abuse in Federal programs.

Whistleblowers play a crucial role in ensuring that Congress and the public are aware of serious cases of waste,

fraud, and mismanagement in government. Whistleblowing is never more important than when our national security is at stake. Since the terrorist attacks of September 11, 2001, courageous individuals have stepped forward to blow the whistle on significant lapses in our efforts to protect the United States against potential future attacks. Most notably, FBI Agent Coleen Rowley alerted Congress to serious institutional problems at the FBI and their impact on the agency's ability to effectively investigate and prevent terrorism.

In another example, two Border Patrol agents from my State of Michigan, Mark Hall and Bob Lindemann, risked their careers when they blew the whistle on Border Patrol and INS policies that were compromising security on the Northern Border. Their disclosure led to my holding a hearing at the Permanent Subcommittee on Investigations in November 2001, that exposed serious deficiencies in the way Border Patrol and INS were dealing with aliens who were arrested while trying to enter the country illegally. Since the hearing, some of the most troublesome policies have been changed, improving the security situation and validating the two agents' concerns. Despite the fact that their concerns proved to be dead on, shortly after they blew the whistle, disciplinary action was proposed against the two agents. Fortunately in this case, whistleblower protections worked. The Office of Special Counsel conducted an investigation and the decision to discipline the agents was reversed. However, that disciplinary action was proposed in the first place is a troubling reminder of how important it is for us to both strengthen protections for whistleblowers and empower the Office of Special Counsel to discipline managers who seek to muzzle employees.

Agent Rowley, Mark Hall and Bob Lindemann are simply the latest in a long line of Federal employees who have taken great personal risks in blowing the whistle on government waste, fraud, and mismanagement. Congress has long recognized the obligation we have to protect a Federal employee when he or she discloses evidence of wrongdoing in a federal program. If an employee reasonably believes that a fraud or mismanagement is occurring, and that employee has the courage and the sense of responsibility to make that fraud or mismanagement known, it is our duty to protect the employee from any reprisal. We want federal employees to identify problems so we can fix them, and if they fear reprisal for doing so, then we are not only failing to protect the whistleblower, but we are also failing to protect the taxpayer.

I sponsored the Whistleblower Protection Act in 1989 which strengthened and clarified whistleblower rights, as well as the bill passed by Congress to strengthen the law further in 1994. Unfortunately, however, repeated hold-

ings by the United States Court of Appeals for the Federal Circuit have corrupted the intent of Congress, with the result that additional clarifying language is sorely needed. The case of LaChance versus White represents perhaps the most notable example of the Federal Circuit's misinterpretation of the whistleblower law.

In LaChance, decided on May 14, 1999, the court imposed an unfounded and virtually unattainable standard on Federal employee whistleblowers in proving their cases. In that case, John E. White was an education specialist for the Air Force who spoke out against a new educational system that purported to mandate quality standards for schools contracting with the Air Force bases. White criticized the new system as counterproductive because it was too burdensome and seriously reduced the education opportunities available on base. After making these criticisms, local agency officials reassigned White, relieving him of his duties and allegedly isolating him. However, after an independent management review supported White's concerns, the Air Force canceled the program White had criticized. White appealed the reassignment in 1992 and the case has been in litigation ever since.

The administrative judge initially dismissed White's case, finding that his disclosures were not protected by the Whistleblower Protection Act. The MSPB, however, reversed the administrative judge's decision and remanded the case back to the administrative judge, holding that since White disclosed information he reasonably believed evidenced gross mismanagement, this disclosure was protected under the Act. On remand, the administrative judge found that the Air Force had violated the Whistleblower Protection Act and ordered the Air Force to return White to his prior status; the MSPB affirmed the decision of the administrative judge. OPM petitioned the Federal Circuit for a review of the board's decision. The Federal Circuit subsequently reversed the MSPB's decision, holding that there was not adequate evidence to support a violation under the Whistleblower Protection Act. The Federal Circuit held that the evidence that White was a specialist on the subject at issue and aware of the alleged improper activities and that his belief was shared by other employees was not sufficient to meet the "reasonable belief" test in the law. The court held that "the board must look for evidence that it was reasonable to believe that the disclosures revealed misbehavior" by the Air Force. The court went on to say: "In this case, review of the Air Force's policy and implementation via the QES standards might well show them to be entirely appropriate, even if not the best option. Indeed, this review would start out with a presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing

regulations. . . . And this presumption stands unless there is "irrefragable proof to the contrary."

It was appropriate for the Federal Circuit to remand the case to the MSPB to have it reconsider whether it was reasonable for White to believe that what the Air Force did in this case involved gross mismanagement. However, the Federal Circuit went on to impose a clearly erroneous and excessive standard for him to demonstrate his "reasonable belief"—requiring him to provide "irrefragable" proof that the Air Force had engaged in gross mismanagement.

Irrefragable means "undeniable, incontestable, incontrovertible, incapable of being overthrown." How can a Federal employee meet a standard of "irrefragable" in proving gross mismanagement? It is a virtually impossible standard of proof to meet. Moreover, there is nothing in the law or legislative history that even suggests such a standard applies to the Whistleblower Protection Act. The intent of the law is not for a Federal employee to act as an investigator and compile "irrefragable" proof that the Federal Government, in fact, committed fraud, waste or abuse. Rather, under the clear language of the statute, the employee needs only to have "a reasonable belief" that there is fraud, waste or abuse occurring in order to make a protected disclosure.

LaChance is only one example of the Federal Circuit misinterpreting the law. Our bill corrects LaChance and as well as several other Federal Circuit holdings. In addition, the bill strengthens the Office of Special Counsel and creates additional protections for federal employees who are retaliated against for blowing the whistle.

One of the most important issues addressed in the bill is to clarify again that the law is intended to protect a broad range of whistleblower disclosures. The legislative history supporting the 1994 Whistleblower Protection Act amendments emphasized: "[I]t also is not possible to further clarify the clear language in section 2302(b)(8) that protection for "any" whistleblowing disclosure truly means "any." A protected disclosure may be made as part of an employee's job duties, may concern policy or individual misconduct, and may be oral or written and to any audience inside or outside the agency, without restriction to time, place, motive or content."

Despite this clear Congressional intent that was clearly articulated in 1994, the Federal Circuit has acted to push a number of whistleblower disclosures outside the protections of the whistleblower law. For example, in Horton versus the Department of the Navy, the Federal Circuit ruled that a whistleblower's disclosures to co-workers, or to the wrong-doer, or to a supervisor were not protected by the WPA. In Willis versus the Department of Agriculture, the court ruled that a whistleblower's disclosures to officials in

the agency chain of command or those made in the course of normal job duties were not protected. In *Huffman* versus Office of Personnel Management, the Federal Circuit reaffirmed *Horton* and *Willis*. And in *Meuwissen* versus Department of Interior, the Federal Circuit held that a whistleblower's disclosures of previously known information do not qualify as "disclosures" under the WPA. All of these rulings violate clear Congressional intent to afford broad protection to whistleblower disclosures.

In order to make it clear that any lawful disclosure that an employee or job applicant reasonably believes is evidence of waste, fraud, abuse, or gross mismanagement is covered by the WPA, the bill codifies previous statements of Congressional intent. Using the 1994 legislative history, it amends the whistleblower statute to cover any disclosure of information without restriction to time, place, form, motive or context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties that the employee or applicant reasonably believes is credible evidence of any violation of any law, rule, or regulation, or other misconduct specified in the whistleblower law. I want to emphasize here that, other than the explicitly listed exceptions identified in the statute, we intend for there to be no exceptions, inferred or otherwise, as to what is a protected disclosure. And the prohibition on inferred exceptions is intended to apply to all protected speech categories in section 2302(b)(8) of the law. The intent here, again, is to make it clear that when the WPA speaks of protecting disclosures by federal employees "any" means "any."

The bill also addresses the clearly erroneous standard established by the Federal Circuit's *LaChance* decision I mentioned earlier. Rather than needing "irrefragable proof" to overcome the presumption that a public officer performed his or her duties correctly, fairly, in good faith, and in accordance with the law and regulations, the bill makes it clear that the whistleblower can rebut this presumption with "substantial evidence." This burden of proof is a far more reasonable and appropriate standard for whistleblowing cases.

In the 1994 WPA amendments, Congress attempted to expand relief for whistleblowers by replacing "compensatory" damages with all direct or indirect "consequential" damages. Again, despite clear Congressional intent, the Federal Circuit has narrowed the scope of relief available to whistleblowers who have been hurt by adverse personnel actions. Our legislation would clarify the law to provide whistleblowers with relief for "compensatory or consequential damages."

The Federal Circuit's repeated misinterpretations of the whistleblower law are unacceptable and demand Con-

gressional action. In response to the court's inexplicable and inappropriate rulings, our bill would suspend for five years the Federal Circuit's exclusive jurisdiction over whistleblower appeals. It would instead allow a whistleblower to file a petition to review a final order or final decision of the MSPB in the Federal Circuit or in any other United States appellate court of competent jurisdiction as defined under 5 U.S.C. 7703(b)(2). In most cases, using another court would mean going to the federal circuit where the contested personnel action took place. This five year period would allow Congress to evaluate whether other appellate courts would issue whistleblower decisions which are consistent with the Federal Circuit's interpretation of WPA protections and guide Congressional efforts to clarify the law if necessary.

In addition to addressing jurisdictional issues and troublesome Federal Circuit precedents, our bill would also make important additions to the list of protected disclosures. First, it would subject certain disclosures of classified information to whistleblower protections. However, in order for a disclosure of classified information to be protected, the employee would have to possess a reasonable belief that the disclosure was direct and specific evidence of a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger to public health or safety, or a false statement to Congress on an issue of material fact. A whistleblower must also limit the disclosure to a member of Congress or staff of the executive or legislative branch holding the appropriate security clearance and authorized to receive the information disclosed. Federal agencies covered by the WPA would be required to establish a process to provide confidential advice to employees on how to lawfully make a protected disclosure of classified information to Congress.

Current law permits Federal employees to file a case at the MSPB when they feel that a manager has taken a personnel action against them in retaliation for blowing the whistle. The legislation would add three new personnel actions to the list of adverse actions that cannot be taken against whistleblowers for engaging in protected activity. These actions would include enforcement of any nondisclosure policy, form or agreement against a whistleblower for making a protected disclosure; the suspension, revocation, or other determination relating to a whistleblower's security clearance; and an investigation of an employee or applicant for employment if taken due to their participation in whistleblowing activity.

It is important to note that, if it is demonstrated that a security clearance was suspended or revoked in retaliation for whistleblowing, the legislation limits the relief that the MSPB and re-

viewing court can order. The bill specifies that the MSPB or reviewing court may issue declaratory and other appropriate relief but may not direct a security clearance to be restored. Appropriate relief may include back pay, an order to reassign the employee, attorney fees, or any other relief the Board or court is authorized to provide for other prohibited personnel practices. In addition, if the Board finds an action on a security clearance to have been illegal, it may bar the agency from directly or indirectly taking any other personnel action based on that illegal security clearance action. Our legislation would also require the agency to review and provide a report to Congress detailing the circumstances of the agency's security clearance decision, and authorizes expedited MSPB review of whistleblower cases where a security clearance was revoked or suspended. The latter is important because a person whose clearance has been suspended or revoked and whose job responsibilities require clearance may be unable to work while their case is being considered.

Our bill would also add two prohibited personnel practices to the whistleblower law. First, it would codify the "anti-gag" provision that has been in force since 1988, by virtue of its inclusion in appropriations bills. Second, it would prohibit a manager from initiating an investigation of an employee or applicant for employment because they engaged in a protected activity, including whistleblowing.

Another issue addressed in the bill involves certain employees who are excluded from the WPA. Among these are employees who hold "confidential policy-making positions." In 1994, Congress amended the WPA to keep agencies from designating employees confidential policymakers after the employees filed whistleblower complaints. The WPA also allows the President to exclude from WPA jurisdiction any agency whose principal function is the conduct of foreign intelligence or counterintelligence activities. Our legislation maintains this authority but makes it clear that a decision to exclude an agency from WPA protections must also be made prior to a personnel action being taken against a whistleblower from that agency. This provision is necessary to ensure that agencies cannot argue that employees are exempt from whistleblower protections after an employee files a claim that they were retaliated against.

Another key section of the bill would strengthen the Office of Special Counsel. OSC is the independent federal agency responsible for investigating and prosecuting federal employee complaints of whistleblower retaliation. Current law, however, limits OSC's ability to effectively enforce and defend whistleblower laws. For example, the law provides the OSC with no authority to request the Merit Systems Protection Board to reconsider one of its decisions or to seek appellate review of an MSPB decision. Even when

another party petitions for a review of a MSPB decision, OSC is typically denied the right to participate in the proceedings.

Our bill would provide explicit authority for the Office of Special Counsel to appear in any civil action brought in connection with the whistleblower law. In addition, it would authorize OSC to obtain circuit court review of any MSPB order in a whistleblowing case if the OSC determines the Board erred and the case would have a substantial impact on the enforcement of the whistleblower statute. In a letter to me addressing these provisions, Special Counsel Elaine Kaplan said, "I believe that these changes are necessary, not only to ensure OSC's effectiveness, but to address continuing concerns about the whittling away of the WPA's protections by narrow judicial interpretations of the law." I ask unanimous consent that the OSC letter be printed in the RECORD.

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

U.S. OFFICE OF SPECIAL COUNSEL,
Washington, DC, September 11, 2002.

Hon. CARL LEVIN,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEVIN: Thank you for giving me the opportunity to comment on the proposed Title VI of H.R. 5005, concerning the protection of federal employee whistleblowers.

As the head of the U.S. Office of Special Counsel (OSC), the independent federal agency that is responsible for investigating and prosecuting federal employees' complaints of whistleblower retaliation, I share your recognition that it is crucial to ensure that the laws protecting whistleblowers are strong and effective. Federal employees are often in the best position to observe and identify official misconduct or malfeasance as well as dangers to the public health and safety, and the national security.

Now, perhaps more than ever before, our national interest demands that federal workers feel safe to come forward to bring appropriate attention to these conditions so that they may be corrected. Further, and again more than ever, the public now needs assurance that the workforce which is carrying out crucial operations is alert, and that its leaders welcome and encourage their constructive participation in making the government a highly efficient and effective steward of the public interest.

To these ends, Title VI contains a number of provisions that will strengthen the Whistleblower Protection Act (WPA) and close loopholes in the Act's coverage. The amendment would reverse the effects of several judicial decisions that have imposed unduly narrow and restrictive tests for determining whether employees qualify for the protection of the WPA. These decisions, among other things, have held that employees are not protected against retaliation when they make their disclosures in the line of duty or when they confront subject officials with their suspicions of wrongdoing. They have also made it more difficult for whistleblowers to secure the Act's protection by interposing what the Court of Appeal for the Federal Circuit has called an "irrefragable" presumption that government officials perform their duties lawfully and in good faith.

In addition to reversing these rulings, Title VI would grant the Special Counsel

independent litigating authority and the right to request judicial review of decisions of the Merit Systems Protection Board (MSPB) in cases that will have a substantial impact upon the enforcement of the WPA. I firmly believe that these changes are necessary, not only to ensure OSC's effectiveness, but to address continuing concerns about the whittling away of the WPA's protections by narrow judicial interpretations of the law. The changes would ensure that, OSC, the government agency charged with protecting whistleblowers, will have a meaningful opportunity to participate in the shaping of the law.

Further, Title VI would strengthen OSC's capacity to use its disciplinary action authority to deter agency supervisors, managers, and other officials from engaging in retaliation, and to punish those who do so. The amendment does this in two ways. First, it clarifies the burden of proof in disciplinary action cases that OSC brings by employing the test first set forth by the Supreme Court in *Mt. Healthy School District v. Board of Education*. Under this test, in order to secure discipline of an agency official accused of engaging in whistleblower retaliation, OSC would have to show that protected whistleblowing was a "significant, motivating factor" in the decision to take or threaten to take a personnel action. If OSC made such a showing, the MSPB would order appropriate discipline unless the official showed, by preponderant evidence, that he or she would have taken or threatened to take the same action even had there been no protected activity.

This change is necessary in order to ensure that the burden of proof in these cases is not so onerous as to make it virtually impossible to secure discipline against retaliators. Under current law, OSC bears the unprecedented burden of demonstrating that protected activity was the but-for cause of an adverse personnel action against a whistleblower. The amendment would correct the imbalance by imposing the well-established *Mt. Healthy* test in these cases.

In addition, the bill would relieve OSC of attorney fee liability in disciplinary action cases in which it ultimately does not prevail. The amendment would shift liability for fees to the manager's employing agency, where an award of fees would be in the interest of justice. The employing agency would indemnify the manager for these costs which would have been incurred by him in the course of performing his official duties.

Under current law, if OSC ultimately does not prevail in a case it brings against a manager whom our investigation shows has engaged in retaliation, then we must pay attorney fees, even if our prosecution decision was an entirely reasonable one. For a small agency like OSC, with a limited budget, the specter of having to pay large attorney fee awards simply because we do not ultimately prevail in a case, is a significant obstacle to our ability to use this important authority to hold managers accountable. It is, moreover, an unprecedented burden; virtually all fee shifting provisions which could result in an award of fees against a government agency, depend upon a showing that the government agency has acted unreasonably or in bad faith.

In addition to these provisions, the bill would also provide that for a period of five years, beginning on February 1, 2003, there would be multi-circuit review of decisions of the MSPB, just as there is now multi-circuit review of decisions of the MSPB's sister agency, the Federal Labor Relations Authority. This experiment will give Congress the opportunity to judge whether providing broader perspectives of all of the nation's courts of appeals will enhance the development of the law under the WPA.

There are several other provisions of the amendments that would strengthen the Act's coverage and remedies. The amendments, for example, would extend coverage of the WPA to circumstances in which an agency initiated an investigation of an employee or applicant in reprisal for whistleblowing or where an agency implemented an illegal non-disclosure form or policy. The amendments also would authorize an award of compensatory damages in federal employee whistleblower cases. Such awards are authorized for federal employees under the civil rights acts, and for environmental and nuclear whistleblowers, among others, under other federal statutes. Given the important public policies underlying the WPA, it seems appropriate that the same sort of make whole relief should be available to federal employee whistleblowers.

Finally, Title VI contains a provision that would provide relief to employees who allege that their security clearances were denied or revoked because of protected whistleblowers, without interfering with the longstanding authority of the President to make security clearance determinations. The amendment would allow employees to file OSC complaints alleging they suffered a retaliatory adverse security clearance determination. OSC would be given the authority to investigate such complaints and the MSPB would have the authority to issue declaratory and appropriate relief other than ordering the restoration of the clearance. Further, where the Board found retaliation, the employing agency would be required to conduct its own investigation of the revocation and report back to Congress.

The amendment provides a balanced resolution of the tension between protecting national security whistleblowers against retaliation and maintaining the President's traditional prerogative to decide who will have access to classified information. Especially in light of the current heightened concerns about issues of national security, this change in the law is clearly warranted.

Thank you again for providing me with an opportunity to comment on these amendments, and for your continuing interest in the work of the Office of Special Counsel.

Sincerely,

ELAINE KAPLAN.

Mr. LEVIN. OSC currently has the authority to pursue disciplinary action against managers who retaliate against whistleblowers. However, Federal Circuit decisions, like *LaChance*, have undermined the agency's ability to successfully pursue such cases. The Special Counsel has said that "change is necessary in order to ensure that the burden of proof in these cases is not so onerous as to make it virtually impossible to secure disciplinary action against retaliators." In addition to it being difficult to win, if the OSC loses a disciplinary case, it has to pay the legal fees of those against whom OSC initiates disciplinary action. In its letter, OSC said that "the specter of having to pay large attorney fee awards . . . is a significant obstacle to our ability to use this important authority to hold managers accountable." Our bill addresses these problems by establishing a reasonable burden of proof for disciplinary actions and requiring the employing agency, not the OSC, to reimburse the prevailing party for attorney fees in a disciplinary proceeding.

Finally, the bill addresses a new issue that has arisen in connection

with the recent enactment of the Homeland Security Act or HSA. To evaluate the vulnerability to terrorist attack of certain critical infrastructure such as chemical plants, computer networks and other key facilities, the HSA asks private companies that own these facilities to submit unclassified information about them to the government. In doing so, the law also created some ambiguity on the question of whether federal employee whistleblowers would be protected by the WPA if they should disclose information that has been independently obtained by the whistleblower about such facilities but which may also have been disclosed to the government as under the critical infrastructure information program.

While I believe it was Congress' intent to extend whistleblower protections to federal employees who disclose such independently obtained information, the law's ambiguities are troublesome in the context of the tendency of the Federal Circuit to narrowly construe the scope of protections afforded by the WPA. Our bill would thus clarify that whistleblower protections do extend to federal employees who disclose independently obtained information that may also have been disclosed to the government as part of the critical infrastructure information program.

We need to encourage federal employees to blow the whistle on waste, fraud and abuse in federal government agencies and programs. These people take great risks and often face enormous obstacles in doing what they believe is right. The Congress and the country owe a particular debt of gratitude to those whistleblowers who put their careers on the line to protect national security. Since September 11, 2001, we have seen a number of examples of how crucial people like Coleen Rowley, Mark Hall and Bob Lindemann are to keeping our country safe. I request unanimous consent to print a letter from Agent Rowley in the RECORD. In the letter she says that when she blew the whistle, she was lucky enough to garner the support of many of her colleagues and members of Congress. However, her letter warns that for every Coleen Rowley, "there are many more who do not benefit from the relative safety of public notoriety." It is to protect those responsible, courageous many that we offer this legislation. We need more like them.

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

SEPTEMBER 2, 2002.

DEAR SENATORS: I have proudly served in federal law enforcement for over 21 years. Prior to my personal involvement in a specific matter, I did not fully appreciate the strong disincentives that sometimes keep government employees from exposing waste, fraud, abuse, or other failures they witness on the job. Nor did I appreciate the strong incentives that do exist for agencies to avoid institutional embarrassment.

The decision to step forward with information that exposed my agency to scrutiny was

one of the most difficult of my career. I did not come to it quickly or lightly. I first attempted to warn my superiors through regular channels. Only after those warnings failed to bring about the necessary response and congressional inquiry was initiated, did it go outside the agency with my concerns. I had no intention or desire to be in the public spotlight, so I did not go to the news media. I provided the information to Members of Congress with oversight responsibility. I felt compelled to do so because my responsibility is to the American people, not to a government agency.

Unfortunately, the cloak of secrecy which is necessary for the effective operation of government agencies involved in national security and criminal investigations fosters an environment where the incentives to avoid embarrassment and the disincentives to step forward combine. When that happens, the public loses. We need laws that strike a better balance, that are able to protect effective government operation without sacrificing accountability to the public. I was lucky enough to garner a good deal of support from my colleagues in the Minneapolis office and Members of Congress. But for every one like me, there are many more who do not benefit from the relative safety of public notoriety. They need credible, functioning rights and remedies to retain the freedom to warn.

I also need to state that I write this letter in my personal capacity, and that it reflects my personal views only, not those of the government agency for which I work.

Thank you for your consideration.

COLEEN ROWLEY.

Mr. LEVIN. I ask unanimous consent to print in the RECORD a section-by-section explanation of the bill.

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

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

The Federal Employee Protection of Disclosures Act would strengthen protections for federal employees who blow the whistle on waste, fraud and abuse in the federal government.

Protected Whistleblower Disclosures. To correct court decisions improperly limiting the disclosures protected by the Whistleblower Protection Act (WPA), section (b) of the bill would clarify Congressional intent that the law covers "any" whistleblowing disclosure, whether that disclosure is made as part of an employee's job duties, concerns policy or individual misconduct, is oral or written, or is made to any audience inside or outside an agency, and without restriction to time, place, motive or context. This section would also protect certain disclosures of classified information to Congress when the disclosure is to a Member or legislative staff holding an appropriate security clearance and authorized to receive the type of information disclosed.

Informal Disclosures. Section (c) would clarify the definition of "disclosure" to include a formal or informal communication or transmission.

Irrefragable Proof. In *LaChance v. White*, the U.S. Court of Appeals for the Federal Circuit imposed an erroneous standard for determining when an employee makes a protected disclosure under the WPA. Under the clear language of the statute, an employee need only have a reasonable belief that he or she is providing evidence of fraud, waste or abuse to make a protected disclosure. But the court ruled that an employee had to have "irrefragable proof" meaning undeniable and incontestable proof to overcome the presumption that a public officer is performing

their duties in accordance with law. Section (d) would replace this unreasonable standard of proof by providing that a whistleblower can rebut the presumption with "substantial evidence."

Prohibited Personnel Actions. Section (e)(1) would add three actions to the list of prohibited personnel actions that may not be taken against whistleblowers for protected disclosures: enforcement of a nondisclosure policy, form or agreement; suspension, revocation, or other determination relating to an employee's security clearance; and investigation of an employee or applicant for employment due to protected whistleblowing activities.

Nondisclosure Actions Against Whistleblowers. Section (e)(2) would bar agencies from implementing or enforcing against whistleblowers any nondisclosure policy, form or agreement that fails to contain specified language preserving the right of government employees to disclose certain protected information. It would also prohibit a manager from initiating an investigation of an employee or applicant for employment because they engaged in protected activity.

Retaliations Involving Security Clearances. Section (e)(3) would make it a prohibited personnel practice for a manager to suspend, revoke or take other action with respect to an employee's security clearance in retaliation for whistleblowing. This section would also authorize the Merit Systems Protection Board (MSPB) to conduct an expedited review of such matters and issue declaratory and other appropriate relief, but would not empower MSPB to restore a security clearance. If MSPB or a reviewing court were to find that a security clearance decision was retaliatory, the agency involved would be required to review its security clearance decision and issue a report to Congress explaining it.

Exclusions from WPA. Current law allows the President to exclude certain employees and agencies from the WPA if they perform certain intelligence related or policy making functions. In 1994, Congress amended the WPA to stop agencies from removing employees from WPA coverage after the employees filed whistleblower complaints. Section (f) would also require that removal of an agency from the WPA be made prior to a personnel action being taken against a whistleblower at that agency.

Attorney Fees. The Office of Special Counsel (OSC) has authority to pursue disciplinary action against managers who retaliate against whistleblowers. Currently, if OSC loses a disciplinary case, it must pay the legal fees of those against whom it initiated the action. Because the amounts involved could significantly deplete OSC's limited resources, section (g) would require the employing agency, rather than OSC, to reimburse the manager's attorney fees.

Compensatory Damages. In the 1994 WPA amendments, Congress attempted to expand relief for whistleblowers by replacing "compensatory" damages with direct and indirect "consequential" damages. Despite Congressional intent, the Federal Circuit narrowed the scope of relief available to whistleblowers. To correct the court's misinterpretation of the law, section (h) would provide whistleblowers with relief for compensatory or consequential damages.

Burden of Proof in Disciplinary Actions. Currently, when OSC pursues disciplinary action against managers who retaliate against whistleblowers, OSC must demonstrate that an adverse personnel action would not have occurred "but for" the whistleblower's protected activity. Section (i) would establish a more reasonable burden of proof by requiring OSC to demonstrate that the whistleblower's protected disclosure was

a "motivating factor" in the decision by the manager to take the adverse action, even if other factors also motivated the decision. This burden would be similar to the approach taken in the 1991 Civil Rights Act.

Disclosures to Congress. Section (j) would require agencies to establish a process to provide confidential advice to employees on how to lawfully make a protected disclosure of classified information to Congress.

Authority of Special Counsel. Under current law, OSC has no authority to request MSPB to reconsider a decision or seek appellate review of a MSPB decision. This limitation undermines OSC's ability to protect whistleblowers and integrity of the WPA. Section (k) would authorize OSC to appear in any civil action brought in connection with the WPA and request appellate review of any MSPB order where OSC determines MSPB erred and the case would have a substantial impact on WPA enforcement.

Judicial Review. In 1982, Congress replaced normal Administrative Procedures Act appellate review of MSPB decisions with exclusive jurisdiction in the U.S. Court of Appeals for the Federal Circuit. While the 1989 WPA and its 1994 amendments strengthened and clarified whistleblower protections, Federal Circuit holdings have repeatedly misinterpreted key provisions of the law. Subject to a five year sunset, section (l) would suspend the Federal Circuit's exclusive jurisdiction over whistleblower appeals and allow petitions for review to be filed either in the Federal Circuit or any other federal circuit court of competent jurisdiction.

Nondisclosure Restrictions on Whistleblowers. Section (m) would require all federal nondisclosure policies, forms and agreements to contain specified language preserving the right of government employees to disclose certain protected information. This section would codify the so-called anti-gag provision that has been included in federal appropriations bills since 1988.

Critical Infrastructure Information. Section (n) would clarify that section 214(c) of the Homeland Security Act (HSA) maintains existing WPA rights for independently obtained information that may also qualify as critical infrastructure information under the HSA.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 164—RE-AFFIRMING SUPPORT OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE AND ANTICIPATING THE COMMEMORATION OF THE 15TH ANNIVERSARY OF THE ENACTMENT OF THE GENOCIDE CONVENTION IMPLEMENTATION OF 1987 (THE PROXIMITY ACT) ON NOVEMBER 4, 2003

Mr. ENSIGN (for himself, Mr. CORZINE, Mr. EDWARDS, Mr. BAYH, Mr. SARBANES, Mr. CONRAD, Mr. REED, Ms. LANDRIEU, Mr. JEFFORDS, Mr. KOHL, Mr. LIEBERMAN, Mr. KENNEDY, Mr. ALLEN, Mr. BIDEN, Mr. SANTORUM, Mrs. DOLE, Mrs. BOXER, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 164

Whereas, in 1948, in the shadow of the Holocaust, the international community responded to Nazi Germany's methodically or-

chestrated acts of genocide by approving the Convention on the Prevention and Punishment of the Crime of Genocide, done at Paris on December 9, 1948;

Whereas the Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide is a crime under international law, defines genocide as certain acts committed with intent to destroy a national, ethnical, racial, or religious group, and provides that parties to the Convention undertake to enact domestic legislation providing effective penalties for persons who are guilty of genocide;

Whereas the United States, under President Harry Truman, was the first nation to sign the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas the United States Senate approved the resolution of advice and consent to the Convention on the Prevention and Punishment of the Crime of Genocide on February 19, 1986;

Whereas the Genocide Convention Implementation Act of 1987 (the Proxmire Act) (Public Law 100-606), signed into law by President Ronald Reagan on November 4, 1988, enacted chapter 50A of title 18, United States Code, to criminalize genocide;

Whereas the enactment of the Genocide Convention Implementation Act marked a principled stand by the United States against the crime of genocide and an important step toward ensuring that the lessons of the Holocaust, the Armenian Genocide, and genocides in Cambodia, Rwanda and elsewhere will be used to help prevent future genocides;

Whereas a clear consensus exists within the international community against genocide, as evidenced by the fact that 133 nations are party to the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas, despite this consensus, many thousands of innocent people continue to fall victim to genocide, and the denials of past instances of genocide continue; and

Whereas November 4, 2003 is the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act); Now, therefore, be it

Resolved, That the Senate—

(1) reaffirms its support for the Convention on the Prevention and Punishment of the Crime of Genocide;

(2) anticipates the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; and

(3) encourages the people and the Government of the United States to rededicate themselves to the cause of ending the crime of genocide.

SENATE RESOLUTION 165—COMMENDING BOB HOPE FOR HIS DEDICATION AND COMMITMENT TO THE NATION

Mr. FRIST submitted the following resolution; which was considered and agreed to:

S. RES. 165

Whereas Bob Hope is unique in the history of American entertainment and a legend in vaudeville, radio, film, and television;

Whereas Bob Hope is a dedicated patriot whose unselfish and incomparable service to his adopted country inspired him, for more than six decades, from World War II to the Persian Gulf War, to travel around the world to entertain and support American service men and women;

Whereas Bob Hope has personally raised over \$1,000,000,000 for United States war relief and over seventy United States charities;

Whereas Bob Hope's life long commitment to public service has made him one of the most loved, honored, and esteemed performers in history, and has brought him the admiration and gratitude of millions and the friendship of every President of the United States since Franklin D. Roosevelt;

Whereas Bob Hope, in a generous commitment to public service, has donated his personal papers, radio and television programs, scripts, his treasured Joke File and the live appearances he made around the world in support of American Armed Forces to the Library of Congress (the "Library") and the American people;

Whereas Bob and Dolores Hope and their family have established and endowed in the Library a Bob Hope Gallery of American Entertainment—a permanent display of rotating items from the Hope Collection—and has donated a generous gift of \$3,500,000 for the preservation of the collection; and

Whereas all Americans have greatly benefited from Bob Hope's generosity, charitable work, and extraordinary creativity: Now therefore, be it

Resolved, That the Senate—

(1) commends Bob Hope for his dedication and commitment to the United States of America;

(2) expresses its sincere gratitude and appreciation for his example of philanthropy and public service to the American people; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Bob Hope.

SENATE CONCURRENT RESOLUTION 52—EXPRESSING THE SENSE OF CONGRESS THAT THE UNITED STATES GOVERNMENT SHOULD SUPPORT THE HUMAN RIGHTS AND DIGNITY OF ALL PERSONS WITH DISABILITIES BY PLEDGING SUPPORT FOR THE DRAFTING AND WORKING TOWARD THE ADOPTION OF A THEMATIC CONVENTION ON THE HUMAN RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES BY THE UNITED NATIONS GENERAL ASSEMBLY TO AUGMENT THE EXISTING UNITED NATIONS HUMAN RIGHTS SYSTEM, AND FOR OTHER PURPOSES

Mr. HARKIN (for himself, Mr. CHAFEE, and Mr. KENNEDY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 52

Whereas all people are endowed with an inestimable dignity, which is based on autonomy and self-determination, and which requires that every person be placed at the center of all decisions affecting such person, and the inherent equality of all people and the ethical requirement of every society to honor and sustain the freedom of any individual with appropriate communal support;

Whereas more than 600,000,000 people have a disability;

Whereas more than two-thirds of all persons with disabilities live in developing countries, and only 2 percent of children with disabilities in the developing world receive any education or rehabilitation;

Whereas during the last 2 decades, a substantial shift has occurred globally in governmental and nongovernmental institutions from an approach of charity toward persons with disabilities to the recognition of the inherent universal human rights of persons with disabilities;

Whereas the United Nations has authoritatively endorsed and helped to advance progress toward realizing the human rights of persons with disabilities, as exemplified by the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (adopted by the United Nations General Assembly in Resolution 48/96 of December 20, 1993), which are monitored by a United Nations Special Rapporteur;

Whereas because of the slow and uneven progress of ensuring that persons with disabilities enjoy their universal human rights in law and in practice, every society and the international community remain challenged to identify and implement the processes which best protect the dignity of persons with disabilities and which fully implement their inherent human rights;

Whereas greater and more rapid progress must be achieved toward overcoming the relative invisibility of persons with disabilities in many societies, national laws, and existing international human rights instruments; and

Whereas, accordingly, the United Nations General Assembly in November 2001, adopted an historic resolution to establish an ad hoc committee open to all United Nations member nations to consider proposals for a comprehensive and integral treaty to protect and promote the rights and dignity of persons with disabilities: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the United States should play a leading role in the drafting of a thematic United Nations convention that affirms the human rights and dignity of persons with disabilities, and that—

(A) is consistent with the spirit of the American with Disabilities Act of 1990, the United States Constitution, and other rights enjoyed by United States citizens with disabilities;

(B) promotes inclusion, independence, political enfranchisement, and economic self-sufficiency of persons with disabilities as foundational requirements for any free and just society; and

(C) provides protections that are at least as strong as the rights that are now recognized under international human rights law for other vulnerable populations; and

(2) the President should instruct the Secretary of State to send to the United Nations Ad Hoc Committee meetings a United States delegation that includes individuals with disabilities who are recognized leaders in the United States disability rights movement.

Mr. HARKIN. Mr. President, I rise to submit a concurrent resolution on behalf of myself, Senator CHAFEE and Senator KENNEDY. This resolution deals with an issue that I have been working on for many years in a bipartisan manner. It simply calls on the United States to take a leading role in the drafting of an international convention on the human rights of individuals with disabilities. Such a treaty could improve the lives of over 600 million individuals with disabilities throughout the world.

For the past twenty years, the United States has put politics aside and has taken a lead role in the world toward the understanding that disability rights are human rights. I chaired the Senate's Subcommittee on the Handicapped at the time that the Americans With Disabilities Act was being considered by Congress and was a leading author of the ADA. During

hearings, I heard over and over again stories of people with disabilities suffering from discrimination—not getting a job because of a disability; being locked up in a nursing home or institution because of a disability; not being able to get into schools, restaurants, stores, banks and other places of business because of a disability. This kind of discrimination is wrong. It is wrong in the United States and it is wrong throughout the world.

In 1990, then President Bush signed the ADA into law. He said, "This historic Act is the world's first comprehensive declaration of equality for people with disabilities. Its passage has made the United States the international leader on this human rights issue." The United States did lead the way in 1990, and it has another historic opportunity to lead the way today.

The issue of disability rights is very personal to me. As many of my colleagues know, my brother Frank was deaf. Because of his disability, he was sent to a school for the "deaf and dumb" across the State. Frank said to me, "I may be deaf but I am not dumb." I think of how many children, like Frank, in the world are suffering the effects of this sort of discrimination. How many children are not going to school because they are deaf, or use a wheelchair, or are blind? How many adults with these same disabilities are not working, not earning a living, not participating in civil society?

In recent months, we have all witnessed the situation people with disabilities face in Iraq and in Afghanistan. We have seen footage of the results of the tyranny of Saddam Hussein. We have seen many individuals who have life-long disabilities as a result of his cruelty. Many more are victims of terrorism and cruelty who now suffer the added injury of discrimination.

America has an historic opportunity to help change the lives of these children and adults from around the world and open the doors of opportunity to them. It is time for the world community to come together and write an important new chapter and break down the barriers that prevent people with disabilities from participating in their communities and play an active role in civil society. It is time to say to all of the world that disability rights are human rights, not just in the United States, but everywhere in the world. I strongly urge the Bush Administration to take a lead and work with other member Nations in the drafting of this resolution. Under the auspices of the United Nations, member states are scheduled to meet next week in New York to consider proposals for a comprehensive treaty to protect and promote the rights and dignity of persons with disabilities. I cannot think of a more worthwhile role the Administration could play than to be a leader on this issue and to fully support a convention on the rights of individuals with disabilities.

America's leadership in this process will help create a treaty that is both well intentioned and relevant, one that may fulfill its potential and vastly improve the perceptions, treatment and conditions of people with disabilities throughout the world. The United States must continue to lead the way in this important international effort.

AMENDMENTS SUBMITTED & PROPOSED

SA 871. Ms. LANDRIEU (for herself, Mr. SPECTER, Mr. BINGAMAN, Ms. COLLINS, Mr. ALEXANDER, and Mr. BUNNING) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes.

SA 872. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 873. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 874. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 875. Mr. WYDEN (for himself, Mr. SUNUNU, Mr. BINGAMAN, Mr. ENSIGN, Mr. REID, Mr. FEINGOLD, Mr. JEFFORDS, and Ms. SNOWE) proposed an amendment to the bill S. 14, supra.

SA 876. Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, and Mr. LEAHY) proposed an amendment to the bill S. 14, supra.

SA 877. Mr. REID proposed an amendment to amendment SA 876 proposed by Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, and Mr. LEAHY) to the bill S. 14, supra.

TEXT OF AMENDMENTS

SA 871. Ms. LANDRIEU (for herself, Mr. SPECTER, Mr. BINGAMAN, Ms. COLLINS, Mr. ALEXANDER, and Mr. BUNNING) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

On page 238, between lines 2 and 3, insert the following:

Subtitle E—Measures to Conserve Petroleum
SEC. ____ . REDUCTION OF DEPENDENCE ON IMPORTED PETROLEUM.

(a) REPORT.—

(1) IN GENERAL.—Not later than February 1, 2004, and annually thereafter, the President shall submit to Congress a report, based on the most recent edition of the Annual Energy Outlook published by the Energy Information Administration, assessing the progress made by the United States toward the goal of reducing dependence on imported petroleum sources by 2013.

(2) CONTENTS.—The report under subsection (a) shall—

(A) include a description of the implementation, during the previous fiscal year, of provisions under this Act relating to domestic crude petroleum production;

(B) assess the effectiveness of those provisions in meeting the goal described in paragraph (1); and

(C) describe the progress in developing and implementing measures under subsection (b).

(b) MEASURES TO REDUCE IMPORT DEPENDENCE THROUGH INCREASED DOMESTIC PETROLEUM CONSERVATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President shall develop and implement measures to conserve petroleum in end-uses throughout the economy of the United States sufficient to reduce total demand for petroleum in the United States by 1,000,000 barrels per day from the amount projected for calendar year 2013 in the reference case contained in the report of the Energy Information Administration entitled “Annual Energy Outlook 2003”.

(2) CONTENTS.—The measures under paragraph (1) shall be designed to ensure continued reliable and affordable energy for consumers.

(3) IMPLEMENTATION.—The measures under paragraph (1) shall be implemented under existing authorities of appropriate Federal executive agencies identified by the President.

SA 872. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 165 after line 14 insert:

(d) LICENSE TERMS.—Section 6 and section 101(i) of the Federal Power Act (16 U.S.C. 799 and 803(i) are each amended by striking “fifty” and inserting “thirty” and section 15(e) of such Act is amended by striking “not less than 30 years, nor more than 50” and inserting “not more than 15.”

SA 873. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 165 after line 14 insert:

(d) ANNUAL LICENSES.—Section 15(a)(1) of the Federal Power Act (16 U.S.C. 808(a)(1) is amended by adding the following at the end thereof: “Annual licenses shall contain such terms and conditions appropriate for the duration of the annual license which are identified by the Secretary of the Interior and the Secretary of Agriculture as necessary for the protection and utilization of the reservation within which the project is located; by the Secretary of the Interior and the Secretary of Commerce for the protection and enhancement of fish and wildlife, including related spawning grounds and habitat; and by the Governor of the State in which the project is located for compliance with water quality standards and other legal requirements for beneficial uses of affected waters. The terms of any new license for a project shall be reduced by one year for each annual license issued for such project.”

SA 874. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, strike line 11 and all that follows through line 17 and insert:

“(f) EFFECT ON EXISTING LAW.—

“(1) Nothing in this section shall relieve the Secretary of any obligation to conduct environmental or other reviews or take any other actions required of the Secretary as of the date of enactment of this section for activities on tribal lands pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 2901 et seq.); the Clean Air Act (42

U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); the Endangered Species Act (16 U.S.C. 1531 et seq.); or any other Federal law for the protection of the environment or environmental quality.

“(2) Nothing in this section affects the application of—

“(A) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.);

“(B) the Atomic Energy Act of 1954 (42 U.S.C. 2011) or any Federal law respecting nuclear or radioactive waste or mining of radioactive materials; or

“(C) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).”

SA 875. Mr. WYDEN (for himself, Mr. SUNUNU, Mr. BINGAMAN, Mr. ENSIGN, Mr. REID, Mr. FEINGOLD, Mr. JEFFORDS, and Ms. SNOWE) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

Strike subtitle B of title IV.

SA 876. Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, and Mr. LEAHY) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

At the end, add the following:

TITLE ___—ENERGY MARKET OVERSIGHT
SEC. ___01. JURISDICTION OF THE FEDERAL ENERGY REGULATORY COMMISSION OVER ENERGY TRADING MARKETS.

Section 402 of the Department of Energy Organization Act (42 U.S.C. 7172) is amended by adding at the end the following:

“(i) JURISDICTION.—

“(1) REFERRAL.—

“(A) IN GENERAL.—To the extent that the Commission determines that any contract that comes before the Commission is not under the jurisdiction of the Commission, the Commission shall refer the contract to the appropriate Federal agency.

“(B) NO EFFECT ON AUTHORITY.—The authority of the Commission or any Federal agency shall not be limited or otherwise affected based on whether the Commission has or has not referred a contract described in subparagraph (A).

“(2) MEETINGS.—A designee of the Commission shall meet quarterly with a designee of the Commodity Futures Trading Commission, the Securities Exchange Commission, the Federal Trade Commission, the Department of Justice, the Department of the Treasury, and the Federal Reserve Board to discuss—

“(A) conditions and events in energy trading markets; and

“(B) any changes in Federal law (including regulations) that may be appropriate to regulate energy trading markets.

“(3) LIAISON.—The Commission shall, in cooperation with the Commodity Futures Trading Commission, maintain a liaison between the Commission and the Commodity Futures Trading Commission.”

SEC. ___02. INVESTIGATIONS BY THE FEDERAL ENERGY REGULATORY COMMISSION UNDER THE NATURAL GAS ACT AND FEDERAL POWER ACT.

(a) INVESTIGATIONS UNDER THE NATURAL GAS ACT.—Section 14(c) of the Natural Gas Act (15 U.S.C. 717m(c)) is amended—

(1) by striking “(c) For the purpose of” and inserting the following:

“(c) TAKING OF EVIDENCE.—

“(1) IN GENERAL.—For the purpose of”;

(2) by striking “Such attendance” and inserting the following:

“(2) NO GEOGRAPHIC LIMITATION.—The attendance”;

(3) by striking “Witnesses summoned” and inserting the following:

“(3) EXPENSES.—Any witness summoned”; and

(4) by adding at the end the following:

“(4) AUTHORITIES.—The exercise of the authorities of the Commission under this subsection shall not be subject to the consent of the Office of Management and Budget.”

(b) INVESTIGATIONS UNDER THE FEDERAL POWER ACT.—Section 307(b) of the Federal Power Act (16 U.S.C. 825f(b)) is amended—

(1) by striking “(b) For the purpose of” and inserting the following:

“(b) TAKING OF EVIDENCE.—

“(1) IN GENERAL.—For the purpose of”;

(2) by striking “Such attendance” and inserting the following:

“(2) NO GEOGRAPHIC LIMITATION.—The attendance”;

(3) by striking “Witnesses summoned” and inserting the following:

“(3) EXPENSES.—Any witness summoned”; and

(4) by adding at the end the following:

“(4) AUTHORITIES.—The exercise of the authorities of the Commission under this subsection shall not be subject to the consent of the Office of Management and Budget.”

SEC. ___03. CONSULTING SERVICES.

Title IV of the Department of Energy Organization Act (42 U.S.C. 7171 et seq.) is amended by adding at the end the following: “**SEC. 408. CONSULTING SERVICES.**

“(a) IN GENERAL.—The Chairman may contract for the services of consultants to assist the Commission in carrying out any responsibilities of the Commission under this Act, the Federal Power Act (16 U.S.C. 791a et seq.), or the Natural Gas Act (15 U.S.C. 717 et seq.).

“(b) APPLICABLE LAW.—In contracting for consultant services under subsection (a), if the Chairman determines that the contract is in the public interest, the Chairman, in entering into a contract, shall not be subject to—

“(1) section 5, 253, 253a, or 253b of title 41, United States Code; or

“(2) any law (including a regulation) relating to conflicts of interest.”

SEC. ___04. LEGAL CERTAINTY FOR TRANSACTIONS IN EXEMPT COMMODITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking subsections (g) and (h) and inserting the following:

“(g) OFF-EXCHANGE TRANSACTIONS IN EXEMPT COMMODITIES.—

“(1) DEFINITIONS.—In this subsection:

“(A) COVERED ENTITY.—The term ‘covered entity’ means—

“(i) an electronic trading facility; and

“(ii) a dealer market.

“(B) DEALER MARKET.—

“(i) IN GENERAL.—The term ‘dealer market’ has the meaning given the term by the Commission.

“(ii) INCLUSIONS.—The term ‘dealer market’ includes each bilateral or multilateral agreement, contract, or transaction determined by the Commission, regardless of the means of execution of the agreement, contract, or transaction.

“(2) EXEMPTION FOR TRANSACTIONS NOT ON TRADING FACILITIES.—Except as provided in paragraph (4), nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity that—

“(A) is entered into solely between persons that are eligible contract participants at the

time the persons enter into the agreement, contract, or transaction; and

“(B) is not entered into on a trading facility.

“(3) EXEMPTION FOR TRANSACTIONS ON COVERED ENTITIES.—Except as provided in paragraphs (4), (5), and (7), nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity that is—

“(A) entered into on a principal-to-principal basis solely between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

“(B) executed or traded on a covered entity.

“(4) REGULATORY AND OVERSIGHT REQUIREMENTS.—

“(A) IN GENERAL.—An agreement, contract, or transaction described in paragraph (2) or (3) (and the covered entity on which the agreement, contract, or transaction is executed) shall be subject to—

“(i) sections 5b, 12(e)(2)(B), and 22(a)(4);

“(ii) the provisions relating to manipulation and misleading transactions under sections 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6c, 6d, 8a, and 9(a)(2); and

“(iii) the provisions relating to fraud and misleading transactions under sections 4b, 4c(a), 4c(b), 4o, and 8a.

“(B) TRANSACTIONS EXEMPTED BY COMMISSION ACTION.—Notwithstanding any exemption by the Commission under section 4(C), an agreement, contract, or transaction described in paragraph (2) or (3) shall be subject to the authorities in clauses (i), (ii), and (iii) of subparagraph (A).

“(5) COVERED ENTITIES.—An agreement, contract, or transaction described in paragraph (3) and the covered entity on which the agreement, contract, or transaction is executed, shall be subject to (to the extent the Commission determines appropriate)—

“(A) section 5a, to the extent provided in section 5a(g) and 5d;

“(B) consistent with section 4i, a requirement that books and records relating to the business of the covered entity on which the agreement, contract, or transaction is executed be made available to representatives of the Commission and the Department of Justice for inspection for a period of at least 5 years after the date of each transaction, including—

“(i) information relating to data entry and transaction details sufficient to enable the Commission to reconstruct trading activity on the covered entity; and

“(ii) the name and address of each participant on the covered entity authorized to enter into transactions; and

“(C) in the case of a transaction or covered entity performing a significant price discovery function for transactions in the cash market for the underlying commodity, subject to paragraph (6), the requirements (to the extent the Commission determines appropriate by regulation) that—

“(i) information on trading volume, settlement price, open interest, and opening and closing ranges be made available to the public on a daily basis;

“(ii) notice be provided to the Commission in such form as the Commission may require;

“(iii) reports be filed with the Commission (such as large trader position reports); and

“(iv) consistent with section 4i, books and records be maintained relating to each transaction in such form as the Commission may require for a period of at least 5 years after the date of the transaction.

“(6) PROPRIETARY INFORMATION.—In carrying out paragraph (5)(C), the Commission shall not—

“(A) require the real-time publication of proprietary information;

“(B) prohibit the commercial sale or licensing of real-time proprietary information; and

“(C) publicly disclose information regarding market positions, business transactions, trade secrets, or names of customers, except as provided in section 8.

“(7) NOTIFICATION, DISCLOSURES, AND OTHER REQUIREMENTS FOR COVERED ENTITIES.—A covered entity subject to the exemption under paragraph (3) shall (to the extent the Commission determines appropriate)—

“(A) notify the Commission of the intention of the covered entity to operate as a covered entity subject to the exemption under paragraph (3), which notice shall include—

“(i) the name and address of the covered entity and a person designated to receive communications from the Commission;

“(ii) the commodity categories that the covered entity intends to list or otherwise make available for trading on the covered entity in reliance on the exemption under paragraph (3);

“(iii) certifications that—

“(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the covered entity is a person described in any of subparagraphs (A) through (H) of section 8a(2);

“(II) the covered entity will comply with the conditions for exemption under this subsection; and

“(III) the covered entity will notify the Commission of any material change in the information previously provided by the covered entity to the Commission under this paragraph; and

“(iv) the identity of any derivatives clearing organization to which the covered entity transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the covered entity subject to the exemption under paragraph (3);

“(B)(i) provide the Commission with access to the trading protocols of the covered entity and electronic access to the covered entity with respect to transactions conducted in reliance on the exemption under paragraph (3); and

“(ii) on special call by the Commission, provide to the Commission, in a form and manner and within the period specified in the special call, such information relating to the business of the covered entity as a covered entity exempt under paragraph (3), including information relating to data entry and transaction details with respect to transactions entered into in reliance on the exemption under paragraph (3), as the Commission may determine appropriate—

“(I) to enforce the provisions specified in paragraph (4);

“(II) to evaluate a systemic market event; or

“(III) to obtain information requested by a Federal financial regulatory authority to enable the authority to fulfill the regulatory or supervisory responsibilities of the authority;

“(C)(i) on receipt of any subpoena issued by or on behalf of the Commission to any foreign person that the Commission believes is conducting or has conducted transactions in reliance on the exemption under paragraph (3) on or through the covered entity relating to the transactions, promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner that is reasonable under the circumstances, or as specified by the Commission; and

“(ii) if the Commission has reason to believe that a person has not timely complied with a subpoena issued by or on behalf of the Commission under clause (i), and the Commission in writing directs that a covered en-

tity relying on the exemption under paragraph (3) deny or limit further transactions by the person, deny that person further trading access to the covered entity or, as applicable, limit that access of the person to the covered entity for liquidation trading only;

“(D) comply with the requirements of this subsection applicable to the covered entity and require that each participant, as a condition of trading on the covered entity in reliance on the exemption under paragraph (3), agree to comply with all applicable law;

“(E) certify to the Commission that the covered entity has a reasonable basis for believing that participants authorized to conduct transactions on the covered entity in reliance on the exemption under paragraph (3) are eligible contract participants;

“(F) maintain sufficient capital, commensurate with the risk associated with transactions conducted on the covered entity; and

“(G) not represent to any person that the covered entity is registered with, or designated, recognized, licensed, or approved by the Commission.

“(8) HEARING.—A person named in a subpoena referred to in paragraph (7)(C) that believes the person is or may be adversely affected or aggrieved by action taken by the Commission under this subsection, shall have the opportunity for a prompt hearing after the Commission acts under procedures that the Commission shall establish by rule, regulation, or order.

“(9) PRIVATE REGULATORY ORGANIZATIONS.—

“(A) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—A covered entity may comply with any core principle under subparagraph (B) that is applicable to the covered entity through delegation of any relevant function to—

“(i) a registered futures association under section 17; or

“(ii) another registered entity.

“(B) CORE PRINCIPLES.—The Commission may establish core principles requiring a covered entity to monitor trading to—

“(i) prevent fraud and manipulation;

“(ii) prevent price distortion and disruptions of the delivery or cash settlement process;

“(iii) ensure that the covered entity has adequate financial, operational, and managerial resources to discharge the responsibilities of the covered entity; and

“(iv) ensure that all reporting, record-keeping, notice, and registration requirements under this subsection are discharged in a timely manner.

“(C) RESPONSIBILITY.—A covered entity that delegates a function under subparagraph (A) shall remain responsible for carrying out the function.

“(D) NONCOMPLIANCE.—If a covered entity that delegates a function under subparagraph (A) becomes aware that a delegated function is not being performed as required under this Act, the covered entity shall promptly take action to address the non-compliance.

“(E) VIOLATION OF CORE PRINCIPLES.—

“(i) IN GENERAL.—If the Commission determines, on the basis of substantial evidence, that a covered entity is violating any applicable core principle specified in subparagraph (B), the Commission shall—

“(I) notify the covered entity in writing of the determination; and

“(II) afford the covered entity an opportunity to make appropriate changes to bring the covered entity into compliance with the core principles.

“(ii) FAILURE TO MAKE CHANGES.—If, not later than 30 days after receiving a notification under clause (i)(I), a covered entity fails to make changes that, as determined by the Commission, are necessary to comply with the core principles, the Commission may

take further action in accordance with this Act.

“(F) RESERVATION OF EMERGENCY AUTHORITY.—Nothing in this paragraph limits or affects the emergency powers of the Commission provided under section 8a(9).

“(10) NO EFFECT ON OTHER AUTHORITY.—This subsection shall not affect the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).”

SEC. 05. PROHIBITION OF FRAUDULENT TRANSACTIONS.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by striking subsection (a) and inserting the following:

“(a) PROHIBITION.—It shall be unlawful for any person, directly or indirectly, in or in connection with any account, or any offer to enter into, the entry into, or the confirmation of the execution of, any agreement, contract, or transaction subject to this Act—

“(1) to cheat or defraud or attempt to cheat or defraud any person (but this paragraph does not impose on parties to transactions executed on or subject to the rules of designated contract markets or registered derivative transaction execution facilities a legal duty to provide counterparties or any other market participants with any material market information);

“(2) willfully to make or cause to be made to any person any false report or statement, or willfully to enter or cause to be entered for any person any false record (but this paragraph does not impose on parties to transactions executed on or subject to the rules of designated contract markets or registered derivative transaction execution facilities a legal duty to provide counterparties or any other market participants with any material market information);

“(3) willfully to deceive or attempt to deceive any person by any means whatsoever (but this paragraph does not impose on parties to transactions executed on or subject to the rules of designated contract markets or registered derivative transaction execution facilities a legal duty to provide counterparties or any other market participants with any material market information); or

“(4) except as permitted in written rules of a board of trade designated as a contract market or derivatives transaction execution facility on which the agreement, contract, or transaction is traded and executed—

“(A) to bucket an order;

“(B) to fill an order by offset against 1 or more orders of another person; or

“(C) willfully and knowingly, for or on behalf of any other person and without the prior consent of the person, to become—

“(i) the buyer with respect to any selling order of the person; or

“(ii) the seller with respect to any buying order of the person.”

SEC. 06. FERC LIAISON.

Section 2(a)(9) of the Commodity Exchange Act (7 U.S.C. 2(a)(9)) is amended by adding at the end the following:

“(C) LIAISON WITH FEDERAL ENERGY REGULATORY COMMISSION.—The Commission shall, in cooperation with the Federal Energy Regulatory Commission, maintain a liaison between the Commission and the Federal Energy Regulatory Commission.”

SEC. 07. CRIMINAL AND CIVIL PENALTIES.

(a) ENFORCEMENT POWERS OF COMMISSION.—Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended in paragraph (3) of the tenth sentence—

(1) by inserting “(A)” after “assess such person”; and

(2) by inserting after “each such violation” the following: “, or (B) in any case of manip-

ulation of, or attempt to manipulate, the price of any commodity, a civil penalty of not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation.”

(b) MANIPULATIONS AND OTHER VIOLATIONS.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence—

(1) by striking “paragraph (a) or (b) of section 9 of this Act” and inserting “subsection (a), (b), or (f) of section 9”; and

(2) by striking “said paragraph 9(a) or 9(b)” and inserting “subsection (a), (b), or (f) of section 9”.

(c) NONENFORCEMENT OF RULES OF GOVERNMENT OR OTHER VIOLATIONS.—Section 6b of the Commodity Exchange Act (7 U.S.C. 13a) is amended—

(1) in the first sentence—

(A) by inserting “section 2(g)(9),” after “sections 5 through 5c.”; and

(B) by inserting before the period at the end the following: “, or, in any case of manipulation of, or an attempt to manipulate, the price of any commodity, a civil penalty of not more than \$1,000,000 for each such violation”; and

(2) in the second sentence, by inserting before the period at the end the following: “, except that if the failure or refusal to obey or comply with the order involved any offense under section 9(f), the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 9(f)”.

(d) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a-1(d)) is amended by striking “(d)” and all that follows through the end of paragraph (1) and inserting the following:

“(d) CIVIL PENALTIES.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

“(1) a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation; or

“(2) in any case of manipulation of, or an attempt to manipulate, the price of any commodity, a civil penalty in the amount of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each violation.”

(e) VIOLATIONS GENERALLY.—Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(1) by redesignating subsection (f) as subsection (e); and

(2) by adding at the end the following:

“(f) PRICE MANIPULATION.—It shall be a felony punishable by a fine of not more than \$1,000,000 for each violation or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for any person—

“(1) to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity;

“(2) to corner or attempt to corner any such commodity;

“(3) knowingly to deliver or cause to be delivered (for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication) false or misleading or knowingly inaccurate reports concerning market information or conditions that affect or tend to affect the price of any commodity in interstate commerce; or

“(4) knowingly to violate section 4 or 4b, any of subsections (a) through (e) of subsection 4c, or section 4h, 4o(1), or 19.”

SEC. 08. CONFORMING AMENDMENTS.

(a) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) in subsection (d)(1), by striking “section 5b” and inserting “section 5a(g), 5b.”;

(2) in subsection (e)—

(A) in paragraph (1), by striking “, 2(g), or 2(h)(3)”;

(B) in paragraph (3), by striking “2(h)(5)” and inserting “2(g)(7)”;

(3) by redesignating subsection (i) as subsection (h); and

(4) in subsection (h) (as redesignated by subparagraph (C))—

(A) in paragraph (1)—

(i) by striking “No provision” and inserting “IN GENERAL.—Subject to subsection (g), no provision”; and

(ii) in subparagraph (A)—

(I) by striking “section 2(c), 2(d), 2(e), 2(f), or 2(g) of this Act” and inserting “subsection (c), (d), (e), or (f)”;

(II) by striking “section 2(h)” and inserting “subsection (g)”;

(B) in paragraph (2), by striking “No provision” and inserting “IN GENERAL.—Subject to subsection (g), no provision”.

(b) Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended in the first sentence by inserting “, or pursuant to an exemption under section 4(c)” after “transaction execution facility”.

(c) Section 8a(9) of the Commodity Exchange Act (7 U.S.C. 12a(9)) is amended—

(1) by inserting “or covered entity under section 2(g)” after “direct the contract market”;

(2) by striking “on any futures contract”; and

(3) by inserting “or covered entity under section 2(g)” after “given by a contract market”.

SA 877. Mr. REID proposed an amendment to amendment SA 876 proposed by Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, and Mr. LEAHY) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

On page 17 after line 25.

“(10) APPLICABILITY.—This subsection does not apply to any agreement, contract, or transaction in metals.”

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, June 10, 2003, at 9:30 a.m., in closed session to receive testimony on certain intelligence programs.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 10, 2003, at 10:00 a.m. to conduct an oversight hearing on “The Administration’s Proposal for Re-authorization of The Federal Public Transportation Program.”

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

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, June 10, 2003, at 9:30 a.m., on Reauthorization of the Federal Motor Carrier Administration.

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

SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND
WATER

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the Subcommittee on Fisheries, Wildlife, and Water be authorized to meet on Tuesday, June 10 at 10 a.m., to conduct a hearing to receive testimony regarding the current regulatory and legal status of federal jurisdiction of navigable waters under the Clean Water Act, in light of the issues raised by the Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers No. 99-1178*.

The hearing will take place in Senate Dirksen 406.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the Subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, June 10, 2003, at 2:30 p.m., in room SD-366 to receive testimony on the following bills: S. 499, to authorize the American Battle Monuments Commission to establish in the State of Louisiana a Memorial to honor the Buffalo Soldiers; S. 546, to provide for the protection of paleontological resources on Federal lands, and for other purposes; S. 643, to authorize the Secretary of the Interior, in cooperation with the University of New Mexico, to construct and occupy a portion of the Hibben Center for Archaeological Research at the University of New Mexico, and for other purposes; S. 677, to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes; S. 1060 and H.R. 1577, to designate the visitors' center at Organ Pipe Cactus National Monument, Arizona, as the "Kris Eggle Visitors' Center"; H.R. 255, to authorize the Secretary of the Interior to grant an easement to facilitate access to the Lewis and Clark Interpretive Center in Nebraska City, Nebraska, and H.R. 1012, to establish the Carter G. Woodson Home National Historic Site in the District of Columbia, and for other purposes.

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

PRIVILEGE OF THE FLOOR

Ms. LANDRIEU. Mr. President, I ask unanimous consent that Tanner John-

son and Neil Naraine of my staff be granted floor privileges.

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

UNANIMOUS CONSENT REQUEST—
S. 1215

Mr. MCCONNELL. Mr. President, we have been negotiating all day with Senator BAUCUS, the ranking member of the Finance Committee, in the hopes of getting the Burma bill cleared, but, regretfully, that has not occurred yet.

Time is passing. I was at a meeting with the President just an hour ago. He brought up the issue. Both the Republican and Democratic leaders of the Senate are in favor of this bill. Both the chairman and the ranking member of the Foreign Relations Committee are in favor of this bill. My good friend, the assistant Democratic leader, is in favor of this bill. It is time to pass it.

We have been protecting, under a rule XIV procedure, the possibility of going to this bill tomorrow. But I must say, I think it would be a lot better to go to it tonight. So I have notified the Senator from Nevada that I am going to make the following unanimous consent request, and I will do that at this point.

Mr. President, I ask unanimous consent that tomorrow, at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the immediate consideration of S. 1215, the Burma sanctions bill, under the following conditions: 1 hour of debate equally divided in the usual form; that upon the use or yielding back of time, the Senate proceed to a vote in relation to the measure, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have been told by Senator BAUCUS and Senator GRASSLEY that they object to this. I would say this, however; that people in Burma, toward whom this is directed, should not rest easy. We are going to figure out a way to have this matter brought before the Senate.

I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, let me say to my good friend from Nevada, I have not heard from Senator GRASSLEY. I keep hearing from the other side that Senator GRASSLEY objects, but I have not heard that, nor have floor staff been informed that he does. But either way, it is time to move forward, and it needs to be done this week, and should be done with a tight time agreement and a rollcall vote.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, as in executive session, I ask unanimous

consent that at 11 o'clock a.m., on Wednesday, June 11, the Senate proceed to executive session for the consideration of Calendar No. 220, the nomination of Richard Wesley, to be United States Circuit Judge for the Second Circuit; provided further that there then be 15 minutes for debate equally divided between the chairman and ranking member prior to a vote on the confirmation of the nomination, with no intervening action or debate. I further ask consent that following the vote, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I ask the Senator to modify his request to allow the chairman and ranking member, or their designees, to control the time. I also say this: If he accepts that modification, this will be the 129th judge we will have approved during the tenure of President Bush, and this will be the 36th circuit judge.

Mr. MCCONNELL. Mr. President, I so modify my unanimous consent request.

The PRESIDING OFFICER. Is there objection to the modified request?

Without objection, it is so ordered.

ROBERT P. HAMMER POST OFFICE
BUILDING

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 1625, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1625) to designate the facility of the United States Postal Service located at 1114 Main Avenue in Clifton, New Jersey, as the "Robert P. Hammer Post Office Building."

There being no objection, the Senate proceeded to consider the bill.

Mr. LAUTENBERG. Mr. President, I am delighted that the Senate is poised to pass H.R. 1625, a bill to designate the United States Post Office located at 1114 Main Avenue in Clifton, NJ, as the "Robert P. Hammer Post Office Building."

Robert Hammer was a dedicated public official, working as City Manager of Clifton, NJ, for 7 years before his death last December at the age of 54. Among the many accomplishments during his tenure, Bob Hammer oversaw a nationally recognized recycling program and helped improve town parks and playgrounds.

It is particularly gratifying that the Senate will pass this measure in time for the facility's dedication ceremony this Saturday, June 14. It will mean so much to Bob's family to have this bill passed in time for the dedication.

I also thank Senator COLLINS and Senator LIEBERMAN for their help in

getting this measure passed so expeditiously.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The bill (H.R. 1625) was read the third time and passed.

COMMENDING BOB HOPE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 165 which was submitted earlier today.

The PRESIDING OFFICER (Mr. TALENT). The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 165) commending Bob Hope for his dedication and commitment to the Nation.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. 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. 165) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 165

Whereas Bob Hope is unique in the history of American entertainment and a legend in vaudeville, radio, film, and television;

Whereas Bob Hope is a dedicated patriot whose unselfish and incomparable service to his adopted country inspired him, for more than six decades, from World War II to the Persian Gulf War, to travel around the world to entertain and support American service men and women;

Whereas Bob Hope has personally raised over \$1,000,000,000 for United States war relief and over 70 United States charities;

Whereas Bob Hope's life-long commitment to public service has made him one of the most loved, honored, and esteemed performers in history, and has brought him the admiration and gratitude of millions and the

friendship of every President of the United States since Franklin D. Roosevelt;

Whereas Bob Hope, in a generous commitment to public service, has donated his personal papers, radio and television programs, scripts, his treasured Joke File and the live appearances he made around the world in support of American Armed Forces to the Library of Congress (the "Library") and the American people;

Whereas Bob and Dolores Hope and their family have established and endowed in the Library a Bob Hope Gallery of American Entertainment—a permanent display of rotating items from the Hope Collection—and has donated a generous gift of \$3,500,000 for the preservation of the collection; and

Whereas all Americans have greatly benefited from Bob Hope's generosity, charitable work and extraordinary creativity: Now, therefore be it

Resolved, That the Senate—

(1) commends Bob Hope for his dedication and commitment to the United States of America;

(2) expresses its sincere gratitude and appreciation for his example of philanthropy and public service to the American people; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Bob Hope.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h-276k, as amended, appoints the following Senators as members of the Senate Delegation to the Mexico-U.S. Inter-parliamentary Group during the First Session of the 108th Congress: The Senator from Tennessee, Mr. FRIST; the Senator from Tennessee, Mr. ALEXANDER; and the Senator from Texas, Mr. CORNYN.

ORDERS FOR WEDNESDAY, JUNE 11, 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Wednesday, June 11. I further ask unanimous consent that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 10 a.m., with the time equally divided between the two leaders or their designees; provided that at

10 a.m., the Senate resume consideration of S. 14, the Energy Bill.

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

PROGRAM

Mr. MCCONNELL. For the information of all Senators, tomorrow morning, following a period of morning business, the Senate will resume consideration of S. 14, the Energy Bill. Under a previous consent, at 11 the Senate will proceed to executive session and debate the nomination of Richard C. Wesley to be a U.S. circuit judge. The Senate will vote on the Wesley nomination at 11:15 tomorrow morning. Following that vote, the Senate will return to the Energy Bill.

There are currently two amendments relating to derivatives pending to that bill. It is my hope that if we cannot work out an agreement with respect to these amendments, we will be able to set the amendments aside and proceed with other energy-related amendments. We have made pretty good progress on the Energy Bill over the past week. We should continue to address and dispose of as many amendments as possible. Therefore, Senators should expect roll-call votes throughout the day tomorrow in relation to amendments to that bill.

I also inform all of my colleagues that we anticipate locking in a final list of amendments to the Energy Bill during tomorrow's session.

In addition to considering amendments to the Energy Bill, it remains my hope that we will be able to take up and pass the Burma sanctions bill tomorrow. We should have done it today. Hopefully we can do it tomorrow. There is currently, as the Senator from Nevada and I have discussed, difficulty in clearing that with Senator BAUCUS, and hopefully that will be cleared up by tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:08 p.m., adjourned until Wednesday, June 11, 2003, at 9:30 a.m.