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Senate

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

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Immortal, invisible, God only wise, great are the works of Your hands and of Your heart. Teach us to live to please You. As we labor, may our focus be on Your priorities and Your providence. During moments of confusion, help us to whisper a prayer for wisdom. Remind us to set our affection on the things above that will live beyond time into eternity.

Give our Senators and all who serve You on Capitol Hill the awareness of their accountability to You. Help us to remember that we are accountable for every idle word. Empower us to weigh our faults, to measure our words, and to labor in a way that will bring You pleasure. Increase Your presence in our lives and in this Chamber that Your power may be felt by all who need Your touch.

We pray today for those who mourn, particularly for the family of Bob Bean. Sustain them in their grief. We pray this in Your holy Name. 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 Republic 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 first 90 minutes will be devoted to a period of morning business, the first 45 minutes controlled by the minority leader or his designee, with the final 45 minutes controlled by the majority side of the aisle. Following morning business, we will consider S. 15, the bioshield bill. Last night we reached agreement to allow for up to 2 hours of debate and a vote on passage of this important piece of legislation. We have been working on bringing the bioshield bill to the Senate floor for quite some time. I am pleased we are finally able to vote on passage on this measure.

Following passage of Project Bioshield, we will resume consideration of the Department of Defense authorization. Pending is the Lautenberg amendment on sanctions. That amendment has been under review, and Members may well want to speak on that issue.

Yesterday Chairman WARNER indicated it was his desire to reach agreement for an amendment filing deadline. I hope that is possible. We should set a time certain for Senators to file their defense amendments to the bill so the two managers may begin to try to clear amendments on both sides of the aisle.

Finally, I remind everyone we will be scheduling votes on judicial nominations as we go forward, and rollcall votes will be anticipated throughout the day.

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, I ask unanimous consent that the morning business period be extended until 11:30 this morning with the additional time equally divided; further, that at 11:30 the Senate begin S. 15 as under the order.

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

PRISONER ABUSE AT ABU GHRAIB

Mr. FRIST. Mr. President, very briefly, I want to comment on what has been a real focus for the Senate and our various committees; that is, the revelations of abuse at the Abu Ghraib prison in Iraq. It has been a shock to the Nation and indeed to the world. The photographs we reviewed last week are appalling to all of us. America is clearly outraged at the scandal, ashamed, as we all should be. But it all centers on the fact that a very few have tarnished the reputations and the honor of a great many people representing the United States of America.

That is why this body, the Senate, has and must continue to act swiftly and fully investigate, to the best of our ability, the incidents of abuse at the Abu Ghraib prison and hold accountable those responsible and take bold corrective actions where necessary to ensure that those incidents never occur again.

This body has acted in a quick and deliberate manner to get to the bottom of this matter. Over the past 2 weeks, we have had a series of hearings. There is a hearing going on in Armed Services now, the second day the Senate Armed Services Committee has held a meeting. The Intelligence Committee held their hearings. The Appropriations Committee has continued to hear from the Defense Department and other agencies on the matter. Our committees are working aggressively in terms of oversight, taking very appropriate action. We have received hours of testimony from administration officials and senior military officers. Members have had the opportunity to review the photos that depict some of the offensive acts.

This morning, for the last hour, the Armed Services Committee has been holding a hearing. The witnesses include General Abizaid, Commander of Central Command; Lieutenant General Sanchez, Commander of the coalition

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

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forces in Iraq; and Major General Miller, who is now in charge of the Abu Ghraib prison.

I mention all of this because we are aggressively investigating and the Defense Department is cooperating fully in these inquiries and has been responsive to all of our requests. I am confident the Defense Department is investigating this matter thoroughly, both within and its relationships to other agencies as well. I am confident they are taking actions to ensure these acts never occur again. This is all essential if we will be successful, which I know we can be, in bringing democracy and the rule of law to Iraq and restoring the respect and confidence many people have historically had in our military.

Last week Secretary Rumsfeld's trip with General Myers occurred. That was a very important trip. It was a boost to the morale of the thousands and thousands of Americans who are serving so nobly in Iraq, our men and women who are fighting for democracy and freedom. I commend the Secretary and General Myers for making the trip.

Secretary Rumsfeld has demonstrated tremendous leadership throughout the last several weeks and months and tremendous character in his presentations, helping us to understand what happened there so we can all take corrective action. I commend Secretary Rumsfeld for his tremendous leadership and courage in addressing this matter of prisoner abuse, but also his leadership in the global war on terrorism. He has been a superb Secretary of Defense who really deserves the thanks of a grateful Nation, and we are thankful for his leadership in these very difficult times.

While I know there are going to be many more difficult days ahead on the prisoner abuse scandal, I am confident the Senate will continue to do what is right and necessary to ensure that justice prevails and such terrible acts never happen again.

I yield the floor.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, first, I wish to indicate that I share much of the sentiment expressed by the distinguished majority leader about the importance of the oversight responsibilities that we hold to be very critical in this difficult and challenging time. I want to single out, in particular, the chairman of the Armed Services Committee for his valiant effort in trying to establish just what went wrong, why it went wrong, and how we can prevent it from occurring again. He has been criticized, in some cases, by members of his own party. I think that is very unfortunate. I think we have a role and that role ought not to be minimized at times of crises.

I think we ought to take these investigations where the facts lead us. I do believe other committees ought to be involved as well, and in some cases they are.

I also compliment the distinguished chairman of the Foreign Relations Committee, Senator LUGAR, who always seems to be as engaged, in a constructive way, as anyone can be given his responsibilities. I think he ought to be recognized as well.

There is work that should be done on the Judiciary Committee, Governmental Affairs Committee, and other committees that I think have yet to pursue the responsibilities they have for oversight as fully and completely as perhaps they should. But certainly one would not have to look beyond the Armed Services Committee and Foreign Relations Committee for models. We can all be very proud and appreciative of the job they currently are doing.

WELLSTONE MENTAL HEALTH EQUITABLE TREATMENT ACT

Mr. DASCHLE. Mr. President, this past Saturday, thousands of people in Sioux Falls, SD, and 35 other cities across America, took part in walks to raise public awareness of mental health. The walks were sponsored by the National Alliance for the Mentally Ill.

In Sioux Falls, more than 300 people dodged rain showers to walk through Falls Park. They were different ages, with different backgrounds. But most shared at least one important distinction: They, or someone close to them, has a mental illness.

The same is true of nearly all Americans. A 1999 report by the Surgeon General found that more than 50 million Americans—one in five—suffer from mental illness each year. Many Members of this Senate—Republicans and Democrats—have spoken bravely and movingly about how mental illness has devastated their own parents, children or siblings.

No Senator who is with us today has demonstrated greater leadership on issues involving mental health than our distinguished colleague from New Mexico, Senator DOMENICI. He knows—from watching a daughter he loves very much struggle with schizophrenia—that mental illnesses don't affect just one person; they affect whole families.

Senator DOMENICI also knows about the stigma attached to mental illness, and the discrimination and suffering that people with mental health problems suffer as a result of that stigma.

Almost a decade ago, this proud conservative Republican found a proud liberal Democratic ally in the Senate. Like PETE DOMENICI, Paul Wellstone had seen someone he loved battle a serious mental illness. In Paul's case, it was his older brother. PETE DOMENICI and Paul Wellstone were an ''odd couple.'' But they were fiercely united in their determination to end discrimination against people with mental illness.

In 1996—thanks to their leadership—Congress passed the Mental Health Parity Act. The law—for the first time—prevented private health insurance plans that offer mental health coverage from setting annual or lifetime limits that are lower than those set for other illnesses. It was an important step forward. But it left a loophole. It allowed companies to set much higher deductibles and co-payments for mental health coverage. It also allowed insurers to set lower limits for outpatient visits or the number of days of inpatient treatment for mental illness. As a result, effective, affordable mental health treatment remains unaffordable for millions of Americans who need it.

The General Accounting Office estimates that nearly 90 percent of the Nation's health plans engage in legal discrimination based on mental health diagnoses. The results can be devastating: unemployment, broken homes, shattered lives, poverty, poor school performance—even suicide.

In 2000, Senator DOMENICI and Senator Wellstone introduced a new bill—the Mental Health Equitable Treatment Act—to close the loopholes. It is a modest proposal. It does not require employers to provide health insurance. It does not require employers that provide health insurance to offer mental health coverage. It simply says that, for employers that choose to offer mental health benefits, insurers cannot provide more restrictive coverage for mental health benefits than they do for other medical and surgical benefits.

In late Fall 2001, the Mental Health Equitable Treatment Act was unanimously added to the Senate version of the FY 2002 Labor HHS Appropriations bill. But it was stripped out of the final conference report at the insistence of the White House and the House Republican leadership.

More than two years ago, in April 2002, President Bush traveled to New Mexico with Senator DOMENICI and announced that he supports ''full mental health parity.'' After listening to families talk about their mental health horror stories, the President said, ''Americans with mental illness deserve our understanding and they deserve excellent care. They deserve a health care system that treats their illness with the same urgency as physical illness.''

Months later, in late October 2002, Paul Wellstone died in a plane crash, along with his wife, Sheila, their daughter, Marcia, and four others. At a memorial service for them in Washington, Senator DOMENICI delivered a beautiful eulogy to his friend; he announced that he was renaming the bill ''The Senator Paul Wellstone Mental Health Equitable Treatment Act,'' and vowed to pass it.

Despite having 69 Senate co-sponsors, more than a year-and-a-half after it was re-introduced in this Congress, the Wellstone bill—S. 486—remains stuck in the HELP Committee.

Wellstone Action, the grassroots organization frmed by Paul and Sheila

Wellstone's two sons to continue their parents' work, has set passage of the Wellstone mental health bill as its only legislative goal this year. Over the last several months, Wellstone Action members have sent more than 32,000 faxes and letters to Congress asking us to pass the Wellstone bill.

Bernie Cameron is one of these letter writers. She lives in Deerfield, NH. Her brother Joe was diagnosed with schizophrenia 50 years ago, when he was just 12. By the age of 14, Joe was living in a State hospital for children. He has spent a total of only about 5 years outside of institutions since then.

Bernie Cameron's parents were both Portuguese immigrants who came to this country when they were 16 years old. Her father worked as a furniture refinisher. Her mother worked at a shoe store. They had 6 children and never had much money. They visited Joe at least three times a week.

''Can you imagine visiting your child in a place that smells of urine, where people are screaming,'' Bernie asks. ''It was so frustrating to them that they couldn't afford a better place for Joe.''

The powerful medications Joe was prescribed gave him tremors and other health problems.

In 1983, after Joe's father died, his mother sold the family home. With the proceeds of the sale, the family sent Joe to McLean's, a very good private psychiatric hospital in Boston. He was then in his late 40s. The hospital changed Joe's medication, which finally brought his seizures under control. But, after a year, they told his family there was nothing else they could do that would make a real difference in the quality of his life; to much time had been lost.

Before Joe got sick, he was a straight A student. Today, he lives in a sheltered halfway house. He still has flashes of unusual intellect and wit. When that happens, his sister wonders, ''If we could have gotten him into a place like McLean's early on, would it have made a difference?''

Bernie Cameron calls her brother's story ''a perfect illustration of the 2–tier health care system in this country.'' If you have insurance and your illness involves a part of your body other than your brain, you get health care. But if your brain is affected—even if you have insurance—there's a good chance you won't get the health care you need.

A new poll by the Coalition for Fairness in Mental Health Coverage shows that 83 percent of Americans surveyed support mental health parity in insurance. When asked whether they would support parity if it raised the premiums one percent—the high-end cost estimated for the Wellstone bill—66 percent of Americans continued to say yes.

The Wellstone bill, as I said, has 69 co-sponsors in the Senate, and 245 cosponsors in the House. It is also supported by more than 360 national organizations.

Mr. President, I ask unanimous consent that the complete list be printed in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mr. DASCHLE. Yet the Wellstone bill remains stuck in the HELP Committee because of fierce opposition from the insurance industry and its allies.

Opponents of mental health parity claim it will drive up the cost of health coverage, which will result in more people losing their insurance.

Let me be clear. Their claims are not true. They are scare tactics. We have heard them all before.

To begin with, small businesses with fewer than 50 employees would be totally exempt.

In addition, two highly respected organizations have analyzed the Wellstone bill. The private accounting firm of PricewaterhouseCoopers predicts it would increase health insurance premiums by 1 percent. That is it, 1 percent. That works out to $1.32 per month.

The Congressional Budget Office predicts an even smaller average increase, nine-tenths of 1 percent. I think most families would think that is a pretty good deal.

Senators DOMENICI and Wellstone modeled their bill on the mental health parity provisions in the Federal Employees Health Benefits Program. According to the Office of Personnel Management, those provisions have increased FEHB premiums only 1.3 percent, and that includes treatment for substance abuse which is not part of the Wellstone bill.

Even these very small cost estimates are probably high because they do not factor in the cost savings resulting from parity.

The National Institute of Mental Health estimates the cost of untreated mental illness, including criminal justice and social welfare costs, at about $300 billion a year.

A 1999 Surgeon General report on mental illness estimates the direct business costs of lack of parity at $70 billion a year, mostly in reduced productivity and increased use of sick leave.

By comparison, when workers with depression were treated with prescription medications, medical costs declined by $882 per employee per year, and absenteeism dropped by 9 days, according to a study published in the Health Economics journal.

Why single out people with mental illness to hold down health care costs? Why not deny treatment for heart disease or diabetes or cancer? Psychiatric treatment does cost money, but so do heart surgeries, kidney dialysis, and chemotherapy.

Health insurers are using incorrect and outdated ideas about the nature and causes of mental illness to deny millions of Americans essential health care and maximize their profits.

Thirty-four States already have mental health parity laws on the books, but the laws vary widely. Many cover only a handful of illnesses, and they cannot cover large, multistate employers or employers who self-insure. Only a Federal law can guarantee real mental health parity for all Americans.

Last October, on the first anniversary of the plane crash that killed Paul and Sheila, their daughter Marcia and four others, I asked unanimous consent that the Senate take up and pass the Wellstone Mental Health Equitable Treatment Act. It would have been a perfect tribute to Paul.

The Republican leadership blocked that request, but they gave us their word that the Senate would consider the Wellstone mental health bill early this year. We are now closing in on the Memorial Day recess. Time is fast running out on this Congress, too. We have been waiting months now to see a proposed amendment from Senator GREGG and the scope of the bill.

On June 10, people are coming to Washington from all over America for a mental health rally to urge passage of the Wellstone bill.

Two years ago in New Mexico, the President said he would work with Congress to help press a mental health parity bill. The true test of the President's leadership is not what the President says; it is his ability to convince Republican leaders in the House and Senate to allow votes on the bill.

Congress can pass this bill quickly, if the President will help. We cannot do this alone; we need his help. What we cannot do is allow mental health benefits to be a luxury only for the very wealthy or the very fortunate.

I yield the floor.

Mr. REID. Mr. President, before the Senator yields the floor, I would like to ask him a question through the Chair.

I am happy to hear the statement of the Senator from South Dakota about the need for mental health parity. One part of me is sad because when he mentions the name of Paul Wellstone, that presents to me a void in my life because it seems only yesterday he was back here walking around with his microphone.

He was a champion of many causes. He worked so hard because he knew I was interested in the subject of suicide and what causes it and how we can prevent it.

Even though I know how important this issue is, and we have to do something about it, I feel—like, I am sure, a lot of his friends who served in the Senate with him—a real void whenever his name is mentioned because he truly was one of the most remarkable people I have met in my life.

I applaud and compliment the leader for his statement on mental health parity. For this man, it is long overdue to recognize him being a great Senator.

Mr. DASCHLE. Mr. President, I thank the Senator from Nevada for his eloquent comments regarding our deceased colleague. I share his admiration for our departed colleague. He was

a man who had passion, conviction, and yet a good sense of humor that allowed that passion and conviction to be embraced by even those who may not have agreed with him on every issue. But his passion about mental health, his conviction that it was the right thing for us to do, to pass mental health parity, lasts way beyond his life. It is not only in tribute to Paul, but I think in recognition of the appropriateness of his conviction and his passion that we remind our colleagues of the debt we owe to him and to our country in passing meaningful legislation at long last to address this embarrassment and this extraordinary deficiency in society today.

I again thank the Senator from Nevada and yield the floor.

EXHIBIT 1

366 ORGANIZATIONS SUPPORTING THE PAUL WELLSTONE MENTAL HEALTH EQUITABLE TREATMENT ACT

Advocates for Youth, Alaska State Medical Association, Alliance for Aging Research, Alliance for Children and Families, Alliance For Mental Health Consumers Rights, Alzheimer's Association, American Academy of Child and Adolescent Psychiatry, American Academy of Cosmetic Surgery, American Academy of Family Physicians, American Academy of Neurology, American Academy of Ophthalmology, American Academy of Otolaryngology-Head and Neck Surgery, American Academy of Pediatrics, American Academy of Physical Medicine and Rehabilitation, American Academy of Physician Assistants, American Academy of Psyciatry and the Law, American Academy of Sleep Medicine, American Association for Geriatric Psychiatry, American Association for Marriage and Family Therapy, American Association for Psychosocial Rehabilitation.

American Association for Thoracic Surgery, American Association of Children's Residential Centers, American Association of Clinical Endocrinologists, American Association of Pastoral Counselors, American Association of Practicing Psychiatrists, American Association of School Administrators, American Association of Suicidology, American Association on Mental Retardation, American Board of Examiners in Clinical Social Work, American College of Cardiology, American College of Chest Physicians, American College of Emergency Physicians, American College of Medical Genetics, American College of Mental Health Administration, American College of Nurse-Midwives, American College of Obstetricians and Gynecologists, American College of Occupational and Environmental Medicine, American College of Osteopathic Family Physicians, American College of Osteopathic Surgeons, American College of Physicians.

American College of Preventive Medicine, American College of Radiology Association, American College of Surgeons, American Congress of Community Supports and Employment Services (ACCSES), American Counseling Association, American Diabetes Association, American Family Foundation, American Federation of State, County and Municipal Employees, American Federation of Teachers, American Foundation for Suicide Prevention, American Gastroenterological Association, American Geriatrics Society, American Group Psychotherapy Association, American Heart Association, American Hospice Foundation, American Hospital Association, American Humane Association, American Jail Association, American Managed Behavioral Healthcare Association (AMBHA), American Medical Association.

American Medical Directors Association, American Medical Group Association, American Medical Rehabilitation Providers Association, American Medical Student Association, American Mental Health Counselors Association, American Music Therapy Association, American Network of Community Options and Resources, American Nurses Association, American Occupational Therapy Association, American Orthopaedic Foot and Ankle Society, American Orthopsychiatric Association, American Osteopathic Academy of Orthopedics, American Osteopathic Association, American Pediatric Society, American Political Science Association, American Psychiatric Association, American Psychiatric Nurses Association, American Psychoanalytic Association, American Psychological Association, American Psychotherapy Association.

American Public Health Association, American School Counselor Association, American School Health Association, American Society for Adolescent Psychiatry, American Society for Clinical Pathology, American Society of Addiction Medicine, American Society of Anesthesiologists, American Society of Clinical Oncology, American Society of Clinical Pharmacology, American Society of Plastic Surgeons, American Therapeutic Recreation Association, American Thoracic Society, America's Health Together, Anna Westin Foundation, Anorexia Nervosa and Related Eating Disorders, Inc., Anxiety Disorders Association of America, Arizona Medical Association, Arkansas Medical Society, Association for the Advancement of Psychology, Association for Ambulatory Behavioral Healthcare.

Association for Clinical Pastoral Education, Inc., Association for Science in Autism Treatment, Association of American Medical Colleges, Association of Asian Pacific Community Health Organizations, Association of Jewish Aging Services of North America, Association of Jewish Family & Children's Agencies, Association of Maternal and Child Health Programs, Association of Medical School Pediatric Department Chairs, Association of Orthopaedic Foot and Ankle Surgeons, Association of University Centers on Disabilities, Association to Benefit Children, Attention Deficit Disorders Association, Autism Society of America, Barbara Schneider Foundation, Bazelon Center for Mental Health Law, Brain Injury Association of America, Inc., California Medical Association, Camp Fire USA, The Carter Center, Catholic Charities USA.

Center for the Advancement of Health, Center for Women Policy Studies, Center on Disability and Health, Center on Juvenile and Criminal Justice, Central Conference of American Rabbis, Chicago Public Schools, Child & Adolescent Bipolar Foundation, Child Neurology Society, Children and Adults with Attention-Deficit/Hyperactivity Disorder, Children's Defense Fund, Children's Healthcare Is a Legal Duty, Children's Hospital Boston, Child Welfare League of America, Christopher Reeve Paralysis Foundation, Church of the Brethren Washington Office, Clinical Social Work Federation, Coalition for Juvenile Justice, College of Psychiatric and Neurologic Pharmacists, Colorado Medical Society, Commission on Social Action of Reform Judaism.

Connecticut State Medical Society, Corporation for the Advancement of Psychiatry, Council for Exceptional Children, Council of State Administrators of Vocational Rehabilitation, Council on Social Work Education, County of Santa Clara, CA, Cure Autism Now, Dads and Daughters, Depression and Bipolar Support Alliance, Disability Rights Education and Defense Fund, Inc., Disability Service Providers of America, Disabled American Veterans, Division for Learning Disabilities (DLD) of the Council for Exceptional Children, Easter Seals, Eating Disorders Coalition for Research, Policy & Action, Employee Assistance Professionals Association, Epilepsy Foundation, Families For Depression Awareness, Families USA, Family Violence Prevention Fund, Family Voices, Federation of American Hospitals.

Federation of Behavioral, Psychological & Cognitive Sciences, Federation of Families for Children's Mental Health, Florida Medical Association, Freedom From Fear, Friends Committee on National Legislation (Quaker), Harvard Eating Disorders Center, Hawaii Medical Association, Human Rights Campaign, Idaho Medical Association, Illinois State Medical Society, Inclusion Research Institute, Indiana State Medical Association, Institute for the Advancement of Social Work Research, International Association of Jewish Vocational Services, International Association of Psychosocial Rehabilitation Services, International Community Corrections Association, International Dyslexia Association, International Society of Psychiatric-Mental Health Nurses, International Spinal Injection Society, Iowa Medical Society.

Iris Alliance Fund, Jewish Federation of Metropolitan Chicago, Johnson Institute, Joint Council of Allergy, Asthma and Immunology, Kentucky Medical Association, Kids Project, Kristen Watt Foundation for Eating Disorder Awareness, Latino Behavioral Health Association, Learning Disabilities Association of America, Legal Action Center, Louisiana State Medical Society, Lutheran Ofc. for Governmental Affairs, Evangelical Lutheran Church in America, Lutheran Services in America, Maine Medical Association, Massachusetts Medical Society, MedChi, the Maryland State Medical Society, Medical Association of Georgia, Medical Association of the State of Alabama, Medical Group Management Association, Medical Society of Delaware.

Medical Society of the District of Columbia, Medical Society of New Jersey, Medical Society of the State of New York, Medical Society of Virginia, Medicare Rights Center, MentalHealth AMERICA, Inc., Michigan State Medical Society, Minnesota Medical Association, Mississippi State Medical Association, Missouri State Medical Association, Montana Medical Association, NAADAC, The Association for Addiction Professionals, National Advocacy Center of the Sisters of the Good Shepherd, National Alliance for Austism Research, National Alliance for the Mentally Ill, National Alliance for Research on Schizophrenia and Affective Disorders, National Alliance to End Homelessness, National Asian American Pacific Islander Mental Health Association, National Asian Women's Health Organizations, National Assembly of Health and Human Service Organizations.

National Association for the Advancement of Colored People (NAACP), National Association for the Advancement of Orthotics & Prosthetics, National Association for Children's Behavioral Health, National Association for the Dually Diagnosed, National Association for Medical Direction of Respiratory Care, National Association for Rural Mental Health, National Association of Anorexia Nervosa and Associated Disorders—ANAD, National Association of Case Management, National Association of Children's Hospitals, National Association of Community Health Centers, National Association of Counties, National Association of County Behavioral Health Directors, National Association of County and City Health

Officials, National Association of Development Disabilities Councils, National Association of Mental Health Planning & Advisory Councils, National Association of Pediatric Nurse Practitioners, National Association of Protection and Advocacy Systems, National Association of Psychiatric Health Systems, National Association of School Nurses, National Association of School Psychologists.

National Association of Social Workers, National Association of State Directors of Special Education, National Association of State Mental Health Program Directors, National Center for Policy Research for Women & Families, National Center on Institutions and Alternatives, National Coalition Against Domestic Violence, National Coalition for the Homeless, National Coalition of Mental Health Consumers and Professionals, National Committee to Preserve Social Security and Medicare, National Council for Community Behavioral Healthcare, National Council of Jewish Women, National Council of La Raza, National Council on the Aging, National Council on Alcoholism and Drug Dependence, National Council on Family Relations, National Council on Problem Gambling, National Council on Suicide Prevention, National Down Syndrome Congress, National Down Syndrome Society, National Eating Disorders Association.

National Educational Alliance for Borderline Personality Disorder, National Education Association, National Exchange Club Foundation, National Foundation for Depressive Illness, National Health Council, National Health Law Program, National Hispanic Medical Association, National Hopeline Network, National Housing Conference, National Latino Behavioral Health Association, National Law Center on Homelessness & Poverty, National Leadership on African American Behavioral Health, National League of Cities, National Medical Association, National Mental Health Association, National Mental Health Awareness Campaign, National Mental Health Consumers' Self-Help Clearinghouse, National Multiple Sclerosis Society, National Network for Youth, National Organization for Rare Disorders.

National Organization of People of Color Against Suicide, National Organization on Fetal Alcohol Syndrome, National Osteoporosis Foundation, National Partnership for Women and Families, National PTA, National Recreation and Park Association, National Rural Health Association, National Schizophrenia Foundation, National Senior Citizens Law Center, National Therapeutic Recreation Society, National Treatment and Research Advancements Association for Personality Disorder, Native American Counseling Inc., Nebraska Medical Association, NETWORK, a Catholic Social Justice Lobby, Nevada State Medical Association, New Hampshire Medical Society, New Mexico Medical Society, NISH (National Industries for the Severely Handicapped), North american Association of Masters in Psychology, North Carolina Medical Society.

North Dakota Medical Association, Obsessive Compulsive Foundation, Office & Professional Employees International Union, Ohio State Medical Association, Oklahoma State Medical Association, Older Adult Consumer Mental Health Alliance, Oregon Medical Association, Organization of Student Social Workers, Partnership for Recovery, Pennsylvania Medical Society, People For the American Way, People With Disabilities Foundation, Physicians for Social Responsibility, Presbyterian Church (USA), Washington Office, Prevent Child Abuse America, Rebecca Project for Human Rights, Renfrew Center Foundation, Rhode Island Medical Society, Samaritans Suicide Prevention Center, School Social Work Association of America.

Screening for Mental Health, Inc., Service Employees International Union, Shaken Baby Alliance, Sjogren's Syndrome Foundation, Society for Adolescent Medicine, Society for Pediatric Research, Society for Personality Assessment, Society for Public Health Education, Society for Research on Child Development, Society for Social Work Research, Society for Women's Health Research, Society of American Gastrointestinal Endoscopic Surgeons, Society of Medical Consultants to Armed Forces, Society of Professors of Child and Adolescent Psychiatry, Society of Thoracic Surgeons, South Carolina Medical Association, South Dakota State Medical Association, STOP IT NOW!, Suicide Awareness Voice of Education, Suicide Prevention Action Network USA, Tennessee Medical Association.

Texas Medical Association, The Arc of the United States, Title II Community AIDS National Network, Tourette Syndrome Association, Treatment and Research Advancements Association for Personality Disorder, Union of American Hebrew Congregations, Unitarian Universalist Association of Congregations, United Cerebral Palsy Association, United Church of Christ, Justice and Witness Ministry, United Jewish Communities, United Methodist General Board of Church and Society, Utah Medical Association, Vermont Medical Society, Volunteers of America, Washington State Medical Association, Wellstone Action, West Virginia State Medical Association, Wisconsin Medical Society, Working Assets, Women of Reform Judaism, Wyoming Medical Society, Yellow Ribbon Suicide Prevention Program, Youth Law Center.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business up to the hour of 11:30 a.m., with the first half of the time under the control of the Democratic leader or his designee, and the second half of the time under the control of the majority leader or his designee.

Mr. REID. Mr. President, on behalf of Senator DASCHLE, I yield 10 minutes to Senator STABENOW, 10 minutes to Senator MURRAY, 10 minutes to Senator DURBIN, and 10 minutes to Senator WYDEN.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered. The Senator from Michigan is recognized.

MENTAL HEALTH PARITY

Ms. STABENOW. Mr. President, I first wish to commend our leader, Senator DASCHLE, for his wonderful words regarding the need for mental health parity, and also join with both leaders in remembering Senator Paul Wellstone and his advocacy.

Nothing would be more fitting than to pass this long overdue legislation and dedicate it in his name.

HEALTH CARE

Ms. STABENOW. Mr. President, 24 years ago, Ronald Reagan was running for President and he asked each of us as Americans a question: Are you better off than you were 4 years ago?

It was the right question then, and it is the right question now. Are we better off than we were 4 years ago? This is a very important question. Unfortunately, for most middle-income Americans in 2004, the answer is clearly no.

What has happened in the last 4 years while wages have been flat, gas prices, college tuition, health care costs have skyrocketed, millions of jobs have been lost, poverty is on the rise, the budget surplus has been squandered, the Social Security trust fund has been raided, State taxes have risen, household debt has gone way up, consumer confidence has dropped, and the stock market has gone down.

We can look at a few of these areas with average weekly earnings flat at slightly over 1 percent; gas prices certainly in Michigan and around the country skyrocketing, going up and up; college tuition; family health care premiums—these are just three measures of what is happening to our families and what is commonly called the middle-class squeeze where families are not seeing their incomes go up, and yet all of the costs of providing opportunity for their children, of being able to meet the daily costs of living are going up and up.

Today I want to talk specifically about just one of those, and that is the family health care premiums. Since President Bush took office, family health care premiums have risen more than $2,700. The average cost of a family plan is now above $9,000. Workers have to pay about $2,400 of that premium out of their own pockets, in addition to paying deductibles and copays.

That is a tremendous amount of money for most families, especially at a time when they are facing higher costs in so many other areas. Much of this increase has to do with the soaring cost of prescription drugs, which I have come to the Senate floor to speak about on many occasions. The cost of prescription drugs—and this is brand-name drugs—is rising at about three and a half times the rate of inflation. In fact, we know that for some of the top name- brand drugs we see advertised on television every day, they are actually rising anywhere from 8 to 10 to 12 percent faster than the rate of inflation, which is extraordinary.

The health care system and the business community paying the costs of health care premiums cannot continue to absorb that, and the Medicare prescription drug benefit does next to nothing to rein in escalating costs. In fact, researchers have suggested that the new Medicare law will actually result in new profits for the drug companies of $139 billion over the next 8 years.

So here we are supposedly passing a bill to help seniors that one would hope would lower prices, but instead, because it does not allow Medicare to negotiate group discounts, it locks in up to 40 million people forced to pay the highest possible prices in the country,

resulting in $139 billion in new profits over the next 8 years for the pharmaceutical industries and continual struggles for our seniors who literally are choosing between food and medicine.

When President Bush took office, the number of uninsured Americans had actually decreased for 2 straight years. The number of uninsured Americans had actually gone down for 2 straight years. But the dramatic increase in premiums during the Bush administration, combined with the loss of so many jobs, has left 3.8 million more Americans without health insurance. There are now nearly 44 million uninsured Americans, and the consequences are dire for these families and, I would argue, for communities and for businesses as well that end up seeing their health care premium dollars go up every time someone walks into the emergency room sicker than they should be, receiving inappropriate care and having the community hospital have to absorb and transfer that to the folks with insurance.

People without health insurance do not receive the care they need, as I indicated, to prevent or detect or treat serious medical problems. As a result, they are forced to live their lives in poorer health and die younger. Approximately 18,000 people die prematurely each year because they do not have health insurance.

We are the greatest country in the world. Shame on us if we cannot fix this. And we can fix it. It is just a matter of will. It is a matter of values and priorities. We need to turn things around and get this right.

So we come back again to President Reagan's famous question: Are you better off than you were 4 years ago? What has happened in the last 4 years? Again, wages have been flat, if not going down. In my State many folks are losing their jobs, and wages that are being replaced are actually lower. Gas prices are skyrocketing out of sight. College tuition, access to college and the American dream that we all want for our children, has gone up tremendously. Health care costs have skyrocketed, as I mentioned. As a result, our middle-income families are feeling squeezed more and more every day, and Americans are not better off. But we can be better off. We are the United States of America. We are the can-do country, and I know we can get back on track. With a few changes, with the right priorities, with the right values, we can turn this around. We have done it before and we can do it again.

With strong leadership and a real commitment to confronting the problems that families face, we can do better. We can provide our schools and teachers with the support they deserve. We can ensure that every qualified student has the opportunity to attend college. We can build a stronger America so every worker has access to health care and our seniors and the disabled truly have access to their prescription drugs that they need at the lowest possible prices. We can restore the confidence of Americans that our better days are still ahead.

We have much to do. All of these facts, all of these issues, relate to choices, the choices we make as we govern about who we want to make sure is doing better in this country. We can choose between focusing on those things that help Americans, help the public to do better, or the special interests of this country. We need to turn it around so we are putting people first and we are addressing those things that allow each of us to have the opportunity for the great American dream. We are all about working hard, playing by the rules, and being able to go as far as one can possibly go in this great country if they are willing to do the work.

Too many folks are working hard and finding themselves more and more with costs and burdens that are stopping them from being able to fully obtain the American dream for themselves and their families. We are not better off right now, but we can be, and I am hopeful with the right kind of changes that we will be.

The PRESIDING OFFICER. The Senator from Washington.

STATE OF EDUCATION

Mrs. MURRAY. Mr. President, I thank my colleague from Michigan for her excellent statement. I rise today to talk about the state of education in America today, and I want to pose a simple question, as my colleague from Michigan did: Are we better off than we were 4 years ago?

Let us look at the facts. Four years ago, we were making record investments in education. We were giving students, parents, and teachers the tools they needed to succeed. We focused on results and we got them. We focused on our classrooms and improved them. We focused on our students and we helped them on a path to lifetime learning.

Today, we find ourselves in very different circumstances. Today, the focus is on process, not on results. Today, the focus is on centralizing authority instead of the classroom. Instead of focusing on our students, the current administration is simply passing the buck.

During the Clinton administration, we focused on improving the economy and giving every American the tools they needed to succeed. We recorded the longest uninterrupted growth period in our Nation's history, and we helped the American people by getting the education, training, skills, and experience they needed to compete in a global economy. We created 26 million American jobs.

Today, it is a very different story. We are facing dismal budgets, unfunded mandates for our schools, and constant attacks on the programs that disadvantaged families rely on. Instead of helping students, the administration has broken promises and failed to pay the Federal share for education. Let us start by looking at how this administration has underfunded the No Child Left Behind Act and the Individuals with Disabilities Education Act.

We have seen programs that help students turn into unfunded mandates that burden our States. Over the past 4 years, States spent $72 billion to cover the unfunded mandates in IDEA and No Child Left Behind. In my home State of Washington, IDEA is underfunded by $746 million. No Child Left Behind is underfunded by $408 million. That makes a difference in every classroom and in every child's life.

Two years ago, when we passed the No Child Left Behind Act, I voted for it. Most of us in Congress agreed that accountability is important and that we need to make sure our kids are learning the things they need to succeed, like reading, math, writing, and science. But the No Child Left Behind Act said in exchange for that new accountability, schools would get the funding they needed. Today the accountability has been imposed but the funding has not. In fact, Federal funding for the No Child Left Behind Act has fallen $32 billion below the authorized levels since this act was signed into law.

I have visited schools in every corner of Washington State and I know firsthand that educators are working harder than ever to help their students meet these new accountability requirements. But today, as we all know, our State and local budgets are stretched so thin our local communities cannot afford to make up the differences between what our schools were promised and what this administration's budget proposal actually provides.

This year, the President's budget fell $9.4 billion short of fully funding this law. President Bush has proposed the smallest increase for education funding in 9 years and he even proposed eliminating commonsense initiatives like dropout prevention. In Washington State alone, the difference between the President's request and the promise of No Child Left Behind means nearly 28,000 low-income students will be left behind. That number skyrockets to 4.6 million nationwide.

We can do better. That is why in fact I offered an amendment to the Senate budget resolution to fully fund that act. Regrettably my amendment failed on party-line votes.

When we passed the No Child Left Behind Act, Congress and the administration sidestepped the issues affecting our high schools. Our national high school graduation rate is an abysmal 69 percent. That number is even worse for students of color. Do you know roughly half of our minority students are graduating from high school? That means nearly half are dropping out. We need to keep better track of how minority students are doing by tracking dropout rates carefully. But today this Department of Education is not requiring

disaggregation of data on dropouts. That would make it much harder for us to help vulnerable students or even to discover which students need help. With the right policies we can reduce the dropout rate. In fact, that is why last summer I introduced S. 1554, the Pathways for All Students to Succeed, or the PASS Act. This bill will reduce dropouts and help us close that achievement gap.

My bill, the PASS Act, does three things. First of all, it will help students to learn to read and write by providing $1 billion to help our schools hire literacy coaches. Second, my bill ensures our students are taking the classes and getting the support they need to finish high school, and it provides $2 billion for academic and career counselors to ensure all of our students have a personalized plan for completing high school and then going on to college.

Finally, my bill provides extra help to schools that need it the most by providing $500 million in grants to help improve our low-performing schools.

I hope the Senate will pass the bill this year. These are critical steps we could be taking if this Congress were to finally focus on improving the lives of our students.

Let me turn to the Federal role in the Individuals with Disabilities Education Act. Nearly 30 years ago, the Federal Government made a commitment of equal opportunity to our Nation's children with disabilities. With that commitment, again we gave the promise the Federal Government would pay 40 percent of the average per-student cost for every special education student. Today, however, the Federal Government is paying less than 19 percent of the costs. Over the past 4 years of fiscal crisis, Federal funding has fallen $40 billion short of that 40-percent promise. This hole in special education funding not only hurts our disabled students, it also hurts all of their classmates because in order to make up for Federal funding shortfalls, many districts have been forced to take money from their general education budgets and that affects all students.

Over the past couple of years, IDEA has received increases in Federal funding levels. However, according to the Congressional Research Service, at increases of $1 billion each year the Federal Government will never fulfill the promise of funding at 40 percent. And even if increases were $1 billion plus inflation, we would not reach the promised level of 40 percent until 2035. That is another 30 years from now.

Last week the Senate passed a reauthorized version of IDEA. Yet, despite clear support, the Senate did not pass an amendment by Senators HAGEL and HARKIN to fully fund IDEA through mandatory funding.

Education must be a priority for our country if we want a stable economy and a brighter future. We need to focus not only on funding Federal mandates but on access to quality early childhood education and postsecondary education.

This year, Congress is working on reauthorizing the Head Start law. I can tell you as a former preschool teacher, I know firsthand how these critical first early years are for our children's future learning, yet this year the President's budget barely allows Head Start to keep up with inflation. That amount is not nearly enough, especially in a year where we are examining new requirements for this program. Without a substantial increase in funding, these programs will have to shut the door to needy at-risk children who will then fall further behind before they even reach kindergarten.

What troubles me more is this President's clear intention is to end this critical program. We all know proposals to block grant programs will eventually lead to decreased funding for the program. Block granting Head Start is not only supported and pushed by the President but also by the House of Representatives. I know I will continue fighting to protect this very critical Head Start Program that has made such a huge difference in the lives of millions of low-income children.

Public education is the bedrock of our democracy. It helps create good, active citizens and it gives our families the tools they need to put food on the table and a roof over their heads. It also ensures each generation of Americans will have more opportunities than their parents and their grandparents did. There is so much at stake in making sure we are moving education forward for all of America's students.

I turn back to the question I posed at the start of my remarks. Are we better off than we were 4 years ago? Sadly, the answer is no. Our students deserve better. Our country deserves better. I am going to keep fighting here in the Senate to ensure that all of America's children get a good education.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

PRESIDENTIAL LEADERSHIP

Mr. DURBIN. Mr. President, I thank the Senator from Washington for her statement relative to education. I believe the theme, the question she has led off with, is one we will be returning to over and over again.

I know how much the Presiding Officer respects Ronald Reagan and how much he looks back on his Presidency and even candidacy as defining moments in the history of our Nation. President Reagan, despite my differences with him politically, had a way of saying things very directly. He was one of the best communicators we have ever had in the White House. He could, in a few words, convey a message so directly and so simply.

This statement of candidate Reagan is one that is a hallmark now of American politics. Not a campaign goes by that someone doesn't say:

Well, as Ronald Reagan once said, ''Are you better off than you were 4 years ago?''

It is a very simple question. It is a question that must be asked each time the American people face an important election, and this may be one of the most important in history.

What we hear back from the American people when we ask this question is a resounding no. They say in overwhelming numbers, America is going in the wrong direction. We need a new direction in this country. We need a strong leadership that not only protects America but also creates opportunity in America. You have heard repeatedly from my colleague from Michigan how this has a direct impact when it comes to the health care costs of families; how it has a direct impact—the Senator from Washington made this point—when it comes to educational costs. I think honestly what they have said is demonstrated by a few charts I have here.

This is one that I think tells the whole story about the last 4 years of the Bush administration. During this period of time, average weekly earnings for families have gone up 1 percent. President Bush can point to the fact that over 4 years, average income for Americans has barely increased. But what has happened to the expenses faced by Americans in the same period of time? The cost of gasoline, up 25 percent. My friend, Senator WYDEN of Oregon, will address that, as he has time and again on the floor of the Senate in the next part of this morning business time.

Look at the cost of college tuition. It has gone up 28 percent in the 4 years President Bush has been in office; the cost of family health care premiums; some 36 percent.

Now we will take a closer look at the family health care premiums as an illustration. When the President took office, the average health care premium paid on an annual basis was $6,348. Now look at the number: $9,068. The President can send out a check for $100, $200, or $300 and say to middle America: Here is your tax cut; go out and go crazy. Then take a look at this and say: Wait a minute, that tax cut just disappeared. More and more workers and families are paying more and more for health care premiums.

Take a look at this chart. Who really is better off? The average weekly earnings show no increase over the same period of time.

Look at the HMO profits. The profits of the health insurance companies have gone up 50 percent in terms of growth. The CEO compensation for the people who run the HMOs and other corporations is up 61 percent.

Working families, struggling to get by, have seen little or no increase in their income, while those who are profiting from HMOs and from other corporations are doing quite well, thank you.

I remember when Warren Buffett came to say hello to us. He is one of

my favorites. His annual report is a must-read for anyone who follows common sense in American business. Warren Buffett, the second wealthiest man in America, said to some Senators: Many people say our policies are class warfare in America today. He said: I have news for you, my class is winning.

He is right, because, quite honestly, the disparity of income in America is worse than it has ever been. This President, with his tax cuts and his policies, has made it worse.

So 4 years later we go back to the same basic Ronald Reagan question: Are you better off now than you were 4 years ago? The answer, quite honestly, for most working Americans, is a resounding no.

Let me address two particular issues that hit most families. I talked about the increase in college tuition costs. You do not need to remind families that if their son or daughter is lucky enough to get into a good school, they will probably be in a position 4 or 5 years later where they are deeply in debt. I have seen it in my family and many others have seen it in theirs. Young people starting out not only have a challenge of finding a good job and a career opportunity but are challenged by what to do with this mountain of debt.

There was a time when the Federal Government helped. There was a time when we had scholarships and loans and grants to help students along so they would not end up more deeply in debt when they graduate from college than many of us were when we bought our first home many years ago.

Over the course of higher education and its cost, we see the gap between the haves and the have-nots is increasing. Over the course of their career, the difference in income between an 18-year-old high school graduate and a 24-year-old college graduate is now more than a million, so it is certainly worth going to school, but college tuition is out of reach for too many American students.

According to the College Board, the 13-percent inflation-adjusted real increase in tuition at public colleges last year was the highest in 30 years. In my State, it is going up. With the weak economy, with the limited resources coming from Washington, with the struggle that many States are having with this recession, which continues to linger, fewer and fewer dollars go into State treasuries and fewer and fewer dollars go from those treasuries to colleges and universities, so they raise tuition.

We are in a recession, losing jobs. Real income is going down and the cost of education is going up. That is a fact. Private school tuition has gone up even higher. Federal assistance has fallen far behind.

In the 1970s, the maximum Pell grant for low-income and working-class families covered about 40 percent of the average cost of going to school. In the 1970s, Pell grants and others helped cover 40 percent. Today, it covers 15 percent. So even the most deserving students from low-income families find the Federal programs are a shadow of what they used to be. They do not provide them the help they need. That means that 48 percent of low-income high school graduates who qualify for college do not go to a 4-year school because they simply do not have the money.

From 1987 to 1999, completion rates on college prep courses for the Nation's poorest students grew by 20 percent. So it means more students are ready for school; they just cannot afford to go to school.

When you look at what we have done on a Federal level time and again, this administration has not provided the helping hand to college students and their families. This President proposed to freeze Pell grants at $4,050 a year for the third year in a row, even though we know the cost of education continues to go up in a double-digit pace. His budget calls for a $823 million increase that merely holds the line on existing grant award levels. He proposes to freeze campus-based aid, cut Perkins loans, and eliminate the LEAP grants. In total, 78,000 students in America will lose grants because of the Bush budget policies, meaning the cost of education is higher and the helping hand from the Federal Government is not going to be there.

Are those families better off today than they were 4 years ago? Is the Bush policy, the budget policy on financing and education, for struggling students, from lower income families, better than it was 4 years ago? By almost every measure, the answer is a resounding no.

We need to get our priorities straight in this country. If we are going to have an American century in the 21st century, as we did in the 20th century, we better focus on students and education. We better make sure that deserving students who want to realize the American dream, many of them the first in their family to be able to go to college, have that chance. They cannot have a chance when the college education has been priced at a level where they cannot afford it, or even worse, graduating with heavy debt. Many of these students cannot pursue the career choice they really want.

How many students graduate wanting to be teachers, good teachers in grade schools and high schools, will be able to realize that dream if they face a mountain of debt? Starting off as a high school or grade school teacher at $30,000 a year, with a pretty limited take home pay, is almost impossible if you have to pay back a mountain of student loans in the process. So they try other things that might make more money and we lose the teacher we need to inspire the next generation.

So when the President makes a decision on budgets to cut back in helping students pay for a college education, it has a ripple effect all the way down the line in terms of new jobs and opportunity, in terms of tomorrow's teachers and nurses, in terms of those who we need to make America the strong nation it needs to be.

Let me also address an issue which is hitting Americans in the pocketbook. Take a look at what has happened to the price of gasoline between when President Bush took office and what it is today. A gallon was $1.47 in 2001 when President Bush came to office. Now it is up to an average of $2.01.

Now look at what is happening with the oil companies that are selling the gasoline. It has been a pretty good year for the oil companies. If you think you are getting pinched at the pump, take a look at what is happening here: For British Petroleum, a 165-percent profit increase; Chevron Texaco, 294 percent; ConcoPhilips—what has happened here—only a 44-percent profit increase. They are falling behind; Exxon Mobil, 125 percent.

Take a look at gas prices in the city of Chicago, which I am proud to represent. They are well over $2 a gallon in downtown Chicago. In California, I understand they are bumping up against $3 a gallon.

So you ask yourself: What can we do?

First—and Senator WYDEN will spend some time on this issue—why are we filling this Strategic Petroleum Reserve at a faster clip now than ever when the price of petroleum that we are putting into it is at record levels? The second question I need to ask, obviously, is, When is this President going to confront these oil companies about their record profits at the expense of families and businesses? The third and obvious question is, Candidate Bush, candidate George W. Bush, said if he ever faced this, he would get on the phone to OPEC and tell them to stop squeezing American consumers and families and businesses. I guess the telephone line is dead between the White House and Riyadh. He is not calling Saudi Arabia to tell them they have to release more oil to the United States. The President as candidate said he would do it. The President as President refuses to do it. Why? Haven't we done enough for the Middle Eastern nations and the OPEC countries, putting hundreds of thousands of American lives at risk for stability and security in the Middle East? And the President will not pick up the phone to say to them, for goodness' sake, you put our economy at risk when you hold back oil. And that is exactly what they are doing. We need Presidential leadership.

I yield the floor.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Oregon.

GASOLINE PRICING

Mr. WYDEN. Mr. President, I have come to the Senate floor this morning to state, in accord with my policy of publicly announcing any hold that I

place on a nominee or a piece of legislation, that I will object to any unanimous consent request for the Senate to take up the President's nominee, Deborah Majoras, to head the Federal Trade Commission.

Gasoline pricing is, of course, one of the most important consumer protection issues that the Federal Trade Commission is responsible for overseeing. The prices for gasoline, of course, are soaring. For years now, the Federal Trade Commission has been waging a campaign of inaction. In three specific areas—increased oil company mergers, refinery shutdowns, and anti-competitive practices—the Federal Trade Commission has simply been AWOL.

Yesterday, after writing to Ms. Majoras, to make sure she knew specifically of my concerns, I met with the nominee to head the Federal Trade Commission. I asked repeatedly if there was even one area—even one area—where she would change existing Federal Trade Commission policy with respect to these practices that are sucking the competitive juices out of gasoline markets across the country. During that conversation not even one example was given of an area that the nominee to head the Federal Trade Commission would change in the gasoline pricing area. It is for that reason that I publicly state today that I am placing a hold on this nominee.

To me, it is absolutely unacceptable for a nominee to chair the Federal Trade Commission to not want to make one specific change in gasoline pricing policy. It is certainly unacceptable to me as a Senator from a State where the average price of gas is now $2.25 a gallon, but it ought to be unacceptable to Senators from every area of the country.

Here are three examples of the record at the Federal Trade Commission that I wish to change:

First, since taking office, the Bush administration has allowed 33 oil industry mergers, totaling $19.5 billion to go through. Not only has the administration not tried to block any of these mergers, they simply have taken a pass in every respect. To be fair, the Clinton Administration also sat on its hands allowing 21 oil mergers to go through while challenging only one.

The Bloomberg News service recently reported on this issue. It is my own view that unchecked oil company mergers are a significant factor in the rising price of gasoline in the country. But the Federal Trade Commission, in the face of this huge wave of mergers, has simply been sitting on their hands, and yesterday, the nominee to head the Federal Trade Commission gave me no indication there would be a change in the policy of the Federal Trade Commission on the merger issue.

Second, a handful of refiners now control most of the gasoline in our markets. The concentration is especially serious on the west and east coasts. Mr. President, 67 percent of the west coast market and 77 percent of the east coast market is controlled by a handful of refiners—just four companies. Along with this increased concentration of refiners, we have seen a drop in the number of refineries at a critical time when clearly we need more refinery capacity, not less.

Now, I have documented evidence—it is up on my Web site—that refinery shutdowns have been implemented not because of competition but to boost profit. Certainly, in my view, the nominee to head the Federal Trade Commission ought to be looking at this issue of refinery capacity. But yet again, the nominee that I met with yesterday was unwilling to state what, if anything, would change with respect to refinery practices.

Third, the Federal Trade Commission has been unwilling to move against anti-competitive practices that the agency has even documented. Here I am talking about redlining, a tool that is used to wall off a community from competition. So, again, as we have seen in the case of oil company mergers, as we have seen in the case of refinery shutdowns, in this third area, anti-competitive practices such as redlining, the Federal Trade Commission is going to stay on the sidelines, apparently, with a new chair.

Most recently, the Federal Trade Commission, through their general counsel, has essentially said that oil companies can price gouge with impunity. It is an extraordinary statement. It was made in the Bloomberg News service, again. But the general counsel of the Federal Trade Commission has basically said oil companies can do whatever they want. They can move unilaterally, raise prices to essentially any level they would want in certain markets.

So this is what I am concerned about: these questions that are specifically under the jurisdiction of the Federal Trade Commission with respect to mergers, with respect to refinery shutdowns, with respect to anti-competitive practices, such as redlining.

I had hoped that the nominee to chair the agency would be willing to make changes. I provided the nominee in advance—in advance of our meeting—the key questions that I went through with her. Yet, despite that, and despite the fact that I asked for even one example of a policy she would change at the Federal Trade Commission, I was given nothing to indicate that the nominee to head the Federal Trade Commission would buck the pernicious trend across this country that is draining the competition out of gasoline markets across America.

For example, I asked Ms. Majoras about the Federal Trade Commission's lack of response to letters I have sent to the Chair requesting the Federal Trade Commission to investigate Shell Oil's plan to close a 70,000-barrel-per-day refinery in Bakersfield, CA. The Federal Trade Commission sent me a two-paragraph response saying they would seriously consider it.

This is an enormously important issue for those of us on the west coast. I see my friend from Nevada on the Senate floor, who has been eloquent with respect to trying to stand up for the consumer on the gasoline issue. The Presiding Officer, who I have the privilege of serving with, has been long concerned about gasoline prices. This Bakersfield shutdown will have enormous and negative ramifications for the people on the west coast.

But while I have heard repeatedly from the agency—and I heard yesterday from the nominee that this ''sounds like a serious issue''—there was no commitment, none, just like the current FTC Chair, to take any specific action. In addition, the nominee pointed out there may even be a potential conflict of interest with respect to the Bakersfield shutdown because of her current law firm responsibilities and the fact that her current firm represents Chevron.

So, Mr. President, I will say, as I have done in the past, that I am going to keep my door open. I am hopeful, in the course of hearings and debates about the future direction of the Federal Trade Commission, that the nominee will shift course from what I heard yesterday. But I will tell you, it is not enough for the agency to continue to say they are ''seriously concerned'' or they are ''monitoring the situation'' or ''they are troubled by the high prices our constituents are paying.'' That is not enough.

When people up and down the west coast of the United States and across the country are getting shellacked by these gasoline prices, in effect, we are seeing consumers clobbered at the pump with dollars from their own pockets, and then taxpayer dollars are used to fill the Strategic Petroleum Reserve at record prices when it is essentially filled.

We need some changes, and we need changes at the top with respect to gasoline pricing policy in this country. That means the Federal Trade Commission has to get off the sidelines. They have to zero in on the three specific areas I mentioned this morning: oil company mergers; refinery shutdowns; and anti-competitive practices, such as redlining.

For far too many years, Federal Trade Commission political appointees have sat on their hands while the anti-competitive practices of the oil industry gouge American consumers at the gas pump. I have given Ms. Majoras a number of opportunities to explain to me what she plans to do differently as a Commissioner, and she has made it abundantly clear that she has no specific plan to energize the FTC to begin fighting for consumers. I don't intend to allow yet another FTC Commissioner collect a $145,00 salary to do nothing while unnaturally high gas prices jeopardize American jobs and American families.

It is my intention to continue to object to Senate consideration of the

nominee to head the Federal Trade Commission until that agency is willing to tell the people of our State and the people of this country that there are going to be some changes and there is going to be some competition again in the gasoline markets of our country.

Mr. President, I yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, how much time remains on the side of the minority?

The PRESIDING OFFICER. There is 3½ minutes.

Mr. REID. Mr. President, we are going to go to the bioshield bill at 11:30. The majority has 45 minutes. We are not going to vote on that until 2 o'clock, anyway. I ask unanimous consent that I be allowed an extra 5 minutes and that the majority also be given 5 minutes.

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

ENERGY

Mr. REID. Mr. President, we have people from the majority coming out here occasionally talking about how important it would be to pass an energy bill. I listened to the President's press secretary yesterday saying: Well, the reason we are not having lower gas prices is because the Democrats won't help with the Energy bill.

This is simply talk. It has absolutely has no merit. All we need to look at is what the administration itself says about the Energy bill. The Department of Energy's Energy Information Administration studied this question and concludes the legislation's incentives to reduce our reliance on foreign oil sources will have a negligible success. The report, prepared by the administration for a Republican Senator, states:

> On a fuel-specific basis, proposals in the [conference report] including changes to production, consumption, imports, and prices are deemed to be negligible.

The bill won't address our energy needs in the future. It won't protect middle-class families who are being gouged with the gas prices we see today. Nevada has the second or third highest gas prices in the country. Gas prices across the Nation have reached alarming levels, especially in Nevada and California. A regular, unleaded gallon of gasoline costs $2.22 in Las Vegas, $2.29 in Reno, while higher blend fuels are at about $2.50 a gallon. I have to say, this was written on Monday. This is 2 days later. I don't know what it is today. But it has gone up.

Since the first of the year, the price of gasoline has increased more than 58 cents a gallon in Nevada. There is no doubt the price of crude oil has contributed to higher gasoline prices, but this outrageous 58-cent increase in Nevada since January has not been driven by the rising cost of crude oil but by corporate greed and the never-ending quest for profits, no matter what it does to the consumer.

Big oil companies and refiners are getting rich. Middle-class families are getting gouged. I had in my office last week a wholesale distributor from Las Vegas and Reno. If a service station wants some oil products, gasoline, that is where they get it. These companies are going broke because they can't pay for the huge cost of fuel. The markup they get is 2 or 3 cents a gallon. They make 2 or 3 cents a gallon on the fuel they sell. So it is not the service station operators making the money. It is not the person who gives them the fuel. It is the big suppliers. Big oil companies and refiners are getting rich. Middle-class families are getting gouged.

I am not making this up. It is documented. Refiner margins have doubled and tripled. Oil companies weren't content to make 25 cents for every gallon of gasoline.

They now make up to 75 cents for every gallon of gasoline sold.

Look at this. Who is better off? Oil companies report record profit increases. British Petroleum did OK last year, a 165-percent increase in their profits. Chevron-Texaco are the record holders, a 294-percent profit. Exxon-Mobil, a 125-percent profit. Conoco-Phillips, I don't know what happened to this company; they only made a 44-percent increase in profit last year. That is all. Conoco-Phillips is down at the bottom. They made a profit before, but now they had an additional 44-percent increase in profit. I repeat, British Petroleum had a 165-percent increase in profit compared to the previous year; Chevron, a 294-percent increase in profit compared to the preceding year; and Exxon-Mobil, a 125-percent increase in profit. I am not making this up. These companies are gouging.

We have all received letters from our constituents. I have received them from Nevadans whose budgets are stretched. They have to make a choice between food, a place to live, and medicine. This is the way it is. It is too bad. Gasoline is not a luxury; it is a necessity. Families have to put gas in their vehicles so they can drive to work, take the children to school, and go to the grocery store.

Big oil companies control it all. British Petroleum, Chevron-Texaco, Conoco-Phillips, Exxon-Mobil, they make the money. And as long as they can show their shareholders they are doing great, it doesn't matter what is happening to the country or the people who work for these companies. They control the supply. They know families have little choice in the matter. They literally have consumers over a barrel of oil.

While consumers are paying record prices, the oil companies are reaping record profits. These profits are outrageous. I believe in the free enterprise system, but if you carry this to its extreme, there isn't much left for the consumer.

Major California refineries owned by Valero and Tesoro that supply the Las Vegas-Reno area have reported record profits and project even bigger gains in the months ahead. Record profits for big oil; record prices for American families.

I have asked the Federal Trade Commission to stop this price gouging, but they won't act. The FTC continues to study the problem while gas prices skyrocket. We all agree something must be done. It is a simple fact that we can't drill our way out of the problem. We are sitting on less than 3 percent of the oil reserves of the world. This includes ANWR. We consume 25 percent of the oil that is produced, and 97-plus percent of the oil reserves in the world are someplace else.

We need to find an innovative new solution, but this administration's energy policy is stuck in the past. It is slanted toward big oil and special interests generally. This is a policy that was hatched in secret 3 years ago by the Vice President's energy task force. This is the task force that refuses to produce the records of who met, where they met, what they talked about. This has gone to court. They have stalled it for almost 4 years.

This past Sunday the Washington Post reported on the influence that has been wielded in this administration by the people who raised large amounts of money for President Bush's campaign. One of the four people who organized the entire fundraising apparatus was Donald Evans, a Texas oil man. The article also noted the influence of Enron CEO Ken Lay—''Kenny boy,'' as he was called by the President—who served on the Energy Department transition team and recommended two of the appointees to the five-member Federal Energy Regulatory Commission. Is it any wonder nothing is being done?

When it comes to national energy policy, this administration is taking care of the Enrons, the big oil companies, while middle-class families and other families are gouged. Our Nation must promote the responsible production of oil and gas, but that doesn't mean we should roll back environmental protections of our priceless public lands to allow drilling. Remember, we cannot produce our way out of this problem.

If we allow drilling in ANWR, with all the roads and other support structures that would be required, we would despoil a national treasure for little long-term gain in energy security.

Instead of squandering our children's birthright for a temporary supply of oil, we should do a better job of conserving.

If all our cars, trucks and sport utility vehicles got an average of 27.5 miles per gallon, we would save more oil in 3 years than could be recovered economically from the entire Arctic National Wildlife Refuge.

I know we can do it because we did it once before.

After the 1973 Arab oil embargo, when Americans were forced to wait in

long lines to buy gasoline, we realized that our dependence on oil from the Middle East was compromising our national security.

So we dedicated ourselves to building vehicles that were more fuel-efficient. And by 1990, the average American vehicle got 40 percent more miles per gallon than in 1973.

That is an American success story, a triumph of good old American ingenuity.

We need to redouble our efforts to conserve oil.

We also need the President to stop filling the Strategic Petroleum Reserve.

It is more than 90 percent full. How much is enough?

There have been two major releases of oil from the SPR. Crude oil prices fell sharply each time.

The first SPR release occurred as the U.S. began bombing Iraq on January 16, 1991. The next day crude oil prices fell from $32 to $21 per barrel.

The second release occurred in September 2000. Crude oil prices immediately fell from $37 to $31 per barrel after this release was announced.

The President also needs to pressure OPEC to significantly increase its production quotas to lower the price of oil on world markets.

These are some immediate steps we can take to help middle class families.

But to meet our energy needs over the long term, we need an energy policy that looks to the future.

I have already talked about the need to conserve oil.

Conserving would protect consumers, and it would make our country stronger.

Thomas Friedman, who covers the Middle East for the New York Times, wrote last week that we must renew our efforts to free ourselves from our dependence on oil from that region.

He suggested an effort modeled after the Manhattan Project. That, of course, was our extraordinary race to develop a nuclear weapon during World War II.

The Manhattan Project was a success. It helped keep the world free.

And we can do it again.

We are going to be spending a lot of time this week talking about national defense, about ways to make our country stronger.

Well, we can make our country stronger by finding an efficient and environmentally sound way to produce hydrogen fuel.

We can find a way to produce hydrogen fuel by harnessing our abundant renewable energy sources—the power of the wind, the warmth of the sun, and the heat within the earth.

We need to break this bill apart and extract what is good.

Let's take elements of this energy legislation that enjoy broad, bipartisan support, and move them forward to the President's desk.

I was encouraged that the FSC/ETI bill passed by the Senate last week contains the Energy Tax Incentives.

I applaud Senators GRASSLEY, BAUCUS, and DOMENICI for the provision that expands and extends the production tax credit for wind, geothermal, solar, and biomass energy.

The FSC/ETI bill also guarantees a commodity floor price for the Alaskan Natural Gas Pipeline.

I strongly support a price floor and loan guarantees to build an Alaska Natural Gas Pipeline, but this supply won't enter the market for another 10 years.

Senator CANTWELL has introduced a standalone bipartisan bill to improve the reliability of our Nation's electric transmission system.

This bill is noncontroversial and can pass both Houses of Congress.

We can pass meaningful parts of this energy legislation, and begin to implement a strategy that looks toward the future.

We need to act now.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, can the Chair advise where we are in the business of the Senate?

The PRESIDING OFFICER. We are in morning business.

MOVING AMERICA FORWARD

Mr. COLEMAN. Mr. President, I want to spend time talking about the Defense authorization bill. Before I do, I want to respond to this question, are we better off? I think it is a good question.

But the question has to be phrased: Are we better off today than we were after the impact of September 11? My colleagues across the aisle continually block out of their minds the impact of the devastating attack on American soil of September 11 and the challenges this country faced—both emotional, from the scars of the terrible loss of life, as well as the economic impact. That is the question.

Are we better off today with the Taliban not operating freely in Afghanistan? Are we better off today with Saddam Hussein no longer supporting Hamas and Hezbollah, no longer operating the torture and rape chambers?

Are we better off today fighting terrorism in Iraq rather than again back on our shores? Are we better off economically?

Mr. President, I have in front of me an article in today's Minneapolis Star Tribune, and I will refer to a couple sections. It says, in April, Minnesota broke all kinds of job records, led by the State's largest drop in unemployment, to 4.1 percent from 4.8 percent. Economists used words such as ''spectacular'' and ''breathless'' to describe the job gains they say were part of the national turnaround.

The U.S. economy added 625,000 jobs in March and April, a turnaround, I note, that was fueled by tax cuts, was fueled by bonus depreciation, was fueled by increasing expansion, fueled by lowering the top rate to give small business a tax break. The article notes that the 0.7-percent drop in the unemployment rate was the biggest since the State started keeping records in the late 1970s.

Are we better off economically today than we were after the impact of 9/11? Absolutely. With the $18,000 job decline and the number of unemployed people, also going back to the 1970s, that was 13 percent fewer than the 140,000 unemployed in March. The 4,500 new manufacturing jobs is the biggest monthly increase since the State started tracking the statistic in 1992.

Are we better off today, post-9/11, than we were right after that attack? Absolutely. Completing Tuesday's figures, success in more hiring suggests fewer firings. New unemployment claims dropped 14.1 percent in April. They talk about in this article the manufacturing sector.

We would be better off if we didn't have the other side filibustering an energy bill. We would grow more jobs. We would be better off if my colleagues on the other side were not blocking asbestos reform, if my colleagues were not blocking class action reform, so that we could grow more jobs. We would be better off if my colleagues on the other side were not blocking the appointing of conferees to the highway bill. That is a jobs bill. Have we moved forward? Absolutely. Have we recovered from 9/11? Absolutely. But rather than criticize, my colleagues should come together and stop the obstruction and blocking and let's move America forward.

DEPARTMENT OF DEFENSE AUTHORIZATION

Mr. COLEMAN. Mr. President, we spend a fair amount of time on this floor discussing priorities for our people and our Government. As far as I am concerned, all that talk is about what comes in second to the subject we are on today: national security.

Our first obligation is to defend the American people and our interests abroad. If we don't do that with thoroughness and excellence, nothing else is going to matter for long.

September 11 was a tragic day. It was also the end of a period of denial. For generations, we believed that we could sit here safely, protected by our oceans. But 2 world wars in the last century and the coming of the nuclear age changed that. But when the Berlin Wall fell down and the Soviet Union collapsed, perhaps some lapsed into a false sense of security. September 11th changed that forever.

This bill—the Defense authorization bill—is an attempt to respond to the defense of American interests in the world as it is, now and for the foreseeable future. Failure to be prepared invites the threats we fear. Peace through strength must remain the governing doctrine of American national security.

I support the work of the Chairman, Senator WARNER, on this bill. What a

tremendous asset it is to the Senate and Nation to have his expertise and experience. The fact that he served at the Pentagon, and has participated in this bill through numerous administrations gives us confidence in this work product.

It has been said that the key to leadership is maintaining order in the midst of change, and change in the midst of order. With the distinguished Chairman, we have that balance.

Mr. President, for a moment, I want to discuss recent developments in Iraq.

You would never try to time a foot race with a sun dial. Likewise, it makes no sense to judge the progress of the war in Iraq by the top of the hour news.

We are at war. That is a sentence fraught with meaning. War is by definition unpredictable. It involves a struggle against a dedicated foe, and constantly shifting conditions. Depending on your point of view, a single event for one part will be an ''ebb'', while for another it is a ''flow.'' With a short term perspective, you never know whether something is a trend or an isolated, irrelevant occurrence.

One of the lessons we learned from the Vietnam era is that when the United States of America commits troops to battle, we should only do so if we are committed and confident of victory. The angst of so many Vietnam veterans is not the sacrifice they were called to make, but the betrayal of their cause and the anger of the American people at them for doing what their country asked them to do.

The decision to go to war in Iraq was not a snap judgment. It was thoroughly debated here on this floor. The vote to authorize the use of force was not unanimous, but it was bipartisan. We crossed a threshold when we made that decision, and when combat began.

A decision to go to war is not a stock you buy or sell depending on how it is doing. We are in this war until we finish it successfully.

Is there room for debate on how the war is to be conducted? Certainly. But only to a point. We don't need 535 commanders in chief.

In a world of instantaneous global communication, we need to be very sensitive to what we say on the public record, and how our words can be interpreted by those who wish to destroy us. War is a matter of armaments and troops and battle plans. But is also a matter of psychology and spirit. We should be very careful not to encourage our enemies. When Congressman MURTHA made his comments last week, I vehemently disagreed with them. This war is certainly ''winnable'' but if insurgents heard his words, it was harder to win than before he spoke.

I reiterate that it would be foolish to try to run this war based on public opinion. We have no General Gallup Poll. The circumstances we have learned about Abu Ghraib are very disturbing to us all. Looking at the polls, it had a short term effect on support for the war effort. But we must maintain the perspective that these are actions we are ashamed of and are working to prevent from ever re-occurring. Compare that to the villains who beheaded Mr. Berg. They reveled in the act of his murder. It was a picture of what we are there to fight against.

Progress is being made. The influential Shia cleric Al-Sistani has called for people like Al Sadr to lay down their arms.

The President has made it clear what to expect as the June 30 deadline approaches. Terrorists like Al Zarqawi know what the prospect of a free Iraq means, and they will do anything to stop it. We cannot let them succeed. We need to be more committed to our noble ideals than the terrorists are to their evil plans. Despite all the attempts to distract us or deter us, we need to stay focused on the transition to Iraqi sovereignty. If we fail, the fall out will be far worse than that from an artillery shell filled with sarin gas.

Mr. President, our history tells us that war is hell. But it also tells us that there are some things worth fighting for.

The battle is engaged. The war on terrorism is being fought in Baghdad, in the Sunni Triangle, not here. Better to fight the battle there than here. Have no doubt, if we were not fighting it there, it would be fought right here. Its poison and death would spew forth upon us.

Removing Saddam Hussein from the world stage was worth fighting for. Freeing the people of Iraq from tyranny and deprivation is worth fighting for. Planting an Arab democracy in the Middle East is an historic opportunity for freedom in this world.

We are committed, Mr. President. Our only option is to persevere to victory. With all people, I hope and pray it will be soon.

I thank the committee for the bill they have brought here to the Senate floor to give the President the tools he needs to protect our security. I look forward to our consideration and passage of it.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

THE COMMANDER'S EMERGENCY RESPONSE PROGRAM

Mr. STEVENS. Mr. President, I come to the floor of the Senate today to share with my colleagues and the American people a genuine success story coming out of Iraq. It is a story that demonstrates how American ingenuity, coupled with common sense and commitment, is leading to immediate, visible and valuable improvements in the lives of the Iraqi people.

I am speaking of the Commander's Emergency Response Program. This is a program that allows our troops on the ground to fund low-cost, high-impact humanitarian and small reconstruction projects that benefit the quality of life of the Iraqi people and contribute to our country's stabilization efforts in Iraq.

The Commander's Emergency Response Program, or CERP, is a program that has generated significant success and one that deserves to be told and told and told.

With the wave of bad news coming out of Iraq in recent weeks, it is easy to lose sight of the progress we have made in that country and of the many accomplishments our Armed Forces have already reached.

Our men and women in uniform have performed magnificently, and the Commander's Emergency Response Program gives them a tool to fund small-scale projects that have an immediate, visible, and high-value impact on the lives of the Iraqi people. We are literally talking about repairing homes, painting schools, restocking hospitals, and restoring freshwater supplies to villages. No project is too small; no task is too trivial.

To date, our commanders on the ground have spent over $250 million through the Commander's Emergency Response Program, funding over 21,000 projects at an average cost of less than $7,000. That is right, $7,000.

Our local commanders have used the CERP to reopen hospitals and clinics all across Iraq to administer over 22 million vaccinations. They have distributed new textbooks to 5.9 million students who are attending school, some for the first time. Our commanders have funded over 1,000 water and sewer projects, bringing clean water to farmers and to villages.

In Rutba, CERP funds were used for electrical and plumbing repairs to the local youth center. The repairs, which cost less than $9,000, were completed within 10 days.

In Baghdad, the 30th Medical Brigade used the CERP funds to purchase inspection equipment for seven slaughterhouses.

The list of small, yet meaningful, projects could go on and on. Most importantly, the CERP lets our troops act quickly without becoming entangled in redtape or bureaucracy.

Individually, these small-scale projects contribute to the improvement in the daily lives of Iraqi citizens step by step. Collectively, these thousands of projects become something larger, like pieces of a puzzle that join together to reveal a larger picture—a good picture.

Collectively, these projects illustrate the concern of the U.S. military for the Iraqi people, the commitment that our men and women in uniform bring to improving the lives of Iraqis every single day, and the creativity in our approach to ensuring security and stability in Iraq.

We do not read much about these kinds of activities, but collectively these projects give our troops on the ground an opportunity to reach out to Iraqi citizens and to build a bond of mutual trust and good will.

BG David Blackledge, the commander of the 352nd Civil Affairs Command in Iraq, said one of the reasons

the Commander's Emergency Response Program has been so successful is that it is administered by the local battalion or brigade commander on the ground who is living and interacting with the citizens of his or her area of responsibility on a daily basis.

Who can better identify the immediate needs that can be addressed through low-cost, high-impact projects than the soldiers right there on the ground?

With all due respect for the policy people here in Washington, they cannot see the potholes in the roads, they cannot see the dilapidated buildings and infrastructure that has degenerated for years under the tyrannical dictatorship of Saddam Hussein. Our troops on the ground see these obstacles every day, and the Commander's Emergency Response Program lets them address these problems immediately and effectively with the cooperation and assistance of the Iraqi people.

Let me be clear—very clear: In most cases, the actual work is done by Iraqis themselves, so that in addition to yielding immediate and visible results, projects funded from the CERP provide jobs to Iraqis who are eager to rebuild their country and to stimulate the Iraqi economy.

Some people might be concerned that our commanders are walking around Iraq and Afghanistan with thousands of dollars of cash in their pockets, spending it without congressional oversight. Let me assure those people that is not so. The coalition has instituted strict controls to ensure complete accountability of the funds from the Commander's Emergency Response Program.

The Commander's Emergency Response Program is a low-cost, high-impact program, the effects of which will be felt throughout Iraq. It has been instrumental in gaining the confidence of the Iraqi people and in generating a tremendous amount of good will toward our troops on the ground.

Sometimes all it takes to improve the lives of Iraqi citizens and to build relationships is to repair a door that was damaged in a raid, or to provide a power generator to a factory so its Iraqi employees can get back to work. These are the types of small, yet meaningful, projects our commanders can tackle with the Commander's Emergency Response Program. These projects do not cost much in terms of dollars, but the return is tremendous. It is critical we continue to incorporate this approach into our reconstruction efforts in Iraq. Our commanders need reasonable, sound financial flexibility to match the speed of their operations and the dynamic nature of our battlefields.

The Commander's Emergency Response Program provides our commanders with a flexible tool to respond quickly and decisively to humanitarian problems. If fixing a well quickly solves a local problem and shows a neighborhood the coalition is improving their lives, then that is an important tool for our troops to have.

Initially, this program was funded from seized Iraqi assets. I am proud to say we gave the Department of Defense the authority to continue the Commander's Emergency Response Program in the current fiscal year 2004 supplemental appropriations bill. I look forward to again supporting the Department as we pass the fiscal year 2005 Department of Defense appropriations bill.

I close with a final thought. Our men and women in uniform liberated 25 million Iraqi people in a military campaign with swiftness, precision, and success—success unparalleled in history. We can attribute this success to the foresight and creativity that allowed us to prepare and equip a total force the world has never seen. Now we are applying that same foresight and creativity as we tackle the difficult task of reconstructing and stabilizing Iraq.

The Commander's Emergency Response Program provides visible, high-impact support to the Iraqi people so they can create a foundation for a free and stable society. It is a true success story in Iraq. I am proud of the troops who use it to help the Iraqi people every day, and I am proud to support this very important program.

Kate Kaufer and Sid Ashworth of the Appropriations Subcommittee on Defense prepared these remarks for my presentation.

I thank the Chair. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

PENTAGON RESPONSE TO IRAQI PRISONER ABUSE

Mr. BENNETT. Mr. President, last week, along with a number of my colleagues, I went up into the room on the fourth floor in the Capitol where the Defense Department, the State Department, and the CIA come to brief us on classified information. I sat in a darkened room where we saw a slide show of the photographs that had been taken of Americans inflicting abuse on Iraqi prisoners. The pictures were revolting, they were disgusting, and they left us all with a sense of outrage that this had gone on, outrage that Americans had been involved in anything such as this.

I did not look forward to the experience. Indeed, I made the initial decision not to go. Then I decided: No, if I am going to be involved in examining what is here, I have to see the evidence, as revolting as it may be.

The sense of outrage that I and my colleagues felt about this was shared by all Americans, but in one sector of American society it seems to be even greater than anyplace else. There are some in this society who might not be able to guess what that sector is. But I would say the outrage that has been the strongest has come from those who serve in the American military.

Duty, honor, country—these are the watch words of the American military, and they were violated by those who took those actions in the prison in Baghdad. They did not do their duty. They dishonored the uniforms they wore as they abused those prisoners, and they brought disgrace on the country whose Constitution they had taken an oath to uphold and defend.

The sense of outrage is nationwide, but it is particularly focused among those who have sworn to uphold duty, honor, and country and saw their fellows in uniform violate those principles.

I rise to discuss this today because today is the first court-martial coming as a result of the investigations that have been conducted into this activity. This morning in Baghdad, Army SPC Jeremy Sivits pled guilty, was convicted, and sentenced to a 1-year imprisonment, reduction in rank, and a bad conduct discharge.

Now, there are those in our society who have less faith in the military, who say: These courts-martial are a part of a coverup; this is an attempt to gloss over what has happened; one cannot trust the military to investigate themselves; and we need a whole series of investigations by outside groups.

I believe the facts are that we will find out more what happened from the courts-martial than we would find out from any degree of investigation conducted elsewhere. I offer as a demonstration of the fact that the military can be trusted to act in matters of this kind the following chronology of what has happened with respect to this incident.

We now know that the abuse of the prisoners took place in the last quarter of 2003. We do not know the exact dates, but sometime toward the end of that year the alleged detainee abuse occurred. On January 13, 2004, SPC Joseph Darby opened an e-mail thinking he was going to see pictures that he described as a travelogue; a history of the performance of a particular unit. Instead, what had been downloaded on his computer were the photographs that my colleagues and I saw in room 407 of this building.

Specialist Darby was absolutely stunned. What did he do? Here were his fellow soldiers engaged in activity that was clearly in violation of everything he had been taught, people he wanted to feel close with and identified with, people who, perhaps, were his friends. What would he do? He did his duty, and he provided a CD of the abuse photos to the Army Criminal Investigation Command, or the CID, on January 13, 2004. On January 14, the CID began its investigation—no attempt to cover up. No attempt to hide or turn away from the fact that there was a potential difficulty. They began the next day, and they notified people up the chain of command of what they were doing.

On January 16, just 2 days later, Brigadier General Kimmitt announced that there would be an investigation by

Central Command. It had gone up all that way, that quickly. In just 3 days they were at the top levels of Central Command.

Two days after that, BG Janis Karpinski, who was the commander at Abu Ghraib prison, was admonished and suspended from her command. She was relieved just 2 days after this reached the attention of Central Command.

Additionally, the Abu Ghraib chain of command was suspended, from the battalion commander, a lieutenant colonel, all the way down. Just 2 days after this was brought to the attention of Central Command, the entire group was relieved.

Now, on January 19, a combined joint task force requested that Central Command appoint an investigating officer, and on January 31, Major General Taguba was appointed to conduct the investigation.

On February 10, the Secretary of the Army tasks the inspector general to conduct an analysis of the internment detention policies, practices, and procedures. It goes beyond just the prison: Look at the whole Army and our procedures to see what can be done to prevent this from happening again.

On March 12, General Taguba completed his investigation and briefed the commander of joint task force 7, Lieutenant General Sanchez. Also on March 12, Lieutenant General Helmly, who was the commander of the U.S. Army Reserve Command, directed that Command's inspector general to conduct an assessment of training for Reserve personnel on the issues of detainee treatment, ethics, and leadership to see if the training had broken down in a way that would cause this to happen. All of this was going on—the military acting on its own.

On March 20, the first charges were preferred against six accused and announced by Brigadier General Kimmitt at a press conference. This is not something that got discovered by some investigative reporter digging in behind the scenes. This was something that was announced by the military after they had done a careful examination and moved in a way to protect the rights of every individual.

At that announcement, no names or units were identified so that they would not compromise the due process of those who were being accused.

On April 15, Major General Fay, the Army Deputy Chief of Staff for Intelligence, appointed an investigative officer to examine the circumstances with respect to the 205th Military Intelligence Brigade. That is the group where the commander was relieved within 2 days of discovering that there was an allegation of a problem.

On May 1, Lieutenant General Sanchez issued a memorandum of reprimand to six general officers and one letter of admonition to a member of the 800th Military Police Brigade as recommended by Major General Taguba. This is not something that they passed off to the GIs, the sergeants, the corporals, and the privates. This is something they took care of at the general officer level. Six general officers received a memorandum of reprimand. That is a career-ending experience for a general officer.

Then on May 7, Secretary Rumsfeld announced the independent review panel headed by former Defense Secretary Jim Schlessinger, including retired Air Force General Chuck Horner, former Representative Tillie Fowler, and former Defense Secretary Harold Brown. And then, today, on May 19, the first court-martial has taken place and Specialist Sivits was found guilty and sentenced.

The lesson that comes from this list of actions is a lesson that the world should heed. The lesson for Iraqis and other nations is that this is how democracies handle their problems. This is how Americans face the difficulties that arise when there is a breakdown that occurs within our military. We do not hide it. We do not pretend it did not happen. We do not strive to find excuses. We act in the way consistent with the rule of law.

I hope everyone in the world would recognize the difference between the way we have responded to this and the way al-Qaida has responded to this. We have responded to it by exercising the rule of law and seeking those responsible. They have responded by taking an innocent American civilian, who had nothing whatever to do with any of this, and cutting off his head, live and in color on international television. That is the difference between Americans and al-Qaida when faced with a problem.

So that is the first lesson I hope the world will take from the way we are handling this. The lesson that the military should take from this is that the rules are there to be obeyed. The lesson that should go forward from Specialist Sivits' court-martial, from the six general officers who got the memorandum of reprimand and from the investigations that are still going forward is that if the rules are broken, you end up in Fort Leavenworth. That is the lesson that should come out of this for the American military, and I believe it is being received there.

The lesson for the commanders, those who are now responsible and who have taken over to replace those who were relieved, is this. It comes from a statement by General Eisenhower, who knew something about military discipline. He said: ''Areas that are not inspected deteriorate.''

Let's go back to Specialist Sivits for a moment and find out from his statements relating to his court-martial what really happened. I am quoting now from the Washington Post:

> Sivits told investigators that the abuse would not have happened had higher-ranking members been present. ''Our command would have slammed us,'' he said. ''They believe in doing the right thing. If they saw what was going on, there would be hell to pay.''
>
> That statement echoes testimony given by one of the initial investigators on the case. During a session similar to a grand jury proceeding, Tyler Pieron, an Army criminal investigator, said the abuses occurred, ''after the chain of command had changed shifts and gone home.''
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> * * * * *
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> Sivits said he did not report the abuse to his commanders because [he was told not to by a friend] ''and I try to be friends with everyone. I see now where trying to be friends with everyone can cost you.''

I spoke with Secretary Rumsfeld this morning about this lesson, the lesson of command. It is fine to change the command, but we must examine what caused the problem and change the procedures. Even though the rules were there, the procedures broke down. There was not a duty officer on duty. We have been told that this abuse took place between 2 and 4 in the morning when no one was around. I raised with Secretary Rumsfeld the importance of seeing to it from now on that the new commanders of the prison make sure there is a duty officer there all night long.

Back to Eisenhower's dictum, there should be snap, surprise inspections. People in the prisons should never know when someone might drop in, unexpected and unannounced, to see what is going on. Secretary Rumsfeld concurred. I believe that is the lesson that command should receive from this experience, and I believe it is the lesson they will learn and they will follow.

As sorry as this chapter is in our proud military history and as deep as this stain has become upon America's honor, it is not the first time we have seen such chapters. It is not the first time we have endured such stains. I wish I could say it is the last time this will happen, but even in this morning's news we are hearing that there are more pictures, that it may have been more widespread than we thought. With human beings as imperfect as they are, it is inevitable that at some point in the future someone else will break the rules, violate his oath, and take actions that will cause all Americans to mourn, as we do over these actions.

Given that history, that it has happened before and perhaps will happen again, we should remember what we did as a nation when it happened before and what we are doing now. We dealt with it. We went after those who were responsible, discovered who they were, gave them their full due process, but when they were convicted, they were punished. They were dealt with. Then we made the changes that were necessary to see to it that it wouldn't happen again. Then we got past it.

We have not allowed those past chapters in our history to deter us from our destiny as a nation. We should do the same thing now. We are in the process of discovering who the guilty are. We are in the process of conducting courts-martial. Specialist Sivits is just the first. Charges have been proffered against others and additional courts-

martial will be forthcoming. We are in the process of making the changes—not just the change of command but the change in procedures to see to it that this will not happen again.

As we have done in the past, we must get through this and not let it deter us from our overall goal of why we are in Iraq. We must not fixate on this stain on our honor to the point that we become so muscle-bound that we cannot proceed forward in our mission.

What is our mission? Speakers who have addressed this before me have made that clear. Our mission is to provide freedom and security for the people of Iraq. I believe that means freedom and security for the Middle East generally. I believe that means transforming the world in which Americans live and an increase of freedom and security for our Nation as well. These are worthy, indeed noble goals, and we must not be deterred from seeking them by preoccupation with this particular outrage.

I close with a conversation I had over the weekend. Like many of us over the weekend, I went home to Utah and I participated in Armed Forces Day. It was a poignant Armed Forces Day for a variety of reasons, because many of the people who were there were families of those in the military who were there without their family member—that is, children, husbands, wives, mothers and fathers of Utahns who are serving in this war and who are not home with their families to enjoy the delightful spring day at Murray City Park where everyone was having a picnic and a good time. Set up in that area was a series of flags, one flag for each individual who had fallen in either Iraq or Afghanistan. Of course, the majority of flags were American flags, but I was struck by the number of British flags, Italian flags, Polish flags, Spanish flags—one I did not recognize, an Ukrainian flag, an Estonian flag. We are providing the leadership, but many countries in the world are responding to us as we launch on this mission.

On Armed Forces Day I sat next to a colonel. He was not a Utahn; he had come to participate in the activities. We visited over lunch. With the Army, he has been in Kosovo, he has been in Bosnia, he has been in Afghanistan, he has been in Iraq, and he was on his way back to Iraq.

I said to him: Colonel, tell me what it is like. You have been there, you have been on the ground. Tell me what it is like. He gave me an answer we hear a lot. Indeed, it was the first sentence out of his mouth that comes out the same as many others. He said: Well, things are not nearly as bad as the U.S. press would have you believe. Things are really going fairly well in many parts of the country. But we have problems.

We talked about some of the problems. He made this observation that I think should keep us thoughtful as we address our mission in Iraq. He said: You know, whether it is Bosnia, Kosovo, Afghanistan, or Iraq, the same thing is true: Those people are just like us in that all they want is to have their children be able to walk out of the door and be safe on the street, to be able to go to school without intimidation and learn what they need to learn to get a decent job and live a decent life. That is all they want in Kosovo, Bosnia, Afghanistan, or Iraq—just like us. That is what we want in America. To bring that to Iraq and give the people of Iraq that opportunity, with their wives and their children and their grandchildren, unfortunately requires force of arms. Americans, British, Italians, Poles, Spaniards, Ukrainians, Estonians, are willing to risk their lives to bring about that goal. We must never lose sight of the importance of that mission or of the sacrifice that has gone into achieving it. We must never turn back simply because there are those who have put a stain on American honor by the way they have behaved.

I pay tribute to the Armed Forces. I pay tribute to the chain of command that is dealing with these challenges. I pay tribute to those who are willing to face the problems and not back away from them or cover them up. We must support them in their efforts. We must not smear the entire establishment because of the actions of a few.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

OREGON'S ECONOMY

Mr. SMITH. Mr. President, yesterday I had the privilege to sit in that chair during much of the morning hour and I heard many of the speeches of our colleagues and friends on the other side. The theme of the day was, Are you better off today than you were 4 years ago? Those are the words of Ronald Reagan and Jimmy Carter. Now they are being applied to George W. Bush. I can say as an Oregonian that the answer in my State is yes, we are now better off than we were 4 years ago.

When I watched George W. Bush take his oath of office on a cold and rainy January day 3½ years ago, I was very mindful that Oregon was not going into recession; we were deep into recession. We had spent 8 years of the Clinton administration watching the dismantling of 70,000 family-wage jobs in many of the natural resource industries in my State, specifically, timber industry, fishing, farming, and others.

We were told we did not need low tech, we had high tech. But the bubble of high tech had already popped in Oregon. Billions of high-tech values, equities, were disappearing because they were no more than the blue sky in the end than they were in the beginning.

Then we should have known it, but the tourism industry that we were told would take the place of our basic industries was in risk of peril that maybe we could not have imagined. When September 11 occurred, tourism evaporated, as well. And my State, because of the policy of the 1990s, coupled with the incredible shocks of the high-tech bubble popping, September 11, corporate scandals, began to register some of the highest unemployment rates in America.

Today those rates are falling and falling fast in Oregon. They are nowhere near as good as they ought to be, but with lower taxes, healthy forest initiative, an effort to preserve our hydroelectric dams in the Pacific Northwest, Oregon is coming back, tourists are coming back, high-tech is being restabilized, and trade is being advanced. These are all issues that will be and are part of the Presidential election.

As one Oregonian, I ask, Are we better off than we were 4 years ago? By most indicators, the answer is emphatically, yes. The rule of thumb is it takes 6 months between the kind of economic news we are beginning to enjoy now before that news is fully understood by the American people. If that holds true this time, a majority of Oregonians will be able to answer with me that, yes, we are better off now than we were 4 years ago.

It is not perfect. Gas prices, as my colleague from Oregon, RON WYDEN, pointed out, are too high. There are many reasons for that. I don't know that they will ever come down to what they were. But I do know the contender for the Presidency does not have the answer on this. The truth is, we have to explore for more and we have to conserve more. It is not all one and it is not all the other. It is both.

I understand he is complaining he does not see the President jawboning down the prices. Yet I think what Mr. Woodward said, that the President was talking to Prince Bandar, the men and women would not stand for it. You cannot have it both ways all the time.

The other half of the equation of, Are you better off now than you were 4 years ago, is the whole issue of our foreign policy and our domestic security. Having spent 6 years on the Foreign Relations Committee, I watched President Clinton, well motivated in foreign policy, trying to reconcile what to do with American power in a world in which we were the only superpower.

I learned a great lesson from him as it relates to Kosovo. I was one of the few Republican Senators who voted with him on Kosovo, consistently believing it was in American interests because it was consistent with an American value that we end genocide in Europe's back door. But for our intervention, at the urging and pleading of our NATO allies, they would have lost Kosovo to Mr. Milosevic without American power, President Clinton's leadership, and the support of this Congress

that ultimately turned around that policy of genocide toward a European Muslim majority.

I remember asking President Clinton, Mr. President, can't you go get a Security Council resolution in support of this? He responded, Senator, I cannot because Russia and China have promised to veto.

I learned then how wise is now-President Bush's policy that you do not go to the Security Council of the United Nations in pursuit of the security of the American people. You do not get a permission slip from an institution that in its very makeup is not democratic.

It is a very interesting and historical observation that of the 191 countries of the U.N. members, only 89 would be described today as free and democratic countries. I guess a little more than half of them would be counted as liberal democratic democracies that ensure political competition, respect for civil liberties, significant independence, civic life, and independent medias. This is the same institution that puts Cuba at the head of its human rights commission and Iran at the head of its disarmament commission.

I say we should stay in it in a realistic way, even a skeptical way, using it as it serves America's interests because that is how other members of the U.N. use the U.N. But do not subject our security to a veto by the Security Council.

So when I hear our colleague on the other side run television ads in my State saying the first thing he will do as President of the United States is to return American foreign policy to the international community, I wonder what he means. And then he clarifies, he will go back to the Security Council.

I want the American people to know—I plead with Oregonians to know—that there is no security in that. Understand that permanent members of the Council—France in particular; Russia as well; China; occasionally Germany is a member—these were the primary creditors of Saddam Hussein, and they were also significant beneficiaries of the food for fraud—I am sorry—the Food for Oil Program which enabled Saddam Hussein to rearm and to execute tens of thousands of his countrymen and to build palaces of great austerity and wastefulness.

Regardless of the motives of other countries, the President did the right thing by going into Iraq and removing Saddam's murderous regime from power. We must remember that. He did the right thing for the people of Iraq, and he did the right thing for the American people as well.

By liberating the Iraqi people, we have provided hope to people not only in Iraq, but throughout the Middle East, that democracy is an option available to them. Civic movements throughout the region have emerged calling for political change, even in countries such as Egypt and Saudi Arabia. The Washington Post has reported that the individuals involved in these movements have widely credited President Bush's democratization policy for allowing them the opportunity to operate in a climate that, up to now, has been unfriendly to their aspirations. This is a real accomplishment, one that is not often touted, but that serves as a harbinger of what is to come if the United States continues to press for democratic change in the Middle East.

Unfortunately, the shameful images being broadcast around the world of a few American soldiers abusing Iraqi prisoners undermine the hard work and dedication of so many Americans who are serving honorably in Iraq. These abuses are abhorrent, and those who are responsible for them must be punished.

But in no way should we equate the actions of a few Americans with the widespread, government-endorsed terror inflicted by Saddam upon his own people. The prisoner abuse was wrong, but the United States has laws and military codes that these soldiers violated—and under which they will be held accountable. You can hardly say the same thing about Saddam's Iraq.

The tragic murder of Nick Berg should remind the American people of the kind of world in which we are living. People who are willing to brutally decapitate an innocent man for the crime of being an American citizen are not individuals who respect international law, or the founding principles of the United Nations. They respect force, and power, and resolve, and determination. President Bush understands this critical fact, and is willing to deal with these evil men in those terms, not under conditions that we wish existed but do not.

I understand that to some, the burden of responsibility we have in the world may seem too much to bear. ''Internationalizing'' conflicts seems, on the surface, to be an appropriate way to reduce our commitments abroad. I disagree. The answer is not to abdicate our responsibilities, but to embrace them.

Next week I am traveling to Madrid, Athens, and Bratislava to discuss these very issues with our NATO allies. It is my preference that we act in conjunction with them, but let me reiterate, we should act consistent with our principles. If in doing so we are at odds with our allies, that is a price I am willing to pay.

I would simply say, as the Presiding Officer has noted, there is bad news, but there is much good news, and many of us would sure like a little equality of treatment because our goals in Iraq, our goals in the war on terrorism, are noble. Short of those goals, we are left with a more moderate tyrant in the Middle East governing Iraq.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

PROJECT BIOSHIELD ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 15, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 15) to amend the Public Health Service Act to provide for the payment of compensation for certain individuals with injuries resulting from the administration of smallpox countermeasures, to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States, and to improve immunization rates by increasing the distribution of vaccines and improving and clarifying the vaccine injury compensation program.

Thereupon, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

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

S. 15

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 ''Biodefense Improvement and Treatment for America Act''.

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[Sec. 1. Short title; table of contents.

[TITLE I—PROTECTION FOR SMALLPOX EMERGENCY PERSONNEL

[Sec. 101. Short title.
[Sec. 102. Amendment to the Public Health Service Act.

[TITLE II—PROJECT BIOSHIELD

[Sec. 201. Short title.
[Sec. 202. Biomedical countermeasure research and development authorities.
[Sec. 203. Biomedical countermeasures procurement.
[Sec. 204. Authorization for medical products for use in emergencies.
[Sec. 205. Developing new countermeasures and protecting existing countermeasures against bioterrorism.

[TITLE III—IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY

[Sec. 301. Short title.

[Subtitle A—State Vaccine Grants

[Sec. 311. Availability of influenza vaccine.
[Sec. 312. Program for increasing immunization rates for adults and adolescents; collection of additional immunization data.
[Sec. 313. Immunization awareness.
[Sec. 314. Supply of vaccines.
[Sec. 315. Communication.
[Sec. 316. Fast track.
[Sec. 317. Study.

[Subtitle B—Vaccine Injury Compensation Program

[Sec. 321. Administrative revision of vaccine injury table.
[Sec. 322. Equitable relief.
[Sec. 323. Derivative petitions for compensation.
[Sec. 324. Jurisdiction to dismiss actions improperly brought.
[Sec. 325. Clarification of when injury is caused by factor unrelated to administration of vaccine.

[Sec. 326. Increase in award in the case of a vaccine-related death and for pain and suffering.
[Sec. 327. Basis for calculating projected lost earnings.
[Sec. 328. Allowing compensation for family counseling expenses and expenses of establishing and maintaining guardianship.
[Sec. 329. Allowing payment of interim costs.
[Sec. 330. Procedure for paying attorneys' fees.
[Sec. 331. Extension of statute of limitations.
[Sec. 332. Advisory Commission on Childhood Vaccines.
[Sec. 333. Clarification of standards of responsibility.
[Sec. 334. Clarification of definition of manufacturer.
[Sec. 335. Clarification of definition of vaccine-related injury or death.
[Sec. 336. Clarification of definition of vaccine and definition of physical injury.
[Sec. 337. Amendments to Vaccine Injury Compensation Trust Fund.
[Sec. 338. Ongoing review of childhood vaccine data.
[Sec. 339. Pending actions.
[Sec. 340. Report.

[TITLE I—PROTECTION FOR SMALLPOX EMERGENCY PERSONNEL

[SEC. 101. SHORT TITLE.

[This title may be cited as the ''Smallpox Emergency Personnel Protection Act of 2003''.

[SEC. 102. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

[Part A of title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by inserting after section 224 the following:

[''SEC. 224A. PROTECTION FOR SMALLPOX EMERGENCY PERSONNEL.

[''(a) DEFINITIONS.—In this section:

[''(1) COVERED COUNTERMEASURE.—The term 'covered countermeasure' means a covered countermeasure as specified in article III of the Declaration.

[''(2) COVERED INDIVIDUAL.—The term 'covered individual' means an individual—

[''(A) who is—

[''(i) a health care worker, a law enforcement officer, a firefighter, a security-related worker, an emergency medical worker, or a public safety worker who is identified in a State, local, or Department of Health and Human Services plan that is approved by the Secretary; or

[''(ii) an individual with respect to whom the Secretary determines and declares that it is advisable to administer the vaccine (not including any individual to whom the Secretary determines only that such vaccine should be made available); and

[''(B) to whom a vaccine is administered during the period in which the Declaration is effective (including the portion of such period before the date of enactment of this section) and ending on the later of—

[''(i) the expiration of the 120-day period that begins on the effective date of the initial interim final regulations to implement this section;

[''(ii) the expiration of the 120-day period that begins on the date on which an individual becomes an individual within a category specified in subparagraph (A); or

[''(iii) the date on which the Secretary publicly announces that an active case of smallpox has been identified either within or outside the United States.

[''(3) COVERED INJURY.—The term 'covered injury' includes—

[''(A) an injury, disability, illness, condition, or death determined, pursuant to the procedures established under subsection (b), to have been sustained as the direct result of administration to an individual of a covered countermeasure during the effective period of the Declaration (other than a minor injury such as minor scarring or minor local reaction); and

[''(B) an injury, disability, illness, condition, or death determined, pursuant to the procedures established under subsection (b), to have been sustained as the direct result of accidental vaccinia inoculation through contact with an individual who is (or who was accidentally inoculated by) an individual in a category specified in Article IV of the Declaration to whom vaccinia vaccine has been administered during the effective period of the Declaration.

[''(4) DECLARATION.—The term 'Declaration' means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary of Health and Human Services on January 24, 2003, and published in the Federal Register on January 28, 2003, including any subsequent amendment.

[''(5) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is (as determined in accordance with section 3)—

[''(A) a covered individual who sustains a covered injury as the direct result of administration of a covered countermeasure; or

[''(B) any individual who contracts vaccinia during the effective period of the Declaration or within 30 days after the end of such period—

[''(i) to whom vaccinia vaccine was not administered;

[''(ii) who has resided with, or has been in close contact with, a covered individual; and

[''(iii) who sustains a covered injury as the direct result of contracting vaccinia.

[''(6) SECRETARY.—Except as provided otherwise, the term 'Secretary' means the Secretary of Health and Human Services.

[''(b) DETERMINATION OF ELIGIBILITY.—

[''(1) IN GENERAL.—The Secretary, in consultation with the Attorney General and the Secretary of Labor, shall establish administrative procedures for determining, as applicable with respect to an individual—

[''(A) whether the individual is an eligible individual;

[''(B) whether the individual has sustained a covered injury or injuries for which medical benefits and employment income-loss compensation may be available under subsections (d) and (e), and the amount of such benefits or compensation; and

[''(C) whether the covered injury or injuries of the individual constitute a compensable disability, or caused the individual's death, for purposes of benefits under subsection (f).

[''(2) COVERED INDIVIDUALS.—The Secretary may accept a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is an individual in a category specified in article IV of the Declaration to whom such a countermeasure has been administered by the applicable deadline specified in subsection (a)(2)(B), as establishing that the individual is a covered individual.

[''(3) DETERMINATION OF CAUSATION.—

[''(A) INJURIES SPECIFIED IN INJURY TABLE.—In any case where an injury or other adverse effect specified in the injury table established under subsection (c) as a known effect of a covered countermeasure manifests in an individual within the time period specified in such table, such injury or other effect shall be rebuttably presumed to have resulted from administration of such covered countermeasure.

[''(B) OTHER DETERMINATIONS.—In making determinations other than those described in subparagraph (A) as to the causation or severity of an injury, the Secretary shall take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

[''(4) DEADLINE FOR FILING CLAIM.—The Secretary shall not consider any claim for a benefit under this subsection with respect to an individual that is filed later than 1 year after—

[''(A) the date a covered countermeasure was administered to the individual; or

[''(B) in the case of a claim based on contact vaccination (as described in subsection (a)(5)(B)), the date of the first symptom or manifestation of onset of an adverse effect of such vaccination.

[''(5) REVIEW OF DETERMINATION.—

[''(A) SECRETARY'S REVIEW AUTHORITY.—The Secretary may review a determination under this subsection at any time on the Secretary's own motion or on application, and may affirm, vacate, or modify such determination.

[''(B) SECRETARY'S ACTION NOT JUDICIALLY REVIEWABLE.—The determinations of the Secretary under this subsection shall not be subject to review by another official of the United States or by a court by mandamus or otherwise.

[''(c) COUNTERMEASURE INJURY TABLE.—

[''(1) SMALLPOX COUNTERMEASURE INJURY TABLE.—The Secretary shall establish by interim final regulation a table identifying—

[''(A) adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed to result from the administration of (or exposure to) a covered countermeasure; and

[''(B) the time periods in which the first symptom, or manifestation of onset of each such adverse effect, must manifest in order for such presumption to apply.

[''(2) AMENDMENTS.—The Secretary may amend by regulation the table established under paragraph (1). Such amendments shall apply retroactively to claims filed or pending at the time of the promulgation of final amending regulations and to claims filed after such promulgation.

[''(d) MEDICAL BENEFITS.—

[''(1) IN GENERAL.—Subject to paragraph (2), an eligible individual shall be entitled to payment by the Secretary for medical items and services as reasonable and necessary to treat a covered injury. The Secretary may consider the provisions of chapter 81 of title 5, United States Code, (and the implementing regulations with respect to such chapter) in determining the amount of such payment and the circumstances under which such payments are reasonable and necessary.

[''(2) LIMITATIONS.—

[''(A) BENEFITS SECONDARY TO OTHER COVERAGE.—The obligation of the Secretary to pay for any services or benefits under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

[''(B) NO BENEFITS FOR MEDICARE-ELIGIBLE INDIVIDUAL.—No benefits shall be available to an individual under this subsection with respect to any period in which the individual is eligible for benefits under title XVIII of the Social Security section (42 U.S.C. 1395 et seq.).

[''(e) COMPENSATION FOR LOST EMPLOYMENT INCOME.—

[''(1) IN GENERAL.—Subject to paragraphs (2) and (3), an eligible individual shall be entitled to payment of compensation by the

Secretary for loss of employment income incurred as a result of a covered injury, at the rate specified in paragraph (2).

[''(2) AMOUNT OF COMPENSATION.—

[''(A) IN GENERAL.—Compensation under this subsection shall be at the rate of 66⅔ percent of monthly pay. The Secretary may consider the provisions of sections 8114 and 8115 of title 5, United States Code (and any implementing regulations) in determining the amount of such payment and the circumstances under which such payments are reasonable and necessary.

[''(B) TREATMENT OF SELF-EMPLOYMENT INCOME.—For purposes of this subsection—

[''(i) the term 'employment income' includes income from self-employment; and

[''(ii) for purposes of computation of pay and determination of wage-earning capacity under subparagraph (A), self-employment income shall be treated as wages.

[''(3) LIMITATIONS.—

[''(A) BENEFITS SECONDARY TO OTHER COVERAGE.—The obligation of the Secretary to pay compensation under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income.

[''(B) NO BENEFITS FOR DEATH OR PERMANENT AND TOTAL DISABILITY.—No payment shall be made under this subsection in compensation for loss of employment income due to the death or permanent and total disability of an eligible individual.

[''(C) LIMIT ON TOTAL BENEFITS.—Total benefits paid to an individual under this subsection shall not exceed $50,000.

[''(D) WAITING PERIOD.—An eligible individual is not entitled to compensation under this subsection for the first 5 work days of disability.

[''(f) PAYMENT FOR DEATH AND PERMANENT, TOTAL DISABILITY.—

[''(1) BENEFIT FOR PERMANENT AND TOTAL DISABILITY.—Subject to the succeeding provisions of this subsection, an eligible individual who is determined, in accordance with the procedures established under subsection (b), to have a covered injury or injuries meeting the definition of disability in section 216(i) of the Social Security Act (42 U.S.C. 416(i)) shall be entitled to have payment made by the Secretary of an amount determined under paragraph (3), in the same manner as disability benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible public safety officer.

[''(2) DEATH BENEFIT.—Subject to the succeeding provisions of this subsection, in the case of an eligible individual whose death is determined, in accordance with the procedures established under subsection (b), to have directly resulted from a covered injury or injuries a death benefit in the amount determined under paragraph (3) shall be payable by the Secretary to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible deceased public safety officer.

[''(3) BENEFIT AMOUNT.—The amount of the disability or death benefit under paragraph (1) or (2) in a fiscal year shall, subject to paragraph (5)(B), equal the amount of the comparable benefit calculated under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) in such fiscal year, without regard to any reduction attributable to a limitation on appropriations.

[''(4) BENEFIT IN ADDITION TO MEDICAL BENEFITS.—A benefit under this subsection shall be in addition to any amounts to which an eligible individual may be entitled as medical benefits under subsection (d).

[''(5) LIMITATIONS.—

[''(A) DISABILITY BENEFITS.—No benefit is payable under paragraph (1) with respect to the disability of an eligible individual if—

[''(i) a disability benefit is paid or payable with respect to such individual under Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

[''(ii) a death benefit is paid or payable with respect to such individual under paragraph (2) or the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

[''(B) DEATH BENEFITS.—No benefit is payable under paragraph (2) with respect to the death of an eligible individual if—

[''(i) a disability benefit is paid with respect to such individual under paragraph (1) or the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

[''(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

[''(g) ADMINISTRATION.—

[''(1) ADMINISTRATION BY AGREEMENT WITH OTHER AGENCY OR AGENCIES.—The Secretary may administer any or all of the provisions of this section through Memorandum of Agreement with the Attorney General or the Secretary of Labor.

[''(2) REGULATIONS.—The head of the agency administering this section or any provisions thereof (including any agency head administering such section or provisions through a Memorandum of Agreement under paragraph (1)) may promulgate such implementing regulations as may be determined necessary and appropriate. Initial implementing regulations may be interim final regulations.

[''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 2003 and each succeeding fiscal year to carry out this section, to remain available until expended, including administrative costs and costs of provision and payment of benefits.

[''(i) RELATIONSHIP TO OTHER LAWS.—

[''(1) NO PREEMPTION OF INDIVIDUAL RIGHTS.—Except as otherwise provided in this section, nothing in this section shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.

[''(2) RELATIONSHIP TO THE FEDERAL TORT CLAIMS ACT.—

[''(A) EXHAUSTION REQUIREMENT.—An individual may not seek any remedy that may be available under section 224(p) (providing a cause of action under the Federal Tort Claims Act for injuries resulting from administration of smallpox countermeasures under such section 224(p)) unless such individual has first filed a claim for payment or compensation under this section and has received a final determination with respect to such claim.

[''(B) OFFSET OF COMPENSATION AGAINST FEDERAL TORT CLAIMS ACT RECOVERY.—The value of any compensation or benefits paid to an individual, or the survivor or survivors of such an individual, or the estate of the individual pursuant to a claim under this section shall be offset against any amount to which such individual or the individual's survivor, survivors, or estate are entitled under section 224(p).

[''(3) PREEMPTION OF STATE LAWS PROVIDING EXCLUSIVE REMEDY FOR WORK-RELATED INJURIES.—No provision of a State workers' compensation law or other State law shall be construed to bar claims or benefits under this section, to the extent that it purports to make such State law the exclusive remedy for a work-related injury or otherwise to make benefits under this section unavailable to an otherwise eligible individual.''.

[TITLE II—PROJECT BIOSHIELD

[SEC. 201. SHORT TITLE.

[This title may be cited as the ''Project BioShield Act of 2003''.

[SEC. 202. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT AUTHORITIES.

[Part B of title IV of the Public Health Service Act (42 U.S.C. 284 et seq.) is amended by adding at the end the following:

[''SEC. 409I. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT.

[''(a) IN GENERAL.—

[''(1) AUTHORITY.—In carrying out research responsibilities under this Act, the Secretary may conduct and support research and development with respect to biomedical countermeasures.

[''(2) IMPLEMENTATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (C), authorities assigned by this section to the Secretary shall be carried out through the Director of NIH and the Director of the National Institute of Allergy and Infectious Diseases.

[''(B) LEAD INSTITUTE.—The National Institute of Allergy and Infectious Diseases shall be the lead institute for biomedical countermeasure research and development under this section.

[''(C) CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS.—To the extent that an authority described in subparagraph (A) is exercised with respect to a chemical, radiological, or nuclear agent, the Secretary may authorize the Director of NIH to carry out the authority through any national research institute.

[''(3) INTERAGENCY COOPERATION.—

[''(A) IN GENERAL.—In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the Federal Government and to use other agencies of the Department of Health and Human Services.

[''(B) LIMITATION.—An agreement or undertaking under this paragraph may not authorize another agency to exercise the authorities provided to the Secretary by this section.

[''(b) EXPEDITED PROCUREMENT AUTHORITY.—

[''(1) INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR BIOMEDICAL COUNTERMEASURE PROCUREMENTS.—

[''(A) IN GENERAL.—For any procurement by the Secretary, of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasure research or development, the amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as applicable pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), shall be deemed to be $25,000,000 in the administration, with respect to such procurement, of—

[''(i) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

[''(ii) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

[''(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements made under this paragraph, including requirements with respect to documenting the justification for use of the authority provided in this paragraph.

[''(2) USE OF NONCOMPETITIVE PROCEDURES.—In addition to any other authority to use procedures other than competitive procedures for procurements, the Secretary may use such other noncompetitive procedures when—

[''(A) the procurement is as described by paragraph (1)(A); and

[''(B) the property or services needed by the Secretary are available from only one responsible source or only from a limited number of responsible sources, and no other type of property or services will meet the needs of the Secretary.

[''(3) INCREASED MICROPURCHASE THRESHOLD.—

[''(A) IN GENERAL.—For a procurement described by paragraph (1)(A), the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be deemed to be $15,000 in the administration of that section with respect to such procurement.

[''(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements that are made under this paragraph and that are greater than $2,500.

[''(C) EXCEPTION TO PREFERENCE FOR PURCHASE CARD MECHANISM.—No provision of law establishing a preference for using a Federal Government purchase card method for purchases shall apply to procurements made under this paragraph and that are greater than $2,500.

[''(c) AUTHORITY TO EXPEDITE PEER REVIEW.—The Secretary may, as the Secretary determines necessary to respond to pressing research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, determines to be appropriate to obtain an assessment of scientific and technical merit and likely contribution to the field of biomedical countermeasure research, in place of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494, as applicable to a grant, contract, or cooperative agreement—

[''(1) that is for performing, administering, or supporting biomedical countermeasure research and development; and

[''(2) the amount of which is not greater than $1,500,000.

[''(d) FACILITIES AUTHORITY.—

[''(1) AGENCY FACILITIES.—In addition to any similar authority provided under any other provision of law, in carrying out this section, the Secretary may—

[''(A) acquire, lease, construct, improve, renovate, remodel, repair, operate, and maintain laboratories, other research facilities and equipment, and other real or personal property as the Secretary determines necessary for the purpose of performing, administering, and supporting biomedical countermeasure research and development; and

[''(B) acquire, without regard to section 8141 of title 40, United States Code, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia.

[''(2) FACILITIES OF GRANTEE OR COOPERATIVE AGREEMENT PARTNER.—

[''(A) IN GENERAL.—The Secretary may exercise the authorities described in section 481A with respect to biocontainment laboratories and other related or ancillary specialized research facilities as the Secretary determines necessary for the purpose of performing, administering, and supporting biomedical countermeasure research and development.

[''(B) AVAILABILITY OF FACILITY TO SECRETARY.—A grant or cooperative agreement under subparagraph (A) may provide that the facility that is the object of such grant or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

[''(C) TWENTY YEAR USE REQUIREMENT.—A grant or cooperative agreement under this paragraph shall include an agreement by the grantee or cooperative agreement partner that, for not less than 20 years after the completion of the acquisition, construction, or other work described in subparagraph (A), the facility will be used for the purposes of the research and development for which it is to be acquired, constructed, or otherwise improved.

[''(D) AMOUNT OF GRANT; COST-SHARING; PAYMENTS.—The provisions of section 481A(e) shall apply to a grant or cooperative agreement under this paragraph, except that—

[''(i) authorities exercised under that section by the Director of the National Center for Research Resources shall, for purposes of this paragraph, be exercised by the Secretary; and

[''(ii) for purposes of this paragraph, each of the percentages in subparagraphs (A) and (B) of section 481A(e)(1) shall be deemed to be 75 percent.

[''(E) RECAPTURE OF PAYMENTS.—If, not later than 20 years after the completion of construction for which a grant or cooperative agreement has been awarded under this paragraph, the facility shall cease to be used for the research and development purposes for which it was constructed (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from obligation to do so), the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the current value (as determined by an agreement between the parties or by action brought in the United States District Court for the district in which such facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction, acquisition, or other improvement of such facility.

[''(e) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—

[''(1) IN GENERAL.—For the purpose of performing, administering, and supporting biomedical countermeasure research and development, the Secretary may, as the Secretary determines necessary to respond to pressing research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, United States Code, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications.

[''(2) FEDERAL TORT CLAIMS ACT COVERAGE.—

[''(A) IN GENERAL.—A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28, United States Code, for money damages for personal injury, including death, resulting from performance of functions under such contract.

[''(B) EXCLUSIVITY OF REMEDY.—The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the person, officer, employee, or governing board member.

[''(3) INTERNAL CONTROLS TO BE INSTITUTED.—

[''(A) IN GENERAL.—The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

[''(B) DETERMINATION OF EMPLOYEE STATUS TO BE FINAL.—A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding on the Secretary and the Attorney General and other parties to any civil action or proceeding.

[''(4) NUMBER OF PERSONAL SERVICES CONTRACTS LIMITED.—The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

[''(f) STREAMLINED PERSONNEL AUTHORITY.—

[''(1) IN GENERAL.—In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing research and development needs under this section, without regard to such provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support biomedical countermeasure research and development in carrying out this section.

[''(2) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for appointments under this subsection.

[''(g) DEFINITION.—As used in this section, the term 'biomedical countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that is used—

[''(1) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

[''(2) to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in paragraph (1).

[''(h) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions by the Secretary under the authority of this section are committed to agency discretion.''.

[SEC. 203. BIOMEDICAL COUNTERMEASURES PROCUREMENT.

[Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh–12) is amended—

[(1) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively; and

[(2) by inserting after subsection (b) the following:

[''(c) BIOMEDICAL COUNTERMEASURES PROCUREMENT.—

[''(1) DETERMINATION OF MATERIAL THREATS.—

[''(A) RISK OF USE.—The Secretary, in consultation with the heads of other agencies as appropriate, shall on an ongoing basis—

[''(i) assess current and emerging threats of use of chemical, biological, radiological, and nuclear agents; and

[''(ii) determine which of such agents present a material risk of use against the United States population.

[''(B) PUBLIC HEALTH IMPACT.—The Secretary of Health and Human Services, in consultation with the Secretary, shall on an ongoing basis—

[''(i) assess the potential public health consequences of use against the United States population of agents identified under subparagraph (A)(ii); and

[''(ii) determine, on the basis of such assessment, the agents for which countermeasures are necessary to protect the public health.

[''(2) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary of Health and Human Services, in consultation with the Secretary, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under paragraph (1).

[''(3) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR PROCUREMENT UNDER THIS SUBSECTION.—

[''(A) IN GENERAL.—The Secretary of Health and Human Services, in accordance with this paragraph, shall identify specific countermeasures to threats identified under paragraph (1) that such Secretary determines, in consultation with the Secretary of Homeland Security, to be appropriate for procurement with appropriations under this subsection for inclusion in the stockpile under subsection (a).

[''(B) REQUIREMENTS.—In order for the Secretary of Health and Human Services to make the determination under subparagraph (A) with respect to a countermeasure, the following requirements must be met:

[''(i) DETERMINATION OF QUALIFIED COUNTERMEASURE.—Such Secretary must determine that the product is a qualified countermeasure (as defined in paragraph (7)).

[''(ii) DETERMINATION OF QUANTITIES NEEDED AND FEASIBILITY OF PRODUCTION AND DISTRIBUTION.—Such Secretary must determine—

[''(I) the quantities of the product that will be needed to meet the needs of the stockpile; and

[''(II) that production and delivery within 5 years of sufficient quantities of the product, as so determined, is reasonably expected to be feasible.

[''(iii) DETERMINATION OF NO SIGNIFICANT COMMERCIAL MARKET.—Such Secretary shall—

[''(I) determine that, at the time of the initial determination under this paragraph, there is not a significant commercial market for the product other than as a homeland security threat countermeasure; and

[''(II) annually redetermine and report to the President, while a determination under subparagraph (A) remains in effect with respect to the product, whether a significant commercial market exists for the product other than as a homeland security threat countermeasure.

[''(4) RECOMMENDATION FOR PRESIDENT'S APPROVAL.—

[''(A) RECOMMENDATION FOR PROCUREMENT.—In the case of a countermeasure that the Secretary and the Secretary of Health and Human Services have determined is appropriate for procurement under this subsection for inclusion in the stockpile, in accordance with the preceding provisions of this subsection, the Secretary and the Secretary of Health and Human Services shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation for procurement under this subsection.

[''(B) PRESIDENTIAL APPROVAL.—A countermeasure may be procured under this subsection only if the President has approved a recommendation under subparagraph (A) with respect to such countermeasure.

[''(C) NOTICE TO CONGRESS.—The Secretary shall notify Congress of each decision of the President to approve a recommendation under subparagraph (A).

[''(5) PROCUREMENT.—The Secretary of Health and Human Services and the Secretary shall be responsible for the following, for purposes of procurement of qualified countermeasures for the stockpile under subsection (a), as approved by the President under paragraph (4):

[''(A) INTERAGENCY AGREEMENTS.—

[''(i) FOR PROCUREMENT.—The Secretary shall enter into an agreement with the Secretary of Health and Human Services for the procurement of the countermeasure in accordance with the provisions of this paragraph. Amounts appropriated under paragraph (8) shall be available for the Secretary of Health and Human Service's costs of such procurement, other than as provided in clause (ii).

[''(ii) FOR ADMINISTRATIVE COSTS.—The agreement entered into between the Secretary and the Secretary of Health and Human Services for managing the stockpile under subsection (a) shall provide for reimbursement of the Secretary of Health and Human Service's administrative costs relating to procurements under this subsection from appropriations to carry out such subsection (a).

[''(B) PROCUREMENT.—

[''(i) IN GENERAL.—The Secretary of Health and Human Services shall be responsible for—

[''(I) arranging for procurement of the countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this subparagraph; and

[''(II) promulgating regulations to implement clauses (v), (vi), and (vii), and any other provisions of this subsection.

[''(ii) CONTRACT TERMS.—A contract for procurements under this subsection shall (or, as otherwise specified in this clause, may) include the following terms:

[''(I) PAYMENT CONDITIONED ON SUBSTANTIAL DELIVERY.—The contract shall provide that no payment may be made until delivery has been made of a substantial portion (as determined by the Secretary of Health and Human Services) of the total number of units contracted for.

[''(II) DISCOUNTED PAYMENT FOR UNLICENSED PRODUCT.—The contract may provide for a discounted price per unit of a product that is not licensed or approved as described in paragraph (7)(A) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing or approval).

[''(III) STORAGE BY VENDOR.—The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Government under the contract, for such period and under such terms and conditions as the Secretary of Health and Human Services may specify, and in such case amounts appropriated under paragraph (8) shall be available for costs of shipping, handling, storage, and related costs for such product.

[''(IV) CONTRACT DURATION.—The contract shall be for a period not to exceed 5 years, renewable for additional periods none of which shall exceed 5 years.

[''(V) TERMINATION FOR NONDELIVERY.—In addition to any other rights of the Secretary of Health and Human Services to terminate the contract, the contract may provide that such Secretary may terminate the contract for failure to deliver a reasonable number (as determined by such Secretary) of units of the product by 3 years after the date the contract is entered into, and may further provide that in such case the vendor shall not be entitled to any payment under the contract.

[''(iii) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES.—The amount of any procurement under this subsection shall be deemed to be below the threshold amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), for purposes of application to such procurement, pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), of—

[''(I) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

[''(II) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

[''(iv) USE OF NONCOMPETITIVE PROCEDURES.—In addition to any other authority to use procedures other than competitive procedures, the Secretary of Health and Human Services may use such other procedures for a procurement under this subsection if the product is available from only one responsible source or only from a limited number of responsible sources, and no other type of product will satisfy such Secretary's needs.

[''(v) PREMIUM PROVISION IN MULTIPLE AWARD CONTRACTS.—

[''(I) IN GENERAL.—If, under this subsection, the Secretary of Health and Human Services enters into contracts with more than one person to procure a countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

[''(aa) identifies an increment of the total quantity of countermeasure required, whether by percentage or by numbers of units; and

[''(bb) promises to pay one or more specified premiums based on the priority of such persons' production and delivery of the increment identified under item (aa), in accordance with the terms and conditions of the contract.

[''(II) DETERMINATION OF GOVERNMENT'S REQUIREMENT NOT REVIEWABLE.—If the Secretary of Health and Human Services includes in each of a set of contracts a provision as described in clause (I), such Secretary's determination of the total quantity of countermeasure required, and any amendment of such determination, is committed to agency discretion.

[''(vi) EXTENSION OF CLOSING DATE FOR RECEIPT OF PROPOSALS NOT REVIEWABLE.—A decision by the Secretary of Health and Human

Services to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

[''(vii) LIMITING COMPETITION TO SOURCES RESPONDING TO REQUEST FOR INFORMATION.—In conducting a procurement under this subsection, the Secretary of Health and Human Services may exclude a source that has not responded to a request for information under section 303A(a)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(a)(1)(B)) if such request has given notice that such Secretary may so exclude such a source.

[''(6) INTERAGENCY COOPERATION.—

[''(A) IN GENERAL.—In carrying out activities under this section, the Secretary and the Secretary of Health and Human Services are authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

[''(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section to the Secretary or to the Secretary of Health and Human Services.

[''(7) DEFINITIONS.—In this subsection:

[''(A) QUALIFIED COUNTERMEASURE.—The term 'qualified countermeasure' means a biomedical countermeasure—

[''(i) that is approved under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) for use as such a countermeasure to a chemical, biological, radiological, or nuclear agent identified as a material threat under paragraph (1); or

[''(ii) for which the Secretary of Health and Human Services determines that sufficient and satisfactory clinical experience or research data (including data, if available, from preclinical and clinical trials) support a reasonable conclusion that the product will qualify for approval or licensing as such a countermeasure within 5 years after the date of a determination under paragraph (3).

[''(B) BIOMEDICAL COUNTERMEASURE.—The term 'biomedical countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))) or biological product (as that term is defined by section 351(i) of the Public Health Service Act (42 U.S.C. 262(i))) that is used—

[''(i) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

[''(ii) to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug or biological product that is used as described in clause (i).

[''(8) APPROPRIATIONS.—

[''(A) IN GENERAL.— There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for fiscal year 2003 and for each fiscal year thereafter, such sums as may be necessary for the costs incurred by the Secretary in the procurement of countermeasures under this subsection as approved by the President under paragraph (4) (other than costs specified in subparagraph (B)).

[''(B) RESTRICTIONS.—Amounts appropriated under this paragraph shall not be available to pay—

[''(i) costs for the purchase of vaccines under procurement contracts entered into before January 1, 2003;

[''(ii) costs under new contracts, or costs of new obligations under contracts previously entered into, for procurement of a countermeasure after the date of a determination under paragraph (3)(B)(iii) that there is a significant commercial market for the countermeasure other than as a homeland security threat countermeasure; or

[''(iii) administrative costs.''.

[SEC. 204. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

[(a) IN GENERAL.—Subchapter E of Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb, et seq.) is amended by adding at the end the following:

["SEC. 564. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

[''(a) IN GENERAL.—Notwithstanding sections 505 and 515 of this Act and section 351 of the Public Health Service Act, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug or device intended solely for use in an actual or potential emergency.

[''(b) DECLARATION OF EMERGENCY.—

[''(1) IN GENERAL.—The Secretary may declare an emergency justifying the authorization of a drug or device under this subsection on the basis of a determination—

[''(A) by the Secretary of Homeland Security, that there is a national emergency (or a significant potential of a national emergency) involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

[''(B) by the Secretary of Defense, that there is a military emergency (or a significant potential of a military emergency) involving a heightened risk to United States military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; or

[''(C) by the Secretary of a public health emergency under section 319 of the Public Health Service Act, involving a specified disease or condition or a specified biological, chemical, radiological, or nuclear agent or agents.

[''(2) TERMINATION OF DECLARATION.—

[''(A) IN GENERAL.—A declaration under this subsection shall terminate upon the earlier of—

[''(i) a determination by the Secretary, in consultation as appropriate with the Secretary of Homeland Security or the Secretary of Defense, that the circumstances described in paragraph (1) have ceased to exist; or

[''(ii) the expiration of the 1-year period beginning on the date on which the declaration is made.

[''(B) RENEWAL.—Notwithstanding subparagraph (A), the Secretary may renew a declaration under this subsection, and this paragraph shall apply to any such renewal.

[''(3) PUBLICATION.—The Secretary shall promptly publish in the Federal Register each declaration, determination, and renewal under this subsection.

[''(c) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—The Secretary may issue an authorization under this section with respect to a product if the Secretary concludes—

[''(1) that an agent specified in a declaration under subsection (b) can cause a serious or life-threatening disease or condition;

[''(2) that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that—

[''(A) the product may be effective in detecting, diagnosing, treating, or preventing—

[''(i) such disease or condition; or

[''(ii) a serious or life-threatening disease or condition caused by a product authorized under this section or approved under this Act or the Public Health Service Act, for detecting, diagnosing, treating, or preventing such a disease or condition caused by such an agent; and

[''(B) the known and potential benefits of the product, when used to detect, diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product;

[''(3) that there is no adequate, approved, and available alternative to the product for detecting, diagnosing, preventing, or treating such disease or condition; and

[''(4) that such other criteria as the Secretary may by regulation prescribe are satisfied.

[''(d) SCOPE OF AUTHORIZATION.—An authorization of a product under this section shall state—

[''(1) each disease or condition that the product may be used to detect, diagnose, prevent, or treat within the scope of the authorization; and

[''(2) the Secretary's conclusions, under subsection (c), concerning the safety and potential effectiveness of the product in detecting, diagnosing, preventing, or treating such diseases or conditions, including an assessment of the available scientific evidence.

[''(e) CONDITIONS OF AUTHORIZATION.—

[''(1) IN GENERAL.—The Secretary is authorized, by order or regulation, to impose such conditions on an authorization under this section as the Secretary determines are necessary or appropriate to protect the public health, including the following:

[''(A) The Secretary shall impose requirements (including requirements concerning product labeling and the provision of information) designed to ensure that, to the maximum extent feasible given the circumstances of the emergency, health care professionals administering the product are informed—

[''(i) that the Secretary has authorized the product solely for emergency use;

[''(ii) of the significant known and potential benefits and risks of use of the product, and of the extent to which such benefits and risks are unknown; and

[''(iii) of the alternatives to the product that are available, and of their benefits and risks.

[''(B) The Secretary shall impose requirements (including requirements concerning product labeling and the provision of information) designed to ensure that, to the maximum extent feasible given the circumstances of the emergency, individuals to whom the product is administered are informed—

[''(i) that the Secretary has authorized the product solely for emergency use;

[''(ii) of the significant known and potential benefits and risks of use of the product, and of the extent to which such benefits and risks are unknown; and

[''(iii) of any option to accept or refuse administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

[''(C) The Secretary may impose limitations on which entities may distribute the product (including limitation to distribution by government entities), and on how distribution is to be performed.

[''(D) The Secretary may impose limitations on who may administer the product, and on the categories of individuals to whom, and the circumstances under which, the product may be administered.

[''(E) The Secretary may condition the authorization on the performance of studies, clinical trials, or other research needed to support marketing approval of the product.

[''(F) The Secretary may impose requirements concerning recordkeeping and reporting, including records access by the Secretary and publication of data.

[''(G) The Secretary may impose (or waive) requirements, with respect to the product, of current good manufacturing practice otherwise applicable to the manufacture, processing, packing, or holding of products subject to regulation under this Act.

[''(H) The Secretary may impose requirements for the monitoring and reporting of adverse events associated with use of the product.

[''(2) WAIVER.—The Secretary may waive any condition imposed under this subsection.

[''(f) DURATION OF AUTHORIZATION.—

[''(1) IN GENERAL.—Except as provided in paragraph (2), an authorization under this section shall be effective until the earlier of the termination of the declaration under subsection (b) or a revocation under subsection (g).

[''(2) CONTINUED USE AFTER END OF EFFECTIVE PERIOD.—An authorization shall continue to be effective for continued use with respect to patients to whom it was administered during the period described by paragraph (1), to the extent found necessary by such patients' attending physicians.

[''(g) REVOCATION OF AUTHORIZATION.—

[''(1) REVIEW.—The Secretary shall periodically review the circumstances and the appropriateness of an authorization under this section.

[''(2) REVOCATION.—The Secretary may revoke an authorization under this section if, in the Secretary's unreviewable discretion—

[''(A) the conditions for such an authorization are no longer met; or

[''(B) other circumstances make such revocation appropriate.

[''(h) PUBLICATION.—The Secretary shall promptly publish in the Federal Register a notice of each authorization, and each termination or revocation of an authorization, under this section.

[''(i) RECORDKEEPING.—

[''(1) IN GENERAL.—The Secretary may by order or regulation require persons, including a person who holds an authorization under this section, or who manufactures, distributes, prescribes, or administers a product that is the subject of such an authorization, to establish and maintain—

[''(A) data that is obtained from such activity and that pertains to the effectiveness or safety of such product;

[''(B) such records as are necessary to determine, or facilitate a determination, whether there may be any violation of this section or of a regulation promulgated under this section; and

[''(C) such additional records as the Secretary may determine necessary.

[''(2) ACCESS TO RECORDS BY SECRETARY.—

[''(A) SAFETY AND EFFECTIVENESS INFORMATION.—The Secretary may by order or regulation require a person who holds an authorization under this section, or who manufactures, distributes, prescribes, or administers a product that is the subject of such an authorization to provide to the Secretary all data that is obtained from such activity and that pertains to the safety or effectiveness of such product.

[''(B) OTHER INFORMATION.—Every person required under this section to establish or maintain records, and every person in charge or custody of such records, shall, upon request by the Secretary, permit the Secretary at all reasonable times to have access to, to copy, and to verify such records.

[''(j) CIVIL MONETARY PENALTIES.—

[''(1) IN GENERAL.—A person who violates a requirement of this section or of a regulation or order promulgated pursuant to this section shall be subject to a civil money penalty of not more than $100,000 in the case of an individual, and not more than $250,000 in the case of any other person, for each violation, not to exceed $1,000,000 for all such violations adjudicated in a single proceeding.

[''(2) ASSESSMENT OF CIVIL PENALTIES.—Paragraphs (3), (4), and (5) of section 303(g) shall apply to a civil penalty under this subsection, and references in such paragraphs to 'paragraph (1) or (2)' shall, for purposes of this subsection, be deemed to refer to paragraph (1) of this subsection.

[''(k) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions under the authority of this section by the Secretary, by the Secretary of Defense, or by the Secretary of Homeland Security are committed to agency discretion.

[''(l) REGULATIONS.—The Secretary may promulgate regulations to implement this section.

[''(m) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect—

[''(1) the authority of the President as Commander in Chief of the Armed Forces of the United States under article II, section 2 of the United States Constitution; or

[''(2) the authority of the Secretary of Defense with respect to the Department of Defense, including the armed forces, under other provisions of Federal law.

[''(n) APPLICATION TO MEMBERS OF ARMED FORCES.—

[''(1) WAIVER OF REQUIREMENT RELATING TO OPTION TO REFUSE.—In the case of the administration of a countermeasure to members of the armed forces, a requirement, under subsection (e)(2)(C), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived by the President if the President determines, in writing, that complying with such requirement is not feasible, is contrary to the best interests of the members affected, or is not in the interests of national security.

[''(2) EFFECT ON STATUTE PERTAINING TO INVESTIGATIONAL NEW DRUGS.—In the case of an authorization based on a determination by the Secretary of Defense under subsection (b)(1)(B), section 1107 of title 10, United States Code, shall not apply to use of a product that is the subject of such authorization, within the scope of such authorization and while such authorization is effective.

[''(o) RELATION TO OTHER PROVISIONS.—If a product is the subject of an authorization under this section, the use of such product within the scope of the authorization—

[''(1) shall not be subject to any requirements pursuant to section 505(i) or 520(g); and

[''(2) shall not be subject to any requirements otherwise applicable to clinical investigations pursuant to other provisions of this Act.''.

[(b) PROHIBITED ACTS.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended—

[(1) in subsection (e)—

[(A) by striking ''504, 703'' and inserting ''504, 564, 703''; and

[(B) by striking ''or 519'' and inserting ''519, or 564''; and

[(2) by adding at the end the following:

[''(hh)(1) Promotion or use of a product that is the subject of an authorization under section 564 other than as stated in the authorization, or other than during the period described by section 564(g), unless such promotion or use is permitted under another provision of this Act.

[''(2) Failure to comply with an information requirement under section 564(e)(1).''.

[SEC. 205. DEVELOPING NEW COUNTERMEASURES AND PROTECTING EXISTING COUNTERMEASURES AGAINST BIOTERRORISM.

[Section 319F of the Public Health Service Act (42 U.S.C. 247d–6) is amended by adding at the end the following:

[''(k) LIMITED ANTITRUST EXEMPTION.—

[''(1) COUNTERMEASURES DEVELOPMENT MEETINGS.—

[''(A) COUNTERMEASURES DEVELOPMENT MEETINGS AND CONSULTATIONS.—The Secretary may conduct meetings and consultations with parties involved in the development of countermeasures for the purpose of the development, manufacture, distribution, or sale of priority countermeasures consistent with the purposes of this title. The Secretary shall give notice of such meetings and consultations to the Attorney General and the Chairperson of the Federal Trade Commission (referred to in this subsection as the 'Chairperson').

[''(B) MEETING AND CONSULTATION CONDITIONS.—A meeting or consultation conducted under subparagraph (A) shall—

[''(i) be chaired or, in the case of a consultation, facilitated by the Secretary or the designee of the Secretary;

[''(ii) be open to parties involved in the development, manufacture, distribution, purchase, or sale of priority countermeasures, as determined by the Secretary;

[''(iii) be open to the Attorney General and the Chairperson;

[''(iv) be limited to discussions involving the development, manufacture, distribution, or sale of priority countermeasures, consistent with the purposes of this title; and

[''(v) be conducted in such manner as to ensure that national security, confidential, and proprietary information is not disclosed outside the meeting or consultation.

[''(C) MINUTES.—The Secretary shall maintain minutes of meetings and consultations under this subsection, which shall not be disclosed under section 552 of title 5, United States Code.

[''(D) EXEMPTION.—The antitrust laws shall not apply to meetings and consultations under this paragraph, except that any agreement that results from a meeting or consultation and that has been denied an exemption pursuant to this subsection shall be subject to the antitrust laws.

[''(2) WRITTEN AGREEMENTS OR CONDUCT.—The Secretary or any party to an agreement or other conduct regarding covered activities entered into or undertaken pursuant to meetings or consultations conducted under paragraph (1), and that is consistent with this paragraph, shall file such written agreement or a description of the conduct involved with the Attorney General and the Chairperson for a determination of whether such agreement or conduct should be exempt from the antitrust laws. In addition to the proposed agreement or description of conduct itself, any such filing shall include—

[''(A) an explanation of the intended purpose of the agreement or conduct;

[''(B) a specific statement of the substance of the agreement or conduct;

[''(C) a description of the methods that will be utilized to achieve the objectives of the agreement or conduct;

[''(D) an explanation of the necessity of a cooperative effort among the particular participating parties to achieve the objectives of the agreement or conduct; and

[''(E) any other relevant information reasonably requested by the Attorney General, in consultation with the Chairperson and the Secretary.

[''(3) DETERMINATION.—The Attorney General, in consultation with the Chairperson,

shall determine whether an agreement or description of conduct submitted under paragraph (2) should be exempt from the antitrust laws.

[''(4) LIMITED ANTITRUST EXEMPTION.—

[''(A) IN GENERAL.—The Attorney General, in consultation with the Chairperson, may, within 30 days of the receipt of a notification pursuant to paragraph (2), revoke in whole or in part, the scope of any exemption granted by the Attorney General under a determination under paragraph (3).

[''(B) EXTENSION.—The Attorney General may extend the 35-day period referred to in subparagraph (A) for an additional period of not to exceed 20 days. Such additional period may be further extended only by the United States district court, upon an application by the Attorney General after notice to the Secretary and the parties involved.

[''(C) APPLICATION OF LAWS.—

[''(i) IN GENERAL.—The antitrust laws shall not apply to an agreement or conduct (described in a description of conduct) that is submitted for review pursuant to paragraph (2) until such time as the Attorney General determines, pursuant to subparagraph (D), that such agreement or conduct should not, in whole or in part, be exempt from the antitrust laws.

[''(ii) LIMITED LIABILITY.—No party to an agreement or conduct referred to in clause (i) shall be liable under the antitrust laws for any actions reasonably necessary to carry out the agreement or for conduct taken after the agreement or description has been submitted pursuant to paragraph (2) and prior to any revocation of the exemption by the Attorney General pursuant to subparagraph (D).

[''(D) DETERMINATION.—In making a determination under this subparagraph, the Attorney General, in consultation with the Chairperson and the Secretary shall consider—

[''(i) whether the agreement or conduct involved would facilitate the availability of priority countermeasures;

[''(ii) whether the exemption from the antitrust laws would promote the public interest;

[''(iii) the competitive impact to areas not directly related to the purposes of the agreement or conduct; and

[''(iv) any other factors determined relevant by the Attorney General and the Chairperson.

[''(5) LIMITATION ON AND RENEWAL OF EXEMPTIONS.—An exemption provided under paragraphs (3) or (4) shall be limited to covered activities, and shall expire on the date that is 3 years after the date on which the exemption becomes effective (and at 3 year intervals thereafter, if renewed) unless the Attorney General in consultation with the Chairperson determines that the exemption should be renewed (with modifications, as appropriate) considering the factors described in paragraph (4).

[''(6) LIMITATION ON PARTIES.—Any exemption from the antitrust laws provided under this subsection shall not apply to the use of any information acquired in conducting exempted activities for any purposes other than those expressly specified in the antitrust exemption provided for by this subsection.

[''(7) GUIDELINES.—The Attorney General and the Chairperson may develop and issue guidelines to implement this subsection.

[''(8) REPORT.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Attorney General and the Chairperson shall report to the Committee on Health, Education, Labor, and Pensions and the Committee on the Judiciary of the Senate and the Committee on Energy and Commerce and the Committee on the Judiciary of the House of Representatives on the use and continuing need for the exemption from the antitrust laws provided by this subsection.

[''(9) SUNSET.—The authority of any party to apply for or to obtain a limited antitrust exemption under this subsection shall expire at the end of the 6-year period that begins on the date of enactment of this subsection.

[''(l) DEFINITIONS.—In this section:

[''(1) ANTITRUST LAWS.—The term 'antitrust laws'—

[''(A) has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (15 U.S.C. 13 et seq.) commonly known as the Robinson-Patman Act), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

[''(B) includes any State law similar to the laws referred to in subparagraph (A).

[''(2) COVERED ACTIVITIES.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'covered activities' means any group of activities or conduct, including attempting to make, making, or performing a contract or agreement or engaging in other conduct, for the purpose of—

[''(i) theoretical analysis, experimentation, or the systematic study of phenomena or observable facts related to the development of priority countermeasures;

[''(ii) the development or testing of basic engineering techniques related to the development of priority countermeasures;

[''(iii) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes related to the development of priority countermeasures;

[''(iv) the production, distribution, or marketing of a product, process, or service related to the development of priority countermeasures;

[''(v) the testing in connection with the production of a product, process, or service related to the development of priority countermeasures;

[''(vi) the collection, exchange, and analysis of research or production information related to the development of priority countermeasures; or

[''(vii) any combination of the purposes described in clauses (i) through (vi);

and such term may include the establishment and operation of facilities for the conduct of covered activities described in clauses (i) through (vi), the conduct of such covered activities on a protracted and proprietary basis, and the processing of applications for patents and the granting of licenses for the results of such covered activities.

[''(B) EXCEPTION.—The term 'covered activities' shall not include the following activities involving 2 or more persons:

[''(i) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service if such information is not reasonably necessary to carry out the purposes of covered activities.

[''(ii) Entering into any agreement or engaging in any other conduct—

[''(I) to restrict or require the sale, licensing, or sharing of inventions, developments, products, processes, or services not developed through, produced by, or distributed or sold through such covered activities; or

[''(II) to restrict or require participation by any person who is a party to such covered activities in other research and development activities, that is not reasonably necessary to prevent the misappropriation of proprietary information contributed by any person who is a party to such covered activities or of the results of such covered activities.

[''(iii) Entering into any agreement or engaging in any other conduct allocating a market with a competitor that is not expressly exempted from the antitrust laws by a determination under subsection (k)(4).

[''(iv) Exchanging information among competitors relating to production (other than production by such covered activities) of a product, process, or service if such information is not reasonably necessary to carry out the purpose of such covered activities.

[''(v) Except as otherwise provided in this subsection or subsection (k), entering into any agreement or engaging in any other conduct to restrict or require participation by any person who is a party to such activities, in any unilateral or joint activity that is not reasonably necessary to carry out the purpose of such covered activities.

[''(3) DEVELOPMENT.—The term 'development' includes the identification of suitable compounds or biological materials, the conduct of preclinical and clinical studies, the preparation of an application for marketing approval, and any other actions related to preparation of a countermeasure.

[''(4) PERSON.—The term 'person' has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

[''(5) PRIORITY COUNTERMEASURE.—The term 'priority countermeasure' means a countermeasure, including a drug, medical device, biological product, or diagnostic test to treat, identify, or prevent infection by a biological agent or toxin on the list developed under section 351A(a)(1) and prioritized under subsection (a)(1).''.

[TITLE III—IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY

[SEC. 301. SHORT TITLE.

[This title may be cited as the ''Improved Vaccine Affordability and Availability Act''.

[Subtitle A—State Vaccine Grants

[SEC. 311. AVAILABILITY OF INFLUENZA VACCINE.

[Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)) is amended by adding at the end the following:

[''(3)(A) For the purpose of carrying out activities relating to influenza vaccine under the immunization program under this subsection, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 and 2004. Such authorization shall be in addition to amounts available under paragraphs (1) and (2) for such purpose.

[''(B) The authorization of appropriations established in subparagraph (A) shall not be effective for a fiscal year unless the total amount appropriated under paragraphs (1) and (2) for the fiscal year is not less than such total for fiscal year 2000.

[''(C) The purposes for which amounts appropriated under subparagraph (A) are available to the Secretary include providing for improved State and local infrastructure for influenza immunizations under this subsection in accordance with the following:

[''(i) Increasing influenza immunization rates in populations considered by the Secretary to be at high risk for influenza-related complications and in their contacts.

[''(ii) Recommending that health care providers actively target influenza vaccine that is available in September, October, and November to individuals who are at increased risk for influenza-related complications and to their contacts.

[''(iii) Providing for the continued availability of influenza immunizations through

December of such year, and for additional periods to the extent that influenza vaccine remains available.

[''(iv) Encouraging States, as appropriate, to develop contingency plans (including plans for public and professional educational activities) for maximizing influenza immunizations for high-risk populations in the event of a delay or shortage of influenza vaccine.

[''(D) The Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, periodic reports describing the activities of the Secretary under this subsection regarding influenza vaccine. The first such report shall be submitted not later than June 6, 2003, the second report shall be submitted not later than June 6, 2004, and subsequent reports shall be submitted biennially thereafter.''.

[SEC. 312. PROGRAM FOR INCREASING IMMUNIZATION RATES FOR ADULTS AND ADOLESCENTS; COLLECTION OF ADDITIONAL IMMUNIZATION DATA.

[(a) ACTIVITIES OF CENTERS FOR DISEASE CONTROL AND PREVENTION.—Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)), as amended by section 311, is further amended by adding at the end the following:

[''(4)(A) For the purpose of carrying out activities to increase immunization rates for adults and adolescents through the immunization program under this subsection, and for the purpose of carrying out subsection (k)(2), there are authorized to be appropriated $50,000,000 for fiscal year 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006. Such authorization is in addition to amounts available under paragraphs (1), (2), and (3) for such purposes.

[''(B) In expending amounts appropriated under subparagraph (A), the Secretary shall give priority to adults and adolescents who are medically underserved and are at risk for vaccine-preventable diseases, including as appropriate populations identified through projects under subsection (k)(2)(E).

[''(C) The purposes for which amounts appropriated under subparagraph (A) are available include (with respect to immunizations for adults and adolescents) the payment of the costs of storing vaccines, outreach activities to inform individuals of the availability of the immunizations, and other program expenses necessary for the establishment or operation of immunization programs carried out or supported by States or other public entities pursuant to this subsection.

[''(5) The Secretary shall annually submit to Congress a report that—

[''(A) evaluates the extent to which the immunization system in the United States has been effective in providing for adequate immunization rates for adults and adolescents, taking into account the applicable year 2010 health objectives established by the Secretary regarding the health status of the people of the United States; and

[''(B) describes any issues identified by the Secretary that may affect such rates.

[''(6) In carrying out this subsection and paragraphs (1) and (2) of subsection (k), the Secretary shall consider recommendations regarding immunizations that are made in reports issued by the Institute of Medicine of the National Academy of Sciences.''.

[(b) RESEARCH, DEMONSTRATIONS, AND EDUCATION.—Section 317(k) of the Public Health Service Act (42 U.S.C. 247b(k)) is amended—

[(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

[(2) by inserting after paragraph (1) the following:

[''(2)(A) The Secretary, directly and through grants under paragraph (1), shall provide for a program of research, demonstration projects, and education in accordance with the following:

[''(i) The Secretary shall coordinate with public and private entities (including nonprofit private entities), and develop and disseminate guidelines, toward the goal of ensuring that immunizations are routinely offered to adults and adolescents by public and private health care providers.

[''(ii) The Secretary shall cooperate with public and private entities to obtain information for the annual evaluations required in subsection (j)(5)(A).

[''(iii) The Secretary shall (relative to fiscal year 2003) increase the extent to which the Secretary collects data on the incidence, prevalence, and circumstances of diseases and adverse events that are experienced by adults and adolescents and may be associated with immunizations, including collecting data in cooperation with commercial laboratories.

[''(iv) The Secretary shall ensure that the entities with which the Secretary cooperates for purposes of subparagraphs (A) through (C) include managed care organizations, community-based organizations that provide health services, and other health care providers.

[''(v) The Secretary shall provide for projects to identify racial and ethnic minority groups and other health disparity populations for which immunization rates for adults and adolescents are below such rates for the general population, and to determine the factors underlying such disparities.

[''(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for each of fiscal years 2003 through 2007.''.

[SEC. 313. IMMUNIZATION AWARENESS.

[(a) DEVELOPMENT OF INFORMATION CONCERNING MENINGITIS.—

[(1) IN GENERAL.—The Secretary of Health and Human Services (in this title referred to as the ''Secretary''), in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in paragraph (2) information concerning bacterial meningitis and the availability and effectiveness of vaccinations for populations targeted by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

[(2) ENTITIES.—An entity is described in this paragraph if the entity—

[(A) is—

[(i) a college or university; or

[(ii) any other facility with a setting similar to a dormitory that houses age-appropriate populations for whom the Advisory Committee on Immunization Practices recommends such a vaccination; and

[(B) is determined appropriate by the Secretary.

[(b) DEVELOPMENT OF INFORMATION CONCERNING HEPATITIS.—

[(1) IN GENERAL.—The Secretary, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in paragraph (2) information concerning hepatitis A and B and the availability and effectiveness of vaccinations with respect to such diseases.

[(2) ENTITIES.—An entity is described in this paragraph if the entity—

[(A) is—

[(i) a health care clinic that serves individuals diagnosed as being infected with HIV or as having other sexually transmitted diseases;

[(ii) an organization or business that counsels individuals about international travel or who arranges for such travel;

[(iii) a police, fire, or emergency medical services organization that responds to natural or man-made disasters or emergencies;

[(iv) a prison or other detention facility;

[(v) a college or university; or

[(vi) a public health authority or children's health service provider in areas of intermediate or high endemicity for hepatitis A as defined by the Centers for Disease Control and Prevention; and

[(B) is determined appropriate by the Secretary.

[SEC. 314. SUPPLY OF VACCINES.

[(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall prioritize, acquire, and maintain a supply of such prioritized vaccines sufficient to provide vaccinations throughout a 6-month period.

[(b) PROCEEDS.—Any proceeds received by the Secretary of Health and Human Services from the sale of vaccines contained in the supply described in subsection (a), shall be available to the Secretary for the purpose of purchasing additional vaccines for the supply. Such proceeds shall remain available until expended.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out subsection (a) such sums as may be necessary for each of fiscal years 2003 through 2008.

[SEC. 315. COMMUNICATION.

[The Commissioner of Food and Drugs shall ensure that vaccine manufacturers receive all forms of compliance guidelines for vaccines and that such guidelines are kept up to date.

[SEC. 316. FAST TRACK.

[The Commissioner of Food and Drugs shall issue regulations to revise the policies of the Food and Drug Administration regarding fast-tracking and priority review approval of vaccine products currently under development, to allow for the use of new forms of existing vaccines in cases where a determination is made that applying such approvals is in the public health interest to address the unmet need of strengthening the overall vaccine supply.

[SEC. 317. STUDY.

[(a) IN GENERAL.—The Secretary shall contract with the Institute of Medicine of the National Academy of Sciences or another independent and competent authority, to conduct a study of the statutes, regulations, guidelines, and compliance, inspection, and enforcement practices and policies of the Department of Health and Human Services and of the Food and Drug Administration that are applicable to vaccines intended for human use that are in periodic short supply in the United States.

[(b) REQUIREMENTS.—The study under subsection (a) shall include a review of the regulatory requirements, guidelines, practices, and policies—

[(1) for the development and licensing of vaccines and the licensing of vaccine manufacturing facilities;

[(2) for inspections and other activities for maintaining compliance and enforcement of the requirements applicable to such vaccines and facilities; and

[(3) that may have contributed to temporary or long-term shortages of vaccines.

[(c) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that contains—

[(1) the results of the study under subsection (a); and

[(2) recommendations for modifications to the regulatory requirements, guidelines, practices, and policies described in subsection (b).

[Subtitle B—Vaccine Injury Compensation Program

[SEC. 321. ADMINISTRATIVE REVISION OF VACCINE INJURY TABLE.

[Section 2114 of the Public Health Service Act (42 U.S.C. 300aa–14) is amended—

[(1) by striking subsection (c)(1) and inserting the following:

[''(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and for at least 60 days of public comment.''; and

[(2) in subsection (d), by striking ''90 days'' and inserting ''60 days''.

[SEC. 322. EQUITABLE RELIEF.

[Section 2111(a)(2)(A) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(2)(A)) is amended by striking ''No person'' and all that follows through ''and—'' and inserting the following: ''No person may bring or maintain a civil action against a vaccine administrator or manufacturer in a Federal or State court for damages arising from, or equitable relief relating to, a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988 and no such court may award damages or equitable relief for any such vaccine-related injury or death, unless the person proves past or present physical injury and a timely petition has been filed in accordance with section 2116 for compensation under the Program for such injury or death and—''.

[SEC. 323. DERIVATIVE PETITIONS FOR COMPENSATION.

[(a) LIMITATIONS ON DERIVATIVE PETITIONS.—Section 2111(a)(2) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(2)) is amended—

[(1) in subparagraph (B), by inserting ''or (B)'' after ''subparagraph (A)'';

[(2) by redesignating subparagraph (B) as subparagraph (C); and

[(3) by inserting after subparagraph (A) the following:

[''(B)(i) No parent or other third party may bring or maintain a civil action against a vaccine administrator or manufacturer in a Federal or State court for damages or equitable relief relating to a vaccine-related injury or death, including without limitation damages for loss of consortium, society, companionship, or services, loss of earnings, medical or other expenses, and emotional distress, and no court may award damages or equitable relief in such an action, unless—

[''(I) the person who sustained the underlying vaccine-related injury or death upon which such parent's or other third party's claim is premised has timely filed a petition for compensation in accordance with section 2111;

[''(II) such parent or other third party is the legal representative or spouse of the person who sustained the underlying vaccine-related injury or death, and such legal representative or spouse has filed a timely derivative petition, in accordance with section 2116; and

[''(III)(aa) the United States Court of Federal Claims has issued judgment under section 2112 on the derivative petition, and such legal representative or spouse elects under section 2121(a) to file a civil action; or

[''(bb) such legal representative or spouse elects to withdraw such derivative petition under section 2121(b) or such petition is considered withdrawn under such section.

[''(ii) Any civil action brought in accordance with this subparagraph shall be subject to the standards and procedures set forth in sections 2122 and 2123, regardless of whether the action arises directly from a vaccine-related injury or death associated with the administration of a vaccine. In a case in which the person who sustained the underlying vaccine-related injury or death upon which such legal representative's or spouse's civil action is premised elects under section 2121(a) to receive the compensation awarded, such legal representative or spouse may not bring a civil action for damages or equitable relief, and no court may award damages or equitable relief, for any injury or loss of the type set forth in section 2115(a) or that might in any way overlap with or otherwise duplicate compensation of the type available under section 2115(a).''.

[(b) ELIGIBLE PERSONS.—Section 2111(a)(9) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(9)) is amended by striking the period and inserting ''and to a parent or other third party to the extent such parent or other third party seeks damages or equitable relief relating to a vaccine-related injury or death sustained by a person who is qualified to file a petition for compensation under the Program.''.

[(c) PETITIONERS.—Section 2111(b) of the Public Health Service Act (42 U.S.C. 300aa–11(b)) is amended—

[(1) in paragraph (1)—

[(A) in subparagraph (A), by striking ''(B)'' and inserting ''(C)'';

[(B) by redesignating subparagraph (B) as subparagraph (C); and

[(C) by inserting after subparagraph (A) the following:

[''(B) Except as provided in subparagraph (C), any legal representative or spouse of a person—

[''(i) who has sustained a vaccine-related injury or death; and

[''(ii) who has filed a petition for compensation under the Program (or whose legal representative has filed such a petition as authorized in subparagraph (A));

may, if such legal representative or spouse meets the requirements of subsection (d), file a derivative petition under this section.''; and

[(2) in paragraph (2)—

[(A) by inserting ''by or on behalf of the person who sustained the vaccine-related injury or death'' after ''filed''; and

[(B) by adding at the end the following: ''A legal representative or spouse may file only 1 derivative petition with respect to each underlying petition.''.

[(d) DERIVATIVE PETITION CONTENTS.—Section 2111 of the Public Health Service Act (42 U.S.C. 300aa–11) is amended—

[(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

[(2) by inserting after subsection (c) the following:

[''(d) DERIVATIVE PETITIONS.—

[''(1) If the legal representative or spouse of the person who sustained the vaccine-related injury or death seeks compensation under the Program, such legal representative or spouse shall file a timely derivative petition for compensation under the Program in accordance with this section.

[''(2) Such a derivative petition shall contain—

[''(A) except for records that are unavailable as described in subsection (c)(3), an affidavit, and supporting documentation, demonstrating that—

[''(i) the child or spouse of such person has, in accordance with section 2111, timely filed a petition for compensation for the underlying vaccine-related injury or death upon which such legal representative's or spouse's derivative petition is premised;

[''(ii) the derivative petition was timely filed;

[''(iii) such legal representative or spouse suffered a loss compensable under section 2115(b) as a result of the vaccine-related injury or death sustained by such person; and

[''(iv) such legal representative or spouse has not previously collected an award or settlement of a civil action for damages for such loss; and

[''(B) records establishing such legal representative's or spouse's relationship to the person who sustained the vaccine-related injury or death.''.

[(e) DETERMINATION OF ELIGIBILITY FOR COMPENSATION.—Section 2113(a)(1) of the Public Health Service Act (42 U.S.C. 300aa–13(a)(1)) is amended—

[(1) in subparagraph (A), by striking ''and'' and inserting ''or, as applicable, section 2111(d),'';

[(2) in subparagraph (B), by striking the period and inserting '', and''; and

[(3) by inserting before the flush matter at the end, the following:

[''(C) in the case of a derivative petition, that the person who sustained the underlying vaccine-related injury or death upon which the derivative petition is premised has timely filed a petition for compensation in accordance with section 2111 and that, with respect to such underlying petition, the special master or court has made the findings specified in subparagraphs (A) and (B) of this paragraph.''.

[(f) COMPENSATION.—Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15) is amended—

[(1) by redesignating subsections (b) through (j) as subsections (c) through (k), respectively;

[(2) by inserting after subsection (a) the following:

[''(b) DERIVATIVE PETITIONS.—

[''(1) IN GENERAL.—Compensation awarded under the Program to a legal representative or spouse who files a derivative petition under section 2111 for a loss sustained as a result of a vaccine-related injury or death sustained by such petitioner's child or spouse shall only include compensation for any loss of consortium, society, companionship, or services, in an amount not to exceed the lesser of $250,000 or the total amount of compensation awarded to the person who sustained the underlying vaccine-related injury or death.

[''(2) MULTIPLE INDIVIDUALS.—Where more than 1 person files a derivative petition under section 2111 for losses sustained as a result of the same underlying vaccine-related injury or death, the aggregate compensation to such persons shall not exceed the lesser of $250,000, or the total amount of compensation awarded to the person who sustained the underlying vaccine-related injury or death. The special master or court shall apportion compensation among the derivative petitioners in proportion to their respective losses.'';

[(3) in subsection (e)(2), as so redesignated by paragraph (1)—

[(A) by striking ''(2) and (3)'' and inserting ''(2), (3), (4), (5), and (6)''; and

[(B) by inserting ''and subsection (b),'' after ''(a),'';

[(4) in subsection (g), as so redesignated by paragraph (1), in paragraph (4)(B), by striking ''subsection (j)'' and inserting ''subsection (k)'';

[(5) in subsection (j), as so redesignated by paragraph (1)—

[(A) in paragraph (1), by striking ''subsection (j)'' and inserting ''subsection (k)''; and

[(B) in paragraph (2), by inserting '', or to a legal representative or spouse of a person

who sustained a vaccine-related injury or death,'' after ''death''; and

[(6) in subsection (k), as so redesignated by paragraph (1), by striking ''subsection (f)(4)(B)'' and inserting ''subsection (g)(4)(B)''.

[SEC. 324. JURISDICTION TO DISMISS ACTIONS IMPROPERLY BROUGHT.

[Section 2111(a)(3) of the Public Health Service Act (42 U.S.C. 300aa–11(a)(3)) is amended by adding at the end the following: ''If any civil action which is barred under subparagraph (A) or (B) of paragraph (2) is filed or maintained in a State court, or any vaccine administrator or manufacturer is made a party to any civil action brought in State court (other than a civil action which may be brought under paragraph (2)) for damages or equitable relief for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, the civil action may be removed at any time before final judgment by the defendant or defendants to the United States Court of Federal Claims. Once removed, the United States Court of Federal Claims shall have jurisdiction solely for the purpose of adjudicating whether the civil action should be dismissed pursuant to this section. If the United States Court of Federal Claims determines that the civil action should not be dismissed, the court shall remand the action to the State Court. The notice required by section 1446 of title 28, United States Code, shall be filed with the United States Court of Federal Claims, and that court shall, except as otherwise provided in this section, proceed in accordance with sections 1446 through 1451 of title 28, United States Code.''.

[SEC. 325. CLARIFICATION OF WHEN INJURY IS CAUSED BY FACTOR UNRELATED TO ADMINISTRATION OF VACCINE.

[Section 2113(a)(2)(B) of the Public Health Service Act (42 U.S.C. 300aa–13(a)(2)(B)) is amended—

[(1) by inserting ''structural lesions, genetic disorders,'' after ''and related anoxia),'';

[(2) by inserting ''(without regard to whether the cause of the infection, toxin, trauma, structural lesion, genetic disorder, or metabolic disturbance is known)'' after ''metabolic disturbances''; and

[(3) by striking ''but'' and inserting ''and''.

[SEC. 326. INCREASE IN AWARD IN THE CASE OF A VACCINE-RELATED DEATH AND FOR PAIN AND SUFFERING.

[(a) IN GENERAL.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa–15(a)) is amended—

[(1) in paragraph (2), by striking ''$250,000'' and inserting ''$350,000''; and

[(2) in paragraph (4), by striking ''$250,000'' and inserting ''$350,000''.

[(b) DEATH AWARDS.—Section 2115(a)(2) of the Public Health Service Act (42 U.S.C. 300aa–15(a)(2)) is amended by inserting ''(if the deceased incurred unreimbursable expenses due to the vaccine-related injury prior to death in excess of $50,000, the award shall also include reimbursement for those unreimbursable expenses that exceed $50,000)'' before the period.

[SEC. 327. BASIS FOR CALCULATING PROJECTED LOST EARNINGS.

[Section 2115(a)(3)(B) of the Public Health Service Act (42 U.S.C. 300aa–15(a)(3)(B)) is amended by striking ''loss of earnings'' and all that follows and inserting the following: ''loss of earnings determined on the basis of the annual estimate of the average (mean) gross weekly earnings of wage and salary workers age 18 and over (excluding the incorporated self-employed) in the private nonfarm sector (which includes all industries other than agricultural production crops and livestock), as calculated annually by the Bureau of Labor Statistics from the quarter sample data of the Current Population Survey, or as calculated by such similar method as the Secretary may prescribe by regulation, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.''.

[SEC. 328. ALLOWING COMPENSATION FOR FAMILY COUNSELING EXPENSES AND EXPENSES OF ESTABLISHING AND MAINTAINING GUARDIANSHIP.

[(a) FAMILY COUNSELING EXPENSES IN POST-1988 CASES.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa–15(a)) is amended by adding at the end the following:

[''(5) Actual unreimbursable expenses that have been or will be incurred for family counseling as is determined to be reasonably necessary and that result from the vaccine-related injury from which the petitioner seeks compensation.''.

[(b) EXPENSES OF ESTABLISHING AND MAINTAINING GUARDIANSHIPS IN POST-1988 CASES.—Section 2115(a) of the Public Health Service Act (42 U.S.C. 300aa–15(a)), as amended by subsection (a), is further amended by adding at the end the following:

[''(6) Actual unreimbursable expenses that have been, or will be reasonably incurred to establish and maintain a guardianship or conservatorship for an individual who has suffered a vaccine-related injury, including attorney fees and other costs incurred in a proceeding to establish and maintain such guardianship or conservatorship.''.

[(c) CONFORMING AMENDMENT FOR CASES FROM 1988 AND EARLIER.—Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15) is amended in subsection (c), as so redesignated by section 323(f)—

[(1) in paragraph (2), by striking ''and'' at the end;

[(2) in paragraph (3), by striking ''(e)'' and inserting ''(f)'';

[(3) by redesignating paragraph (3) as paragraph (5); and

[(4) by inserting after paragraph (2), the following:

[''(3) family counseling expenses (as provided for in paragraph (5) of subsection (a));

[''(4) expenses of establishing and maintaining guardianships (as provided for in paragraph (6) of subsection (a)); and''.

[SEC. 329. ALLOWING PAYMENT OF INTERIM COSTS.

[Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15) is amended in subsection (f), as so redesignated by section 323(f), by adding at the end the following:

[''(4) A special master or court may make an interim award of costs subject to final adjustment if—

[''(A) the case involves a vaccine administered on or after October 1, 1988;

[''(B) the special master or court has determined that the petitioner is entitled to compensation under the Program;

[''(C) the award is limited to other costs (within the meaning of paragraph (1)(B)) incurred in the proceeding;

[''(D) not more than 1 prior award has been made with respect to such petition; and

[''(E) the petitioner provides documentation verifying the expenditure of the amount for which compensation is sought.''.

[SEC. 330. PROCEDURE FOR PAYING ATTORNEYS' FEES.

[Section 2115 of the Public Health Service Act (42 U.S.C. 300aa–15), is amended in subsection (f), as so redesignated by section 323(f) and amended by section 329, by adding at the end the following:

[''(5) When a special master or court awards attorney fees or costs under paragraph (1) or (4), it may order that such fees or costs be payable solely to the petitioner's attorney if—

[''(A) the petitioner expressly consents; or

[''(B) the special master or court determines, after affording to the Secretary and to all interested persons the opportunity to submit relevant information, that—

[''(i) the petitioner cannot be located or refuses to respond to a request by the special master or court for information, and there is no practical alternative means to ensure that the attorney will be reimbursed for such fees or costs expeditiously; or

[''(ii) there are otherwise exceptional circumstances and good cause for paying such fees or costs solely to the petitioner's attorney.''.

[SEC. 331. EXTENSION OF STATUTE OF LIMITATIONS.

[(a) GENERAL RULE.—Section 2116(a) of the Public Health Service Act (42 U.S.C. 300aa–16(a)) is amended—

[(1) in paragraph (2), by striking ''36 months'' and inserting ''6 years''; and

[(2) in paragraph (3), by striking ''48 months'' and inserting ''6 years''.

[(b) CLAIMS BASED ON REVISIONS TO TABLE.—Section 2116 of the Public Health Service Act (42 U.S.C. 300aa–16) is amended by striking subsection (b) and inserting the following:

[''(b) EFFECT OF REVISED TABLE.—If at any time the Vaccine Injury Table is revised and the effect of such revision is to make an individual eligible for compensation under the program, where, before such revision, such individual was not eligible for compensation under the program, or to significantly increase the likelihood that an individual will be able to obtain compensation under the program, such person may, and shall before filing a civil action for equitable relief or monetary damages, notwithstanding section 2111(b)(2), file a petition for such compensation if—

[''(1) the vaccine-related death or injury with respect to which the petition is filed occurred not more than 10 years before the effective date of the revision of the table; and

[''(2) either—

[''(A) the petition satisfies the conditions described in subsection (a); or

[''(B) the date of the occurrence of the first symptom or manifestation of onset of the injury occurred more than 4 years before the petition is filed, and the petition is filed not more than 2 years after the effective date of the revision of the table.''.

[(c) DERIVATIVE PETITIONS.—Section 2116 of the Public Health Service Act (42 U.S.C. 300aa–16) is amended by adding at the end the following:

[''(d) DERIVATIVE PETITIONS.—No derivative petition may be filed for compensation under the Program later than the earlier of—

[''(1) the last day on which the petition for compensation for the underlying claim of the person who sustained the vaccine-related injury or death upon which the derivative petition is premised may be timely filed; or

[''(2) 60 days after the date on which the special master has issued a decision pursuant to section 2112(d)(3) on the underlying claim of the person who sustained the vaccine-related injury or death upon which the derivative petition is premised.''.

[(d) TIMELY RESOLUTIONS OF CLAIMS.—

[(1) SPECIAL MASTER DECISION.—Section 2112(d)(3)(A) of the Public Health Service Act (42 U.S.C. 300aa–12(d)(3)(A)) is amended by adding at the end the following: ''For purposes of this subparagraph, the petition shall be deemed to be filed on the date on which the special master issues a certificate of completeness, indicating that all petition contents and supporting documents required under section 2111(c) and, when applicable, section 2111(d) and the Vaccine Rules of the United States Court of Federal Claims, such as an affidavit and supporting documentation, have been served on the Secretary and

filed with the clerk of the United States Court of Federal Claims.''.

[(2) DERIVATIVE PETITIONS.—Section 2112(d)(3)(C) of the Public Health Service Act (42 U.S.C. 300aa–12(d)(3)(C)) is amended by adding at the end the following: ''With respect to any derivative petition filed under section 2111, the period of time during which the petition for compensation for the underlying vaccine-related injury or death upon which such derivative petition is premised is pending shall be treated as a suspension for purposes of this subparagraph.''.

[(3) COURT OF FEDERAL CLAIMS DECISION.—Section 2121(b) of the Public Health Service Act (42 U.S.C. 300aa–21(b)) is amended by adding at the end the following: ''For purposes of this subsection, the petition shall be deemed to be filed on the date on which the special master issues a certificate of completeness, indicating that all petition contents and supporting documents required under section 2111(c) and, when applicable, section 2111(d) and the Vaccine Rules of the United States Court of Federal Claims, such as an affidavit and supporting documentation, have been served on the Secretary and filed with the clerk of the United States Court of Federal Claims.''.

[SEC. 332. ADVISORY COMMISSION ON CHILDHOOD VACCINES.

[(a) SELECTION OF PERSONS INJURED BY VACCINES AS PUBLIC MEMBERS.—Section 2119(a)(1)(B) of the Public Health Service Act (42 U.S.C. 300aa–19(a)(1)(B)) is amended by striking ''of whom'' and all that follows and inserting the following: ''of whom 1 shall be the legal representative of a child who has suffered a vaccine-related injury or death, and at least 1 other shall be either the legal representative of a child who has suffered a vaccine-related injury or death or an individual who has personally suffered a vaccine-related injury.''.

[(b) MANDATORY MEETING SCHEDULE ELIMINATED.—Section 2119(c) of the Public Health Service Act (42 U.S.C. 300aa–19(c)) is amended by striking ''not less often than four times per year and''.

[SEC. 333. CLARIFICATION OF STANDARDS OF RESPONSIBILITY.

[(a) GENERAL RULE.—Section 2122(a) of the Public Health Service Act (42 U.S.C. 300aa–22(a)) is amended by striking ''and (e) State law shall apply to a civil action brought for damages'' and inserting ''(d), and (f) State law shall apply to a civil action brought for damages or equitable relief''; and

[(b) UNAVOIDABLE ADVERSE SIDE EFFECTS.—Section 2122(b)(1) of the Public Health Service Act (42 U.S.C. 300aa–22(b)(1)) is amended by inserting ''or equitable relief'' after ''for damages''.

[(c) DIRECT WARNINGS.—Section 2122(c) of the Public Health Service Act (42 U.S.C. 300aa–22(c)) is amended by inserting ''or equitable relief'' after ''for damages''.

[(d) CONSTRUCTION.—Section 2122(d) of the Public Health Service Act (42 U.S.C. 300aa–22(d)) is amended—

[(1) by inserting ''or equitable relief'' after ''for damages''; and

[(2) by inserting ''or relief'' after ''which damages''.

[(e) PAST OR PRESENT PHYSICAL INJURY.—Section 2122 of the Public Health Service Act (42 U.S.C. 300aa–22) is amended—

[(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

[(2) by inserting after subsection (c) the following:

[''(d) PAST OR PRESENT PHYSICAL INJURY.—No vaccine manufacturer or vaccine administrator shall be liable in a civil action brought after October 1, 1988, for equitable or monetary relief absent proof of past or present physical injury from the administration of a vaccine, nor shall any vaccine manufacturer or vaccine administrator be liable in any such civil action for claims of medical monitoring, or increased risk of harm.''.

[SEC. 334. CLARIFICATION OF DEFINITION OF MANUFACTURER.

[Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

[(1) in the first sentence, by striking ''under its label any vaccine set forth in the Vaccine Injury Table'' and inserting ''any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine''; and

[(2) in the second sentence, by inserting ''including any component or ingredient of any such vaccine'' before the period.

[SEC. 335. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

[Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.''.

[SEC. 336. CLARIFICATION OF DEFINITION OF VACCINE AND DEFINITION OF PHYSICAL INJURY.

[Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

[''(7) The term 'vaccine' means any preparation or suspension, including a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccine's product license application and product label.

[''(8) The term 'physical injury' means a manifest physical illness, condition, or death, including a neurological disease or disorder.''.

[SEC. 337. AMENDMENTS TO VACCINE INJURY COMPENSATION TRUST FUND.

[(a) EXPANSION OF COMPENSATED LOSS.—Section 9510(c)(1)(A) of the Internal Revenue Code of 1986 is amended by inserting '', or related loss,'' after ''death''.

[(b) INCREASE IN LIMIT ON ADMINISTRATIVE EXPENSES.—Subparagraph (B) of section 9510(c)(1) of the Internal Revenue Code of 1986 is amended—

[(1) by striking ''(but not in excess of the base amount of $9,500,000 for any fiscal year)''; and

[(2) by striking the period and inserting '', provided that such administrative costs shall not exceed the greater of—

[''(i) the base amount of $9,500,000 for any fiscal year,

[''(ii) 125 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 150 percent of the average number of claims pending in the preceding 5 years,

[''(iii) 175 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 200 percent of the average number of claims pending in the preceding 5 years,

[''(iv) 225 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 250 percent of the average number of claims pending in the preceding 5 years, or

[''(v) 275 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 300 percent of the average number of claims pending in the preceding 5 years.''.

[(c) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) of the Internal Revenue Code of 1986 is amended by striking ''October 18, 2000'' and inserting ''the date of enactment of the Improved Vaccine Affordability and Availability Act''.

[SEC. 338. ONGOING REVIEW OF CHILDHOOD VACCINE DATA.

[Part C of title XXI of the Public Health Service Act (42 U.S.C. 300a–25 et seq.) is amended by adding at the end the following:

[''SEC. 2129A. ONGOING REVIEW OF CHILDHOOD VACCINE DATA.

[''(a) IN GENERAL.—Not later than 6 months after the date of enactment of this section, the Secretary shall enter into a contract with the Institute of Medicine of the National Academy of Science under which the Institute shall conduct an ongoing, comprehensive review of new scientific data on childhood vaccines (according to priorities agreed upon from time to time by the Secretary and the Institute of Medicine).

[''(b) REPORTS.—Not later than 3 years after the date on which the contract is entered into under subsection (a), the Institute of Medicine shall submit to the Secretary a report on the findings of the studies conducted under such contract, including findings as to any adverse events associated with childhood vaccines, including conclusions concerning causation of adverse events by such vaccines, and other appropriate recommendations, based on such findings and conclusions.

[''(c) FAILURE TO ENTER INTO CONTRACT.—If the Secretary and the Institute of Medicine are unable to enter into the contract described in subsection (a), the Secretary shall enter into a contract with another qualified nongovernmental scientific organization for the purposes described in subsections (a) and (b).

[''(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003, 2004, 2005 and 2006.''.

[SEC. 339. PENDING ACTIONS.

[The amendments made by this title shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

[SEC. 340. REPORT.

[Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Advisory Commission on Childhood Vaccines shall report to the Secretary regarding the status of the Vaccine Injury Compensation Trust Fund, and shall make recommendations to the Secretary regarding the allocation of funds from the Vaccine Injury Compensation Trust Fund.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Project BioShield Act of 2003''.

SEC. 2. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT AUTHORITIES.

(a) IN GENERAL.—Part B of title IV of the Public Health Service Act (42 U.S.C. 284 et seq.) is amended by adding at the end the following:

''SEC. 409J. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT.

''(a) IN GENERAL.—

''(1) AUTHORITY.—In carrying out research responsibilities under this Act, the Secretary may conduct and support research and development with respect to biomedical countermeasures.

''(2) IMPLEMENTATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), authorities assigned by this section to the Secretary shall be carried out through the Director of NIH.

''(B) LEAD INSTITUTE.—The National Institute of Allergy and Infectious Diseases shall be the lead institute for performing, administering, or supporting biomedical countermeasure research and development. The Director of NIH may delegate to the Director of the Institute authorities as are necessary to carry out this function.

''(C) CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS.—To the extent that an authority described in subparagraph (A) is exercised with respect to a chemical, radiological, or nuclear agent, the Secretary may authorize the Director of NIH to carry out the authority through any national research institute.

''(D) AVAILABILITY OF FACILITIES TO THE SECRETARY.—In any grant or cooperative agreement entered into under the authority provided in this section with respect to a biocontainment laboratory or other related or ancillary specialized research facility that the Secretary determines necessary for the purpose of preforming, administering, and supporting biomedical countermeasures research and development, the Secretary may provide that the facility that is the object of such grant or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

''(3) INTERAGENCY COOPERATION.—

''(A) IN GENERAL.—In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the Federal Government and to use other agencies of the Department of Health and Human Services.

''(B) LIMITATION.—An agreement or undertaking under this paragraph may not authorize another agency to exercise the authorities provided to the Secretary by this section.

''(b) EXPEDITED PROCUREMENT AUTHORITY.—

''(1) INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR BIOMEDICAL COUNTERMEASURE PROCUREMENTS.—

''(A) IN GENERAL.—For any procurement by the Secretary, of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasure research or development, the amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as applicable pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), shall be deemed to be $25,000,000 in the administration, with respect to such procurement, of—

''(i) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

''(ii) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

''(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements made under this paragraph, including requirements with respect to documenting the justification for use of the authority provided in this paragraph.

''(2) USE OF NONCOMPETITIVE PROCEDURES.—In addition to any other authority to use procedures other than competitive procedures for procurements, the Secretary may use such other noncompetitive procedures when—

''(A) the procurement is as described by paragraph (1)(A); and

''(B) the property or services needed by the Secretary are available from only one responsible source or only from a limited number of responsible sources, and no other type of property or services will meet the needs of the Secretary.

''(3) INCREASED MICROPURCHASE THRESHOLD.—

''(A) IN GENERAL.—For a procurement described by paragraph (1)(A), the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be deemed to be $15,000 in the administration of that section with respect to such procurement.

''(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements that are made under this paragraph and that are greater than $2,500.

''(C) EXCEPTION TO PREFERENCE FOR PURCHASE CARD MECHANISM.—No provision of law establishing a preference for using a Federal Government purchase card method for purchases shall apply to procurements made under this paragraph and that are greater than $2,500.

''(c) AUTHORITY TO EXPEDITE PEER REVIEW.—The Secretary may, as the Secretary determines necessary to respond to pressing research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, determines to be appropriate to obtain an assessment of scientific and technical merit and likely contribution to the field of biomedical countermeasure research, in place of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494, as applicable to a grant, contract, or cooperative agreement—

''(1) that is for performing, administering, or supporting biomedical countermeasure research and development; and

''(2) the amount of which is not greater than $1,500,000.

''(d) AGENCY FACILITIES.—In addition to any similar authority provided under any other provision of law, in carrying out this section, the Secretary may—

''(1) acquire, lease, construct, improve, renovate, remodel, repair, operate, and maintain laboratories, other research facilities and equipment, and other real or personal property as the Secretary determines necessary for the purpose of performing, administering, and supporting biomedical countermeasure research and development; and

''(2) acquire, without regard to section 8141 of title 40, United States Code, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia.

''(e) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—

''(1) IN GENERAL.—For the purpose of performing, administering, and supporting biomedical countermeasure research and development, the Secretary may, as the Secretary determines necessary to respond to pressing research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, United States Code, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications.

''(2) FEDERAL TORT CLAIMS ACT COVERAGE.—

''(A) IN GENERAL.—A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28, United States Code, for money damages for personal injury, including death, resulting from performance of functions under such contract.

''(B) EXCLUSIVITY OF REMEDY.—The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the person, officer, employee, or governing board member for any act or omission within the scope of the Federal Tort Claims Act.

''(C) RECOURSE IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(i) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this paragraph, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any person, officer, employee, or governing board member to carry out any obligation or responsibility assumed by such person, officer, employee, or governing board member under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person, officer, employee, or governing board member.

''(ii) VENUE.—The United States may maintain an action under this subparagraph against such person, officer, employee, or governing board member in the district court of the United States in which such person, officer, employee, or governing board member resides or has its principal place of business.

''(3) INTERNAL CONTROLS TO BE INSTITUTED.—

''(A) IN GENERAL.—The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

''(B) DETERMINATION OF EMPLOYEE STATUS TO BE FINAL.—A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding on the Secretary and the Attorney General and other parties to any civil action or proceeding.

''(4) NUMBER OF PERSONAL SERVICES CONTRACTS LIMITED.—The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

''(f) STREAMLINED PERSONNEL AUTHORITY.—

''(1) IN GENERAL.—In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing research and development needs under this section, without regard to such provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support biomedical countermeasure research and development in carrying out this section.

''(2) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for appointments under this subsection.

''(g) DEFINITION.—As used in this section, the term 'biomedical countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that is used—

''(1) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

''(2) to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in paragraph (1).

''(h) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions by the Secretary under the authority of this section are committed to agency discretion.''.

(b) TECHNICAL AMENDMENT.—Section 481A of the Public Health Service Act (42 U.S.C. 287a-2) is amended—

(1) in subsection (a)(1), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(2) in subsection (c)—

(A) in paragraph (1), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''; and

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking ''subsection (i)'' and inserting ''subsection (i)(1)'';

(3) in subsection (d), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(4) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(ii) in subparagraph (A), by inserting ''(or, in the case of the Institute, 75 percent)'' after ''50 percent''; and

(iii) in subparagraph (B), by inserting ''(or, in the case of the Institute, 75 percent)'' after ''40 percent'';

(B) in paragraph (2), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''; and

(C) in paragraph (4), by inserting ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''; and

(5) in subsection (f)—

(A) in paragraph (1), by inserting ''in the case of an award by the Director of the Center,'' before ''the applicant''; and

(B) in paragraph (2), by inserting ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''.

SEC. 3. BIOMEDICAL COUNTERMEASURES PROCUREMENT.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 319A, the following:

''SEC. 319A-1. BIOMEDICAL COUNTERMEASURES PROCUREMENT.

''(a) DETERMINATION OF MATERIAL THREATS.—

''(1) RISK OF USE.—The Secretary of Homeland Security, in consultation with the heads of other agencies as appropriate, shall on an ongoing basis—

''(A) assess current and emerging threats of use of chemical, biological, radiological, and nuclear agents; and

''(B) determine which of such agents present a material risk of use against the United States population.

''(2) PUBLIC HEALTH IMPACT.—The Secretary, in consultation with the Secretary of Homeland Security, shall on an ongoing basis—

''(A) assess the potential public health consequences of use against the United States population of agents identified under paragraph (1)(B); and

''(B) determine, on the basis of such assessment, the agents for which countermeasures are necessary to protect the public health.

''(b) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary, in consultation with the Secretary of Homeland Security, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under subsection (a).

''(c) CALL FOR NECESSARY COUNTERMEASURES; COMMITMENT FOR RECOMMENDATION FOR PROCUREMENT.—

''(1) PROPOSAL TO THE PRESIDENT.—Based on a determination of necessary countermeasures under subsection (a), and the assessment of availability and appropriateness of countermeasures under subsection (b), the Secretary of Homeland Security and the Secretary may jointly submit to the President a proposal to—

''(A) call for a necessary countermeasure that is not available; and

''(B) commit to make a recommendation for procurement under subsection (e) of the first such specific countermeasure that meets the conditions for procurement under subsection (d).

''(2) COUNTERMEASURE SPECIFICATIONS.—The Secretary of Homeland Security and the Secretary shall, to the extent practicable, include in the recommendation under paragraph (1)—

''(A) estimated quantity of purchase (in the form of number of doses or number of effective courses of treatments regardless of dosage form);

''(B) necessary measures of minimum safety and effectiveness;

''(C) estimated price for each dose or effective course of treatment regardless of dosage form; and

''(D) other information that may be necessary to encourage and facilitate research, development, and manufacture of the countermeasure or to provide specifications for the countermeasure.

''(3) PRESIDENTIAL APPROVAL.—If the President has approved a request under paragraph (1), the Secretary of Homeland Security and the Secretary shall make known to persons who may respond to a call for the countermeasure—

''(A) the call for the countermeasure;

''(B) specifications for the countermeasure under paragraph (2); and

''(C) a commitment for a recommendation for procurement under subsection (e) of the first such specific countermeasure that meets the conditions for procurement under subsection (d) and the specifications under paragraph (2).

''(4) SUBSEQUENT SPECIFIC COUNTERMEASURES.—Procurement under subsection (f) of the first such specific countermeasure, or any other such countermeasure, that meets the conditions for procurement under subsection (d) and the specifications under paragraph (2) shall not preclude the additional procurement under subsection (f) of a subsequent such countermeasure that meets the conditions of procurement under subsection (d) if such a countermeasure provides improved safety or effectiveness or for other reasons enhances preparedness to respond to threats of use of a biological, chemical, radiological, or nuclear agent.

''(d) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR PROCUREMENT UNDER THIS SECTION.—

''(1) IN GENERAL.—The Secretary, in accordance with this section, shall identify specific countermeasures to threats identified under subsection (a) that the Secretary determines, in consultation with the Secretary of Homeland Security, to be appropriate for procurement with appropriations under this subsection for inclusion in the stockpile under section 121(a) of the Public Health and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh-12(a)).

''(2) REQUIREMENTS.—In order for the Secretary to make the determination under paragraph (1) with respect to a countermeasure, the following requirements must be met:

''(A) DETERMINATION OF QUALIFIED COUNTERMEASURE.—The Secretary must determine that the product is a qualified countermeasure (as defined in subsection (h)).

''(B) DETERMINATION OF QUANTITIES NEEDED AND FEASIBILITY OF PRODUCTION AND DISTRIBUTION.—The Secretary must determine—

''(i) the quantities of the product that will be needed to meet the needs of the stockpile; and

''(ii) that production and delivery within 5 years of sufficient quantities of the product, as so determined, is reasonably expected to be feasible.

''(C) DETERMINATION OF NO SIGNIFICANT COMMERCIAL MARKET.—The Secretary shall—

''(i) determine that, at the time of the initial determination under this subsection, there is not a significant commercial market for the product other than as a biomedical countermeasure; and

''(ii) annually redetermine and report to the President, while a determination under paragraph (1) remains in effect with respect to the product, whether a significant commercial market exists for the product other than as a biomedical countermeasure.

''(e) RECOMMENDATION FOR PRESIDENT'S APPROVAL.—

''(1) RECOMMENDATION FOR PROCUREMENT.—In the case of a countermeasure that the Secretary of Homeland Security and the Secretary have determined is appropriate for procurement under this section for inclusion in the stockpile, in accordance with the preceding provisions of this section, the Secretary of Homeland Security and the Secretary shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation for procurement under this section.

''(2) PRESIDENTIAL APPROVAL.—A countermeasure may be procured under this section only if the President has approved a recommendation under paragraph (1) with respect to such countermeasure.

''(3) NOTICE TO CONGRESS.—The Secretary of Homeland Security shall notify Congress of each decision of the President to approve a recommendation under paragraph (1).

''(f) PROCUREMENT.—The Secretary and the Secretary of Homeland Security shall be responsible for the following, for purposes of procurement of qualified countermeasures for the stockpile under section 121(a) of the Public Health and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh-12(a)), as approved by the President under subsection (e):

''(1) IN GENERAL.—The Secretary shall be responsible for—

''(A) arranging for procurement of the countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this paragraph; and

''(B) promulgating regulations to implement subparagraphs (E), (F), and (G), and any other provisions of this section.

''(2) CONTRACT TERMS.—A contract for procurement under this section shall (or, as otherwise specified in this paragraph, may) include the following terms:

''(A) PAYMENT CONDITIONED ON SUBSTANTIAL DELIVERY.—The contract shall provide that no payment may be made until delivery has been made of a substantial portion (as determined by the Secretary) of the total number of units contracted for.

''(B) DISCOUNTED PAYMENT FOR UNLICENSED PRODUCT.—The contract may provide for a discounted price per unit of a product that is not licensed or approved as described in subsection (h)(1) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing or approval).

''(C) STORAGE BY VENDOR.—The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Government under the contract, for such period and under such terms and conditions as the Secretary may specify, and in such case amounts appropriated under subsection (i) shall be available for costs of shipping, handling, storage, and related costs for such product.

''(D) CONTRACT DURATION.—The contract shall be for a period not to exceed 5 years, renewable for additional periods none of which shall exceed 5 years.

''(E) TERMINATION FOR NONDELIVERY.—In addition to any other rights of the Secretary to terminate the contract, the contract may provide

that such Secretary may terminate the contract for failure to deliver a reasonable number (as determined by the Secretary) of units of the product by 3 years after the date the contract is entered into, and may further provide that in such case the vendor shall not be entitled to any payment under the contract.

''(F) PRODUCT APPROVAL.—The contract shall provide that the vendor seek approval, clearance, or licensing of the product from the Secretary for a timetable for the development of data and other information to support such approval, clearance, or licensing, and that the Secretary may waive part of all of this contract term on request of the vendor or on the initiative of the Secretary.

''(3) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES.—The amount of any procurement under this section shall be deemed to be below the threshold amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), for purposes of application to such procurement, pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), of—

''(A) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

''(B) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

''(4) USE OF NONCOMPETITIVE PROCEDURES.—In addition to any other authority to use procedures other than competitive procedures, the Secretary may use such other procedures for a procurement under this section if the product is available from only one responsible source or only from a limited number of responsible sources, and no other type of product will satisfy such Secretary's needs.

''(5) PREMIUM PROVISION IN MULTIPLE AWARD CONTRACTS.—

''(A) IN GENERAL.—If, under this section, the Secretary enters into contracts with more than one person to procure a countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

''(i) identifies an increment of the total quantity of countermeasure required, whether by percentage or by numbers of units; and

''(ii) promises to pay one or more specified premiums based on the priority of such persons' production and delivery of the increment identified under clause (i), in accordance with the terms and conditions of the contract.

''(B) DETERMINATION OF GOVERNMENT'S REQUIREMENT NOT REVIEWABLE.—If the Secretary includes in each of a set of contracts a provision as described in subparagraph (A), such Secretary's determination of the total quantity of countermeasure required, and any amendment of such determination, is committed to agency discretion.

''(6) EXTENSION OF CLOSING DATE FOR RECEIPT OF PROPOSALS NOT REVIEWABLE.—A decision by the Secretary to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

''(7) LIMITING COMPETITION TO SOURCES RESPONDING TO REQUEST FOR INFORMATION.—In conducting a procurement under this section, the Secretary may exclude a source that has not responded to a request for information under section 303A(a)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(a)(1)(B)) if such request has given notice that such Secretary may so exclude such a source.

''(g) INTERAGENCY COOPERATION.—

''(1) IN GENERAL.—In carrying out activities under this section, the Secretary of Homeland Security and the Secretary are authorized, subject to paragraph (2), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

''(2) LIMITATION.—An agreement or undertaking under this subsection shall not authorize another agency to exercise the authorities provided by this section to the Secretary of Homeland Security or to the Secretary.

''(h) DEFINITIONS.—In this section:

''(1) QUALIFIED COUNTERMEASURE.—The term 'qualified countermeasure' means a biomedical countermeasure—

''(A) that is approved under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of this Act (42 U.S.C. 262) or that is approved under section 515 or cleared under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e and 360) for use as such a countermeasure to a chemical, biological, radiological, or nuclear agent identified as a material threat under subsection (a); or

''(B) for which the Secretary determines that sufficient and satisfactory clinical experience or research data (including data, if available, from preclinical and clinical trials) support a reasonable conclusion that the product will qualify for approval or licensing as such a countermeasure within 5 years after the date of a determination under subsection (d).

''(2) BIOMEDICAL COUNTERMEASURE.—The term 'biomedical countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))), or biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))) that is used—

''(A) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

''(B) to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug or biological product that is used as described in subparagraph (A).

''(i) APPROPRIATIONS.—

''(1) IN GENERAL.— There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for fiscal year 2003 and for each fiscal year thereafter, such sums as may be necessary for the costs incurred by the Secretary in the procurement of countermeasures under this subsection as approved by the President under subsection (e) (other than costs specified in paragraph (2)).

''(2) RESTRICTIONS.—Amounts appropriated under this subsection shall not be available to pay—

''(A) costs for the purchase of vaccines under procurement contracts entered into before January 1, 2003;

''(B) costs under new contracts, or costs of new obligations under contracts previously entered into, for procurement of a countermeasure after the date of a determination under subsection (d)(2)(C) that there is a significant commercial market for the countermeasure other than as a biomedical countermeasure; or

''(C) administrative costs.''.

SEC. 4. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

(a) IN GENERAL.—Subchapter E of Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb, et seq.) is amended by adding at the end the following:

''SEC. 564. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

''(a) IN GENERAL.—Notwithstanding sections 505, 510(k), and 515 of this Act and section 351 of the Public Health Service Act, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, biological product, or device intended solely for use in an actual or potential emergency.

''(b) DECLARATION OF EMERGENCY.—

''(1) IN GENERAL.—The Secretary may declare an emergency justifying the authorization of a drug, biological product, or device under this subsection on the basis of a determination—

''(A) by the Secretary of Homeland Security, that there is a domestic emergency (or a significant potential of a domestic emergency) involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent;

''(B) by the Secretary of Defense, that there is a military emergency (or a significant potential of a military emergency) involving a heightened risk to United States military forces of attack with a biological, chemical, radiological, or nuclear agent; or

''(C) by the Secretary of a public health emergency under section 319 of the Public Health Service Act, affecting national security and involving a specified biological, chemical, radiological, or nuclear agent or a specified disease or condition that may be attributable to such agent.

''(2) TERMINATION OF DECLARATION.—

''(A) IN GENERAL.—A declaration under this subsection shall terminate upon the earlier of—

''(i) a determination by the Secretary, in consultation as appropriate with the Secretary of Homeland Security or the Secretary of Defense, that the circumstances described in paragraph (1) have ceased to exist; or

''(ii) the expiration of the 1-year period beginning on the date on which the declaration is made.

''(B) RENEWAL.—Notwithstanding subparagraph (A), the Secretary may renew a declaration under this subsection, and this paragraph shall apply to any such renewal.

''(3) NOTIFICATION.—The Secretary shall promptly publish in the Federal Register, and shall notify the appropriate committees of Congress concerning, each declaration, determination, and renewal under this subsection.

''(c) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—The Secretary may issue an authorization under this section with respect to a product if the Secretary concludes—

''(1) that an agent specified in a declaration under subsection (b) can cause a serious or life-threatening disease or condition;

''(2) that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that—

''(A) the product may be effective in detecting, diagnosing, treating, or preventing—

''(i) such disease or condition; or

''(ii) a serious or life-threatening disease or condition caused by a product authorized under this section or approved under this Act or the Public Health Service Act, for detecting, diagnosing, treating, or preventing such a disease or condition caused by such an agent; and

''(B) the known and potential benefits of the product, when used to detect, diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product;

''(3) that there is no adequate, approved, and available alternative to the product for detecting, diagnosing, preventing, or treating such disease or condition; and

''(4) that such other criteria as the Secretary may by regulation prescribe are satisfied.

''(d) SCOPE OF AUTHORIZATION.—An authorization of a product under this section shall state—

''(1) each disease or condition and the intended use of the product within the scope of the authorization; and

''(2) the Secretary's conclusions, under subsection (c), concerning the safety and potential effectiveness of the product in detecting, diagnosing, preventing, or treating such diseases or conditions, including an assessment of the available scientific evidence.

''(e) CONDITIONS OF AUTHORIZATION.—The Secretary is authorized to impose such conditions on an authorization under this section as the Secretary determines are necessary or appropriate to protect the public health, including the following:

''(1) The Secretary shall impose requirements (including requirements concerning product labeling and the provision of information) designed to ensure that, to the maximum extent feasible given the circumstances of the emergency, health care professionals administering the product are informed—

''(A) that the Secretary has authorized the product solely for emergency use;

''(B) of the significant known and potential benefits and risks of use of the product, and of the extent to which such benefits and risks are unknown; and

''(C) of the alternatives to the product that are available, and of their benefits and risks.

''(2) The Secretary shall impose requirements (including requirements concerning product labeling and the provision of information) designed to ensure that, to the maximum extent feasible given the circumstances of the emergency, individuals to whom the product is administered are informed—

''(A) that the Secretary has authorized the product solely for emergency use;

''(B) of the significant known and potential benefits and risks of use of the product, and of the extent to which such benefits and risks are unknown; and

''(C) of any option to accept or refuse administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

''(3) The Secretary may impose limitations on which entities may distribute the product (including limitation to distribution by government entities), and on how distribution is to be performed.

''(4) The Secretary may impose limitations on who may administer the product, and on the categories of individuals to whom, and the circumstances under which, the product may be administered.

''(5) The Secretary may condition the authorization on the performance of studies, clinical trials, or other research needed to support marketing approval of the product.

''(6) The Secretary shall impose, to the extent feasible and appropriate given the circumstances of the emergency, requirements concerning recordkeeping and reporting, including records access by the Secretary and publication of data.

''(7) The Secretary may waive, to the extent appropriate given the circumstances of the emergency, requirements, with respect to the product, of current good manufacturing practice otherwise applicable to the manufacture, processing, packing, or holding of products subject to regulation under this Act.

''(8) The Secretary shall, to the extent feasible and appropriate given the circumstances of the emergency, impose requirements for the monitoring and reporting of adverse events associated with use of the product.

''(f) DURATION OF AUTHORIZATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an authorization under this section shall be effective until the earlier of the termination of the declaration under subsection (b) or a revocation under subsection (g).

''(2) CONTINUED USE AFTER END OF EFFECTIVE PERIOD.—An authorization shall continue to be effective for continued use with respect to patients to whom it was administered during the period described by paragraph (1), to the extent found necessary by such patients' attending physicians.

''(g) REVOCATION OF AUTHORIZATION.—

''(1) REVIEW.—The Secretary shall periodically review the circumstances and the appropriateness of an authorization under this section.

''(2) REVOCATION.—The Secretary may revoke an authorization under this section if, in the Secretary's unreviewable discretion—

''(A) the conditions for such an authorization are no longer met; or

''(B) other circumstances make such revocation appropriate.

''(h) PUBLICATION.—The Secretary shall promptly publish in the Federal Register, and provide to the appropriate committees of Congress, a notice of each authorization, and each termination or revocation of an authorization, under this section.

''(i) RECORDKEEPING.—

''(1) IN GENERAL.—The Secretary may require persons, including a person who holds an authorization under this section, or who manufactures, distributes, prescribes, or administers a product that is the subject of such an authorization, to establish and maintain—

''(A) data that is obtained from such activity and that pertains to the effectiveness or safety of such product;

''(B) such records as are necessary to determine, or facilitate a determination, whether there may be any violation of this section or of a regulation promulgated under this section; and

''(C) such additional records as the Secretary may determine necessary.

''(2) ACCESS TO RECORDS BY SECRETARY.—

''(A) SAFETY AND EFFECTIVENESS INFORMATION.—The Secretary may require a person who holds an authorization under this section, or who manufactures, distributes, prescribes, or administers a product that is the subject of such an authorization to provide to the Secretary all data that is obtained from such activity and that pertains to the safety or effectiveness of such product.

''(B) OTHER INFORMATION.—Every person required under this section to establish or maintain records, and every person in charge or custody of such records, shall, upon request by the Secretary, permit the Secretary at all reasonable times to have access to, to copy, and to verify such records.

''(j) CIVIL MONETARY PENALTIES.—

''(1) IN GENERAL.—A person who violates a requirement of this section or of a regulation or order promulgated pursuant to this section shall be subject to a civil money penalty of not more than $100,000 in the case of an individual, and not more than $250,000 in the case of any other person, for each violation, not to exceed $1,000,000 for all such violations adjudicated in a single proceeding.

''(2) ASSESSMENT OF CIVIL PENALTIES.—Paragraphs (3), (4), and (5) of section 303(g) shall apply to a civil penalty under this subsection, and references in such paragraphs to 'paragraph (1) or (2)' shall, for purposes of this subsection, be deemed to refer to paragraph (1) of this subsection.

''(k) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions under the authority of this section by the Secretary, by the Secretary of Defense, or by the Secretary of Homeland Security are committed to agency discretion.

''(l) REGULATIONS.—The Secretary may promulgate regulations to implement this section.

''(m) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect—

''(1) the authority of the President as Commander in Chief of the Armed Forces of the United States under article II, section 2 of the United States Constitution; or

''(2) the authority of the Secretary of Defense with respect to the Department of Defense, including the armed forces, under other provisions of Federal law.

''(n) APPLICATION TO MEMBERS OF ARMED FORCES.—

''(1) WAIVER OF REQUIREMENT RELATING TO OPTION TO REFUSE.—In the case of the administration of a countermeasure to members of the armed forces, a requirement, under subsection (e)(2), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived by the President if the President determines, in writing, that complying with such requirement is not feasible, is contrary to the best interests of the members affected, or is not in the interests of national security.

''(2) EFFECT ON STATUTE PERTAINING TO INVESTIGATIONAL NEW DRUGS.—In the case of an authorization based on a determination by the Secretary of Defense under subsection (b)(1)(B), section 1107 of title 10, United States Code, shall not apply to use of a product that is the subject of such authorization, within the scope of such authorization and while such authorization is effective.

''(o) RELATION TO OTHER PROVISIONS.—If a product is the subject of an authorization under this section, the use of such product within the scope of the authorization—

''(1) shall not be subject to any requirements pursuant to section 505(i) or 520(g); and

''(2) shall not be subject to any requirements otherwise applicable to clinical investigations pursuant to other provisions of this Act.''.

(b) PROHIBITED ACTS.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended—

(1) in subsection (e)—

(A) by striking ''504, 703'' and inserting ''504, 564, 703''; and

(B) by striking ''or 519'' and inserting ''519, or 564''; and

(2) by adding at the end the following:

''(hh)(1) Promotion or use of a product that is the subject of an authorization under section 564 other than as stated in the authorization, or other than during the period described by section 564(g), unless such promotion or use is permitted under another provision of this Act.

''(2) Failure to comply with an information requirement under section 564(e).''.

SEC. 5. AMENDMENTS TO PROVISIONS OF THE HOMELAND SECURITY ACT.

(a) DECLARATION RECOMMENDING MAKING COUNTERMEASURE AVAILABLE TO INDIVIDUALS.—Section 224(p)(2)(A)(i) of the Public Health Service Act (42 U.S.C. 233(p)(2)(A)(i)) is amended—

(1) by striking ''advisable the administration'' and inserting the following: ''advisable—

''(I) the administration'';

(2) by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(II) making a covered countermeasure available to a category or categories of individuals who may wish to receive it.''.

(b) AMENDMENT TO ACCIDENTAL VACCINIA INOCULATION PROVISION.—Section 224(p)(2)(C)(ii)(II) of the Public Health Service Act (42 U.S.C. 233(p)(2)(C)(ii)(II)) is amended by striking ''resides or has resided with'' and inserting ''has resided with, or has had close contact with,''.

(c) DEEMING ACTS AND OMISSIONS TO BE WITHIN SCOPE OF EMPLOYMENT.—Section 224(p)(2) of the Public Health Service Act (42 U.S.C. 233(p)(2)) is amended by adding at the end the following:

''(D) ACTS AND OMISSIONS DEEMED TO BE WITHIN SCOPE OF EMPLOYMENT.—

''(i) IN GENERAL.—In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of—

''(I) subsection (a); and

''(II) section 1346(b) and chapter 171 of title 28, United States Code.

''(ii) INDIVIDUALS TO WHOM DEEMING APPLIES.—An individual is described by this clause if—

''(I) vaccinia vaccine was administered to such individual as provided by paragraph (2)(B); and

''(II) such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i)(I).''.

(d) REQUIREMENT TO COOPERATE WITH UNITED STATES.—Section 224(p)(5) of the Public Health Service Act (42 U.S.C. 233(p)(5)) is amended in paragraph heading by striking ''DEFENDANT'' and inserting ''COVERED PERSON''.

(e) AMENDMENT TO DEFINITION OF COVERED COUNTERMEASURE.—Subclause (II) of section

224(p)(7)(A)(i) of the Public Health Service Act (42 U.S.C. 233(p)(7)(A)(i)(II)) is amended to read as follows:

''(II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and''.

(f) AMENDMENT TO DEFINITION OF COVERED PERSON.—Section 224(p)(7)(B) of the Public Health Service Act (42 U.S.C. 233(p)(7)(B)) is amended—

(1) in the matter preceding clause (i), by striking ''includes any person'' and inserting ''means a person'';

(2) in clause (ii)—

(A) by striking ''auspices such'' and inserting the following: ''auspices—

''(I) such''; and

(B) by adding at the end the following:

''(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

''(III) the immediate site of administration of a covered countermeasure was monitored, managed, or cared for; or

''(IV) an evaluation was made of whether the administration of a covered countermeasure was effective;'';

(3) in clause (iii) by striking ''or'';

(4) by striking clause (iv) and inserting the following:

''(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, or supplied technical or scientific advice or assistance with respect to administration of such countermeasures;

''(v) in the case of a claim arising out of alleged transmission of vaccinia from an individual—

''(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i)(I); or

''(II) an entity that employs an individual described by clause (I) or where such individual has privileges to provide health care;

''(vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);

''(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

''(viii) an individual who has privileges to provide health care under the auspices of an entity described in clause (ii) or (v)(II).''.

(g) AMENDMENT TO DEFINITION OF QUALIFIED PERSON.—Section 224(p)(7)(C) of the Public Health Service Act (42 U.S.C. 233(p)(7)(C)) is amended—

(1) by striking ''who is authorized to'' and inserting the following: ''who—

''(i) is authorized to'';

(2) by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(ii) is otherwise authorized by the Secretary to administer such countermeasure.''.

(h) DEFINITION OF ''ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE''.—Section 224(p)(7) of the Public Health Service Act (42 U.S.C. 233(p)(7)) is amended by adding at the end the following:

''(D) ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE.—

''(i) IN GENERAL.—The term 'arising out of administration of a covered countermeasure', when used with respect to a claim or liability, includes, except as provided in clause (ii), a claim or liability arising out of—

''(I) determining whether, or under what conditions, an individual should receive a covered countermeasure;

''(II) obtaining informed consent of an individual to the administration of a covered countermeasure;

''(III) monitoring, management, or care of an immediate site of administration of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or

''(IV) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).

''(ii) EXCEPTION.—Such term shall not include a claim or liability arising out of care for or treatment of complications arising out of the administration of the countermeasure.''.

(i) TECHNICAL CORRECTION.—Section 224(p)(2)(A)(ii) of the Public Health Service Act (42 U.S.C. 233(p)(2)(A)(ii)) is amended by striking ''paragraph (8)(A)'' and inserting ''paragraph (7)(A)''.

(j) EFFECTIVE DATE.—This amendments made by this section shall take effect as if enacted on November 25, 2002.

SEC. 6. GAO REPORT.

Not later than 4 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report that—

(1) describes the activities conducted under the authorities provided for in section 409J(b)(1) of the Public Health Service Act (as added by section 2) and section 319A-1(f)(3) and (4) of such Act (as added by section 3);

(2) identifies any procurements that would have been prohibited except for the authorities provided in the sections described in paragraph (1); and

(3) assesses the adequacy of the internal controls established by the Secretary of Health and Human Services regarding procurements made under the authorities provided for in the sections described in paragraph (1).

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours of debate equally divided on the measure.

The majority leader.

Mr. FRIST. Mr. President, agents of bioterror are potentially the most powerful and devastating weapons of mass destruction that are known to man. Bioterror agents are more powerful than traditional weapons of mass destruction, are more powerful than chemical weapons, are more powerful than nuclear weapons.

When I say that, people oftentimes say: How can you say that? And it really comes down to one simple concern: that many of the bioterror agents are and can be infectious. They are agents of virus, of bacteria, of another living organism that cannot be seen, that cannot be touched, that cannot be smelled or heard. Yet they are deadly. They know no borders. There are no geographic borders. They attack indiscriminately, and they can travel through a school, they can travel through a community, they can travel through a State, they can travel through a country, and they can travel, indeed, through a continent. They are powerful, powerful agents.

The United States is less than adequately prepared today in terms of defense against these agents of bioterror. Over the next 2 hours, we will be talking about a bill—and ultimately will pass a bill—that is long overdue, legislation that bolsters, that strengthens our Nation's defenses against threats from bioterrorism.

I applaud the leadership of Senator JUDD GREGG, the distinguished chairman of the Health, Education, Labor, and Pensions Committee. He has done a tremendous service to this Nation by bringing this legislation through his committee and to the floor of the Senate today for passage.

We absolutely must—we absolutely must—strengthen our defenses against the threats of biological weapons which I just referred to. But also covered in this bill are other weapons of mass destruction, including nuclear, including chemical, and including radiological weapons.

I also commend the distinguished Senator from Massachusetts, Mr. KENNEDY, for his efforts to achieve a bipartisan consensus on the bioshield legislation we are now considering on the Senate floor.

This legislation has been a priority for President Bush. I congratulate him. He first outlined his bold initiative in his State of the Union Address in January 2003. Since then, we have worked closely with the administration and with our colleagues here in Congress to pass this critical legislation.

What the legislation allows us to do is be proactive in developing a broad range of countermeasures to combat biological, chemical, radiological, and nuclear threats.

It was just several months ago in my own office that there was a bioterror attack and ricin was sent. It is a deadly agent. It is an interesting agent to think about because it is deadly. It is ricin. It was here in our Nation's capital city, in an adjacent building. There is no antidote. We do not have a medicine that can counteract the effects of ricin today.

It is now 3, almost 4 years ago that anthrax hit this same capital. It was deadly. With ricin, thank goodness, nobody was hurt and injured. With the anthrax, 3 years ago, the reality was being demonstrated that bioterror is here, it is on our own soil. It hit this Nation. It hit this Capitol. It hit the entire east coast. Indeed, it was deadly, that little anthrax bacteria that you cannot see.

This legislation allows us to further our response to such agents, both here on our soil, which exist and are being used today, as well as internationally.

It was just 2 days ago that a canister of sarin gas—it shifted just a little bit, with a mixing of two other chemicals, to become sarin gas—began to leak through that canister, again reminding us of the impact that chemical weapons can have today.

So whether it is domestically or internationally, this piece of legislation will bolster and strengthen our defenses to fight, to use countermeasures that will prevent, hopefully, the use of and have an appropriate response to the use of these biological and chemical weapons.

The bioshield legislation really does do just that. It improves our ability to investigate, to develop, and to produce these new such countermeasures. For the first time, we have well defined

this new paradigm of a public and private partnership working together to develop these countermeasures in our Nation's interests.

While maintaining high standards of scientific excellence, the bill streamlines the ability of agencies and entities, such as the National Institutes of Health, to rapidly advance research into these much needed countermeasures, countermeasures to the realities of biological weapons today.

The bill provides the private sector with new incentives to invest in research and development of biomedical countermeasures that otherwise simply would not have the business potential. We need to give those appropriate incentives to the private sector, to use its ingenuity, to use its innovation, to use its capitalism, to use its knowledge to respond to the realities, these real threats that are out there today.

The legislation is critical to our efforts to protect our citizens. There is a whole series of biological threats that are categorized by categories 1, 2, and 3. For the category 1 list, we have vaccines for only two, one being anthrax and the other being smallpox. Both of those vaccines need continued research and refinement in order to minimize those side effects and to make sure we can improve the ease of delivery so that in the event we need to respond, we can respond quickly, efficiently, and safely, whether it be for our soldiers or for citizens throughout America.

This bill also is a major component of our overall much larger strategy to improve our overall biodefense.

There are other initiatives such as strengthening our public health system. Our public health system has been neglected over the last 25 or 30 years. That public health system, that public health infrastructure, is the frontline in response to these agents.

Another component I hope we will be able to address in the future, which is important as we develop this broad strategy against bioterrorism, is this whole element of vaccine liability. Clearly, our vaccine liability system needs reform.

We have the latest public health challenges, things such as SARS, sudden acute respiratory syndrome—a year and a half ago that virus came, and nobody knew what it was, and the terror it created—West Nile virus, and vancomycin-resistant staphylococcus aureus. All of those have taught us the danger of sitting back and being too complacent and not being proactive. In this bill we are being proactive.

I commend especially Chairman GREGG, the President of the United States for his bold leadership, Senator KENNEDY, and all of our colleagues who have worked to craft this legislation to see that we respond to a clearly identifiable need. Passage of this legislation, indeed, is a major step forward in strengthening our national security.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from New Hampshire.

Mr. GREGG. Madam President, I thank the majority leader for his kind statements. I certainly want to recognize the fact that without the majority leader's very strong and thoughtful leadership in this area, we would not have gotten this far. He is obviously an expert in the area of health care and especially sensitive to the need to do something in the area of fighting those agents which might be used against us as biological agents. His leadership and knowledge have made a significant difference in our ability to be successful with this bill. I thank him for that leadership.

I join him in thanking the President. Obviously, this is an initiative high on the President's agenda and the people at NIH, Dr. Zerhouni and Dr. Fauci, who understand the threat and understand the need to address the threat.

We have to put the threat in context, and, regrettably, the context is serious. Were this 1950, 1960, were this any time prior to the latter part of last century and the beginning of our century, and we had terrorists out there who wanted to do us harm, who were as fanatical as are the people who wish to do us harm, the Islamic fundamentalist movement, we would fight them and we would be concerned about them. But our concerns and our ability to handle their threat would be proportional. We would have been able to manage it at that time in an effective and rather contained way.

The problem today is that when you have a fanatical group, a group willing to not only pursue its purposes without limitation and as part of that to be willing to kill innocent individuals, and when you have a group such as that that is also able to get or potentially take possession of weapons of mass destruction, you have created a whole new issue, a whole new threat, a threat of massive proportions. Because if individuals are willing to use weapons of mass destruction—biological, chemical, or nuclear—and they have no compunction about killing innocents—and in fact the purpose of Islamic fundamentalism is specifically to kill Western individuals, people who subscribe to the American philosophy, to our Nation—and their purpose is to undermine our country, to destroy our culture because they deem Western culture to be a threat to them, when you have people like that and they have the ability to possess weapons of mass destruction and the delivery systems to get those weapons into places where they could do massive harm, then you have a problem of immense proportion. The Nation must protect itself from that type of threat. That is what this bioshield initiative is an attempt to do.

We recognize, as the majority leader stated, that probably the single most threatening weapon which these individuals can get their hands on easily and disperse easily—it is not the single most threatening weapon overall; I suspect a nuclear device, were they able to produce one, would be more threatening—the type of weaponry which they most likely can get their hands on which has the potential to do the most harm to the most innocent individuals is a biological weapon or potentially a chemical weapon, but more likely a biological weapon. Because if they were able, for example, as was seen in a small contained area in the Capitol, to spread anthrax or to spread smallpox or to spread botulism, Ebola, or any other agents which would be a disease which would be carried, as the majority leader mentioned, without sight, without sound, without smell, without noise, across a large dispersal area, they could literally harm tens of thousands, potentially even more, Americans.

There is no question but if these fundamentalist terrorists, Islamic fundamentalists, get their hands on that type of weapon, get their hands on a biological weapon, come into possession of an anthrax capability or a smallpox capability, they will use it. There is no question about that. They will use it in a place where people gather who are gathering simply to go through their daily lives, whether it is in a subway system as occurred in Japan, or whether it is in a building as occurred here in the Capitol, or whether it is in some other area where people congregate.

So we as a nation—and the President has made this very clear—have a responsibility to try to defend ourselves from that type of a threat. It is not an inexpensive responsibility. It is going to cost us a lot of money. Regrettably, it is a complex responsibility. There is no magic wand you can wave that will inoculate the American public against these threats. But we understand there is a procedure to go as far down the road as we can possibly go to accomplish that sort of an inoculation or have the capacity to defend our people from that type of a threat.

One of the great advantages we have in fighting Islamic fundamentalism is that we are a sophisticated society which has technical capabilities which we can bring to bear in this war—and it is a war—and bring it to bear in a manner which allows us to take the position that gives us self-defense and also the capacity to carry the battle to them rather than have them carry the battle to us.

This bioshield bill grew out of an initiative that the President suggested, which was that in the case of a series of agents which are biologically driven, which we know can do the most harm, the top seven or eight agents which we know can do the most harm—six or seven agents—we are going to initiate an effort to try to develop the science necessary to develop ways to interdict, to stop, to cure, to make the attacks that use those types of agents less harmful to our people. But in order to accomplish that, we had to recognize as a government—and the administration certainly did—that there is no commercial applicability for this type

of research. There is no commercial demand for this type of a commodity.

A vaccine for anthrax is not in great commercial demand. People are not just going to go out and buy it or take it for the purposes of going through their daily lives. It is not like some other cure to some other sickness, and, therefore, we had to set up a structure where we make it viable for our private sector pharmaceutical industry and biotechnology industry to invest the extraordinary amount of money it takes to invest in the production of this type of response capability. That is essentially what bioshield does. It puts in place a regime which accomplishes three things.

First, it creates a research and development initiative which is public and private, using the great strength of NIH, which is refocused under the leadership of Dr. Zerhouni and Dr. Fauci, which has refocused a large amount of their energy, time, and expertise on this issue. It combines that public effort, which is aggressive, with a private initiative.

In order to get the private initiative going, it sets up a funding stream which makes it clear to the private sector that should they pursue development of vaccines or other ways to treat these agents which we see as the most threatening, whether it be anthrax, plague, smallpox, viral hemorrhagic fevers such as Ebola, or botulism, when they set up processes to address those diseases, whether it is a vaccine or whether it is something else, they will know there are going to be dollars in the pipeline to support that research and, more importantly, to purchase their product once they have produced it. And it will be purchased by the Government, obviously, because there is no market in the private sector for that.

So along with the research component of having NIH focused on this and the private sector focused on this, this bill sets up a stockpiling and procurement procedure to make it clear that, first, once we develop these types of vaccines, we are going to have enough of them to be able to deal with a major attack. Second, the producers of these vaccines or other treatment processes developed—it might be a pharmaceutical—are going to be able to have adequate return on their investment so they can pay the cost of producing that and still make a reasonable return. Third, the bill sets up a process where, should the event occur, should we be attacked with some sort of an agent that we do not yet have the actual approved response to—don't have an approved vaccine—and it has not received all of the FDA clearing that vaccines must go through, which is a long, complicated process in order to approve a vaccine for human use, or approve a pharmaceutical, but should there be somewhere in the pipeline a vaccine which appears to have some success in remediating damage caused by one of these biological attacks, or a pharmaceutical which remediates that, and it is in the pipeline, we set up a procedure that allows, under certain very limited situations where there is a clear and obvious emergency, the administration to use that treatment that is in development for human consumption in order to confront an emergency situation where specifically we have been attacked.

So that is the basic theme of the way this bill works. It creates the research component, the stockpiling and purchasing component, and creates an emergency outlet valve, if you will, for addressing a situation where we are attacked and we don't have a finalized product to address it.

As the majority leader mentioned, of the six major areas of threat that we see in the biological area, today we only have vaccines to address two of them. One of the vaccine regimes is sort of difficult to deliver. That, of course, is in the anthrax area. We have, obviously, a very strong vaccine capability, and we are getting the production of new vaccines in the area of smallpox. Hopefully, people will get back to being vaccinated for smallpox because this is a legitimate threat. But in the area of plague, viral hemorrhagic fever, and botulism, there are no vaccines yet. That is why it is very important that we focus the resources, energy, and the genius of the American health community on making sure that we try to develop these types of responses.

We are, regrettably, living in a world that has people who would do harm, who would pursue a course of inflicting massive harm for the purpose of making their political and quasi-religious point. It is an unfortunate fact. We need look no further than 9/11 to recognize that the killing of innocent people by the thousands is something that fundamentalist Islamic people, who ascribe to that belief, who are terrorists, basically are willing to pursue. We know that, regrettably, these biologic agents exist. Anthrax can be produced probably fairly easily if they have a chemistry background. We know it can be delivered and, regrettably, it was in the Capitol Building.

We know that other types of agents can also be produced. Regrettably, there may even be a vial of smallpox somewhere out there that could be used. So it is critical, as the President has so appropriately stated, that we put into place the process for trying to, in this area, reduce the threat, and hopefully someday be able to totally mute the threat. Obviously, if we are capable as a culture of developing a vaccine or some other treatment that will neutralize the effect of these types of biological agents, then they will not be used against us because the harm they would cause would not be worth the risk of developing and spreading of the agent. So it is definitely in our interest to pursue this course.

It is regrettable that it has taken us this long to get to this point from a legislative standpoint. But I congratulate the administration because they have not waited on us, the Congress. They have gone down the road as far as they think they can go toward letting contracts and putting into place the processes necessary to begin the development of these various vaccines and regimes necessary to address these risks. They have sort of come to a dead end, where they need this authorization in order to take the next steps necessary in the process of developing and expediting the process of getting these cures in place and the regimes in place.

So this bill remains critical to our efforts in the fight on the war against terrorism. Therefore, it is good that we have finally been able to reach a consensus in the Senate, where we will be able to pass this bill later today. It is my understanding that the House of Representatives is likely to accept this bill as it passes the Senate. Hopefully, that will be the case, and we can move it down to the President, who I know has been waiting anxiously. He has talked to us many times about the need for this piece of legislation. This will be a good way, obviously, to complete this week.

AMENDMENT NO. 3178

Mr. GREGG. Madam President, I send to the desk a substitute amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for himself and Mr. KENNEDY, proposes an amendment numbered 3178.

Mr. GREGG. Madam President, I ask unanimous consent that further 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.'')

Mr. GREGG. Madam President, I thank the staff of the HELP Committee, Vincent Ventimiglia and Sharon Soderstrom, Steve Irizarry, and the other members of the staff who have done a great job in pulling this legislation together and following it through the process.

It has been a complicated, tortured, difficult exercise. It would not have gotten to this point without strong and effective staff work. The country owes them a debt of gratitude.

In the end, this bill is going to be one of the major components of our ability to protect ourselves as we move through this world that has such fundamentally evil individuals in it who might actually use this type of weapon against us or anyone else.

There will also be some side benefits to this initiative. I honestly believe as we evolve various vaccines and initiate this research effort in trying to address issues such as anthrax and botulism and plague, we will actually have some spinoffs that will be positive in other health areas, and specifically in ways to deliver these types of vaccines in a

less intrusive way. For example, anthrax has already gone from a six-shot series down to a three-shot series. I understand there is significant progress being made toward having a single vaccination event, potentially, in the anthrax area. There is great progress being made that I think may pay dividends to the American people beyond just the fight on terrorism but in addressing other types of agents which need and require vaccines or pharmaceuticals.

So this is a bill that not only is going to be a plus from the standpoint of fighting the war on terrorism but will be a plus from the standpoint of improving the health care delivery system in the United States, and specifically giving Americans better and more effective pharmaceuticals and vaccines.

I reserve the remainder of our time.

Madam President, I ask unanimous consent that at the conclusion or yielding back of time on S. 15, the bill be temporarily set aside, and the Senate then vote on passage at 2 p.m. today.

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

Mr. GREGG. Madam President, I ask that if we proceed to a quorum call, the time be charged equally to both sides.

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

Mr. GREGG. 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. 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. BROWNBACK. Madam President, I ask unanimous consent to speak on the side of the proponent, Senator GREGG, for up to 7 minutes.

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

Mr. BROWNBACK. Mr. President, I am here to address the Bioshield Act and particularly section 3 of that bill that directs the Secretary of Homeland Security on an ongoing basis to assess threats of use of chemical, biological, radiological, and nuclear agents and determine which threats pose a material risk of use against the U.S. population.

I draw my colleagues' particular attention to what has recently been reported in the newspaper about one of the most recent uses of sarin gas that has occurred and its possibility of being used in the United States.

I commend my colleagues for bringing this bill to the Senate, for a chance to talk about it. It is a very important issue. I see in this particular section our need to assess this. The discovery and confirmation of sarin gas in artillery shells in Iraq highlights evidence that Saddam Hussein had a weapons of mass destruction program that was not only fully operational but ready for use against U.S. troops.

I raise this for two reasons. One, the argument that we have not been able to find WMD in Iraq is ongoing. I hope we will not dismiss the lack of any findings in the past and what we are finding now, the actual use of sarin gas against our troops. That should continue to be a focus that we hunt for, and we should be vigilant in looking for weapons of mass destruction, particularly chemicals such as sarin gas. But more importantly, Iraq had told the U.N. weapons inspection team they had produced tons of sarin gas and other chemical weapons. We should be concerned about where those are today and whether some of them may have found their way into Syria or other countries.

I ask unanimous consent to have printed in the RECORD a news story that appeared today from Fox News.

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

[From Fox News, May 19, 2004]

TESTS CONFIRM SARIN IN IRAQI ARTILLERY SHELL

(By Liza Porteus)

NEW YORK.—Tests on an artillery shell that blew up in Iraq on Saturday confirm that it did contain an estimated three or four liters of the deadly nerve agent sarin (search), Defense Department officials told Fox News Tuesday.

The artillery shell was being used as an improvised roadside bomb, the U.S. military said Monday. The 155-mm shell exploded before it could be rendered inoperable, and two U.S. soldiers were treated for minor exposure to the nerve agent.

Three liters is about three-quarters of a gallon; four liters is a little more than a gallon.

''A little drop on your skin will kill you'' in the binary form, said Ret. Air Force Col. Randall Larsen, founder of Homeland Security Associates. ''So for those in immediate proximity, three liters is a lot,'' but he added that from a military standpoint, a barrage of shells with that much sarin in them would more likely be used as a weapon than one single shell.

The soldiers displayed ''classic'' symptoms of sarin exposure, most notably dilated pupils and nausea, officials said. The symptoms ran their course fairly quickly, however, and as of Tuesday the two had returned to duty.

The munition found was a binary chemical shell, meaning it featured two chambers, each containing separate chemical compounds. Upon impact with the ground after the shell is fired, the barrier between the chambers is broken, the chemicals mix and sarin is created and dispersed.

Intelligence officials stressed that the compounds did not mix effectively on Saturday. Due to the detonation, burn-off and resulting spillage, it was not clear exactly how much harmful material was inside the shell.

A 155-mm shell can hold two to five liters of sarin; three to four liters is likely the right number, intelligence officials said.

Another shell filled with mustard gas (search), possibly also part of an improvised explosive device (IED) was discovered on May 2, Defense Dept. officials said.

The second shell was found by passing soldiers in a median on a thoroughfare west of Baghdad. It probably was simply left there by someone, officials said, and it was unclear whether it was meant to be used as a bomb.

Testing done by the Iraqi Survey Group (search)—a U.S.-organized group of weapons inspectors who have been searching for weapons of mass destruction (search) since the ouster of Saddam Hussein—concluded that the mustard gas was ''stored improperly'' and was thus ''ineffective.''

''It's not out of the ordinary or unusual that you would find something [like these weapons] in a haphazard fashion'' in Iraq, Edward Turzanski, a political and national security analyst, told Fox News on Tuesday.

But ''you have to be very careful not to be entirely dismissive of it,'' he added. ''It remains to be seen whether they have more shells like this.''

IRAQ: A ''BAZAAR OF WEAPONS''

New weapons caches are being found every day, experts said, including ''hundreds of thousands'' of rocket-propelled grenades and portable anti-aircraft weapons.

''Clearly, if we're gonna find one or two of these every so often—used as an IED or some other way—the threat is not all that high, but it does confirm suspicion that he [Saddam] did have this stuff,'' said Ret. U.S. Army Col. Robert Maginnis.

''It is a bazaar of weapons that are available on every marketplace throughout that country,'' Maginnis added. ''We're doing everything we can to aggressively disarm these people, but there were so many things that were stored away by Saddam Hussein in that country . . . it's a huge job that we're tackling.''

Some experts were concerned that enemy fighters with access to potential weapons of mass destruction in a country full of stockpiles could mean more risk to coalition forces and Iraqis.

''What we don't know is if there are other shells, which there certainly could be,'' said Dennis Ross, a former ambassador and special Middle East coordinator and a Fox News foreign affairs analyst. ''We also don't know whether or not these kind of shells could be used as explosives, which could have a more devastating effect on our troops.''

Other experts said the individual shells themselves don't pose a threat to the masses.

''I'm not as concerned they're going to use a lot of chemical munitions,'' Maginnis said. ''They're not gonna use these as improvised explosive devices because they don't have a big blast associated with them, but they do combine those two compounds into the noxious sarin gas. But they can't do it all that well with a small explosive charge.''

''The reality is, they'd have to have a whole bunch of these things,'' he added, ''have to find some way of blowing them with a large charge to even create a cloud.''

That doesn't mean insurgents couldn't find a better way to make the devices to create a more ''terrorist-type of attack'' against U.S. forces, Maginnis continued.

The task of military analysts in Baghdad will be determine how old the sarin shells is. A final determination will have a significant effect on how weapons researchers and inspectors proceed.

Some experts suggested that the two shells, which were unmarked, date back to the first Persian Gulf War. The mustard gas shell may have been one of 550 projectiles that Saddam failed to account for in his weapons declaration shortly before Operation Iraqi Freedom began. Iraq also failed to account for 450 aerial bombs containing mustard gas.

It's not clear if enemy fighters simply found an old stockpile of weapons, or if they even knew what was inside.

Defense Secretary Donald Rumsfeld reacted cautiously to the news of the discoveries.

''What we have to then do is to try to track down and figure out how it might be there, what caused that to be there in this improvised explosive device, and what might it mean in terms of the risks to our forces,'' Rumsfeld said Monday.

KURDS: WE HAVE EVIDENCE OF WMD

An Iraqi Kurdish official had no doubt similar substances will be found as the weapons hunt continues.

''We don't know where they are, but we suspect they are hidden in many locations in Iraq,'' Howar Ziad, the Kurdish representatives to the United Nations, told Fox News on Tuesday. ''It's quite possible that even the neighboring states who are against the reform of Iraq . . . are helping the Saddamites in hiding.''

''As we know, the Baathist regime had a track record of using'' these chemicals against people in Iraq, such as the Kurds, Ziad continued. ''He's [Saddam] never kept any commitment he's ever made to the international committee nor to the people'' to not use such deadly materials.

Saddam's regime used sarin in mass amounts during an air attack on the Kurdish town of Halabja (search) in 1988, toward the end of the Iran-Iraq War. More than 5,000 people are believed to have died in Halabja and surrounding villages, where more than 65,000 were injured.

Both Iraq and Iran used chemical weapons during the 1980–88 war.

Ziad said the United Nations, the World Health Organization and others had not ''bothered'' to travel to the Iraqi Kurdistan to see the firsthand effects sarin and other chemical weapons had on people and to get proof that Saddam did in fact possess such weapons.

''We have evidence—we have victims of the use of those agents, and we're still waiting for WHO and the U.N. to come investigate,'' Ziad said.

Mr. BROWNBACK. I will read portions of this news story, dated today, Fox News:

Tests on an artillery shell that blew up in Iraq on Saturday confirmed that it did contain an estimated three or four liters of the deadly nerve agent sarin.

This has been confirmed by Defense Department officials. This is obviously a danger to our troops. It is obviously of great concern to us if this were to find its way into the United States.

I will read from retired United States Army COL Robert Maginnis:

Clearly, if we're gonna find one or two of these every so often—used as an IED or some other way—the threat is not all that high, but it does confirm suspicion that he [Saddam] did have this stuff.

He goes on to say this:

It is a bazaar of weapons that are available on every market place through that country. We're doing everything we can to aggressively disarm these people but there are so many things that were stored away by Saddam Hussein in that country . . . it's a huge job that we're tackling.

This next quote is from Dennis Ross, the former Ambassador, special envoy to the Middle East, a well-known figure on Middle East peace negotiations that took place:

What we don't know is if there are other shells which there certainly could be.

He goes on to say:

We also don't know whether or not these kinds of shells could be used as explosives, which could have a more devastating effect on our troops.

A final quote for the RECORD from this story:

Saddam's regime used sarin gas in mass amounts during an air attack on the Kurdish town of Halabja in 1988, toward the end of the Iran-Iraq War. More than 5,000 people are believed to have died in Halabja and surrounding villages, with more than 65,000 injured.

This is deadly stuff. It exists. We are now finding it. We need to be aware of that as we move forward with this bioshield bill.

Earlier this week the Wall Street Journal reported that U.S. inspectors found within the last few months ''warehouses full of commercial and agricultural chemicals'' which, if mixed and packaged properly, ''could quickly become chemical weapons.'' U.S. forces in Karbala have uncovered 55-gallon drums loaded with chemicals that were said to be ''pesticides,'' some of which were stored in what military sources described as a camouflaged bunker complex. Why would anyone camouflage insecticide?

According to another article, the alleged agricultural site just happened to be located alongside a military ammunition dump. Why are we storing insecticide by a military ammunition dump?

According to the Journal, the Iraq Survey Group, headed by Charles Duelfer, recently told Congress that some of Saddam's WMD facilities were newly built and contained stockpiled raw materials that would have allowed them to ''produce such weapons on a moment's notice.''

If I recall, in early April, Jordanian authorities foiled an al-Qaida plot to kill 80,000 people in a chemical weapons attack in Amman.

According to one of the conspirators whose confession was broadcast on Jordanian TV, al-Qaida WMD specialist Abu Musab al-Zarqawi, who was last seen in that chilling video beheading Nick Berg, trained and outfitted the WMD attackers in prewar Iraq. Like notorious terrorists Abu Nidal and Abu Abi Abbas, Zarqawi enjoyed sanctuary in Baghdad, courtesy of Saddam Hussein. Jordanian coverage of the plot included footage of 100-gallon jugs containing chemical weapons that had been intercepted 75 miles from the Syrian border where much of Saddam Hussein's prewar WMD stockpiles are believed to be hidden.

The Zarqawi revelation comes on the heels of the April 26 explosion at a suspected chemical weapons factory in Baghdad just as a U.S. weapons team arrived to inspect its contents. This was disguised as ''a perfume factory,'' and the facility was boobytrapped to destroy evidence, investigators believe, of whatever was inside.

We should not be surprised if, within the coming weeks, more sarin-laden shells are uncovered in Iraq. In the meantime, we should focus on this and get coverage on what is taking place and what has been found of this deadly sarin gas.

I note that Secretary Ridge, Homeland Security Department, has been warning of an increased risk of attack in coming months. In light of what we found in Iraq, it would not be far-fetched to say if al-Qaida wants to strike on U.S. soil, it would likely be with a chemical or biological weapon, something other than a conventional explosive.

In a recent interview with the Associated Press, retired LTG Patrick Hughes said that America has gotten better at predicting and safeguarding itself against attacks since September 11, but still Lieutenant General Hughes indicated that significant threats remain, especially now as high ''background noise'' from terrorists and heightened sensitivity during the election year has officials on guard for a possible attack whose nature they cannot quite pin down.

Based on captured material, interviews, and other sources of information, Lieutenant General Hughes believes that al-Qaida will likely strike with something other than a conventional explosive device. He is particularly worried about chemical and biological attacks, including a dirty bomb, and particularly points to the possibility of another anthrax biological attack following the one that wreaked havoc on the postal system, closed a Senate office building for 3 months, and killed five people in 2001.

We first heard about sarin gas in an attack at a Japanese subway where twelve people died. It is a potent weapon in which a little drop on your skin will kill you. Sarin gas was confirmed in the 155-mm shell and contained an estimated 3 or 4 liters. Fortunately, the two soldiers who may have been exposed are now safe and are returned to duty. They did show signs of being hit by chemical weapons, but it was a mild case and they are back on duty. This could have ended in tragedy had our soldiers not been more vigilant.

I hope we will continue to be focused on finding these weapons of mass destruction, particularly before they find their way to our shores so we can make sure our troops are safe and that such weapons do not find their way here to the United States. I believe my colleagues' bill will go a long way toward securing that goal. I urge its immediate passage.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, I strongly support the Project Bioshield Act. It is an essential part of our Nation's ability to respond effectively to the threat of terrorist attacks that use biological or chemical weapons.

I commend Senators GREGG, FRIST, REED, and other members of our HELP Committee for their efficient and effective bipartisan work on this bill, and I thank Senator LEVIN for his expertise and thoughtful considerations.

I also commend our colleagues on the Appropriations Committee, and especially the chairman, Senator STEVENS, and the ranking member, Senator BYRD, for already providing the funding that Project Bioshield needs to be effective. Their leadership is essential in protecting the Nation.

We have worked closely, too, with Secretary Tommy Thompson and CMS Administrator Mark McClellan on this important legislation. They deserve great credit for their leadership as well.

The Project Bioshield Act is an important addition to the Public Health Security and Bioterrorism Preparedness and Response Act that we passed 2 years ago. Since that major legislation was enacted, we have seen new examples of the vicious impact of terrorism around the world. The brutal pictures from the appalling bomb attack in Madrid and the horrifying images of other terror attacks around the world are savage reminders that we must never let down our guard.

The will to protect the Nation from terrorism is not enough. We must also provide the resources and the means. Bioshield is a major step toward giving the Nation's health care professionals the support they need to respond to attacks of biological, chemical, and nuclear weapons.

A terrorist armed with a vial of a deadly pathogen could inflict pain and death on a vast scale. For too many of the weapons we face, our defenses are inadequate. The Nation needs better vaccines and drugs to fight ancient enemies such as smallpox or new plagues launched by genetically modified disease bacteria.

The members of our HELP Committee have worked together to help America's skilled physicians and scientists develop the vaccines, the diagnostic tests, and treatments needed to meet these disease challenges. Clearly, new legislation is needed to improve America's defensive arsenal against these threats.

The current bill will help guide the talents of America's medical researchers and biotechnology industry in building the stronger medical defenses we need to keep families safe from bioterrorism.

I am proud that Boston is, once again, leading the way in developing pioneering new biodefense countermeasures. We have taken steps to expedite the discovery of new vaccines and cures needed to protect the Nation.

This chart is a statement about this overall legislation:

> Bioshield will accelerate the development of new vaccines, treatments and diagnostics to keep America safe from biological, chemical and radiological weapons.

The fact remains that there is little commercial interest in the development of countermeasures, because they will only be used in the event of some kind of assault or attack on the United States. Nonetheless, we need to develop these vaccines and the various treatments for treating these kinds of dangers because we may very well face them. If we are going to be serious about dealing with biodefense and bioterrorism, this is a very important part of the whole process.

Harvard Medical School has worked with other academic centers to create a New England Regional Center for Excellence for Biodefense. The new center will be the incubator for innovative ideas for treatments of the future. The Boston University Medical Center is building a major new laboratory to enable these pioneering new treatments be tested in a safe and secure research facility.

At the new laboratory, researchers from across America will be able to help turn promising new ideas into treatments to help patients. NIH has recognized the excellence of the center and the laboratory by making substantial investments in their development. The Project Bioshield will help complete this pipeline of discovery by harnessing the creativity and the skill of the flourishing biotechnology industry.

The legislation will ensure companies know that investing in new responses for bioterrorist attacks is a risk worth taking. The bill before the Senate guarantees that any company which develops a successful new product for these threats will find a willing buyer in the Federal Government. With that guarantee, companies will make the investments needed to prepare for any attack. Without that guarantee, they will not. It is as simple as that.

The act will accomplish several other important goals. It will streamline and accelerate the research at NIH on bioterrorism and other weapons of mass destruction. The most effective weapons in the war against biological and chemical attacks are often the skills of our health professionals and the ingenuity of our scientists. The new flexibility for NIH under this legislation will help use these extraordinary talents in the search for new responses.

The act will also encourage the biotechnology, pharmaceutical, and medical device industries to use their creativity to develop countermeasures against the dangerous pathogens and chemical or radioactive agents. In addition, it authorizes the Food and Drug Administration to allow the emergency use of unapproved medicines when needed to deal with such attacks.

The authorization for the emergency use of unapproved products also includes strong provisions on informed consent for patients and limits the scope of products that can qualify for emergency authorization. The FDA must carefully monitor adverse reactions to unapproved products and must require the recordkeeping and studies necessary to assure the safest possible use of these products.

The enactment of the Project BioShield Act is a significant accomplishment, but there is much more work to be done.

This is a brief outline of what this legislation is all about. It establishes the $5.6 billion fund as a guaranteed market for the new biodefense products, and it ensures that the Departments of Homeland Security and HHS set priorities in developing medicines for the threats that America faces. So you combine intelligence about the nature of the threat with expertise from HHS to set the priorities in developing medicines.

It gives NIH, the gold standard in terms of research throughout the world, much needed flexibility to ensure promising research areas can advance quickly. Finally, it allows the FDA to authorize the emergency use of medicines under the tightly controlled conditions outlined in this legislation.

The most sophisticated disease monitoring system will be of little use if public health agencies are so starved of funds that they cannot keep our communities safe.

I want to take a few moments of the Senate's time to look at the progress for bioterror preparedness.

This is taken from a GAO study from February 10 of this year. It says:

> No State reported meeting what they call the third benchmark, a plan for the hospitals in the State to respond to an epidemic involving at least 500 patients.

This is extraordinary. On the one hand, dealing with bioterrorism we have to be able to detect and contain it, and then we have to be able to treat people. That is where BioShield can be enormously effective. But if we are going to be able to contain and treat a bioterror attack, we must be able to deal with it in our medical centers. What we are finding out now, as we review our preparedness, is that we are not making the progress that is absolutely essential to protect communities.

Report after report shows that we are falling short in preparing our defenses against the threat of bioterrorism. The GAO conducted a detailed analysis of the readiness of hospitals for such attacks. How many communities do you think have plans—just plans to be able to treat a surge of 500 additional patients in a terrorism emergency? Would you say 75 percent? 50 percent? Only 25 percent? No, you would be wrong. The correct answer is none. Zero! Not a single community in the GAO survey had a plan to treat an additional 500 patients. That is basic—and none of the communities in the GAO survey could do it. That is a situation that has to be remedied.

An expert panel assembled by the Trust for America's Health conducted an analysis of the readiness for bioterrorism of public health agencies in all 50 States. They examined 10 key indicators of readiness, such as adequate laboratory capacity to respond to bioterrorism emergencies. How many

States do you think were fully prepared? The answer, again, shockingly, is none.

This chart shows the different grades of States in bioterror preparedness. The highest we find is 7 out of 10. That would be the green. That includes California, Florida, Tennessee, and Maryland. But if you look at most of this chart you will see it is red or pink, which means they have only 2 or 3 of the 10 required actions necessary to be successful in dealing with bioterrorism. You need to have laboratories, hospital capacity and, as mentioned before in Bioshield, the basic medicines to treat the victims.

The Institute of Medicine in 2003 found that America's health agencies have ''vulnerable and outdated health information systems and technologies, an insufficient and inadequately trained public health workforce, antiquated laboratory capacity, a lack of realtime surveillance in epidemiological systems, an ineffective and fragmented communications network, incomplete domestic preparedness and emergency response capabilities, and communities without access to essential public health services.''

That is really the challenge. If we talk about homeland security, this is a key aspect in ensuring homeland security. It is a challenge we have to address. That puts the Project BioShield Act in an ominous perspective. It is a large step in the right direction, but without a commitment to adequately fund our hospitals and our health agencies, genuine preparedness and effective homeland security will still be far from what is needed.

I urge my colleagues in approving this important bipartisan legislation to also do what it takes to see that our hospitals and health agencies have the resources they need to use the new tools that BioShield gives them. We don't know how much time we have, but we do know we have to get the job done and do it as quickly as we can.

Mr. President, I want to take a moment to thank a number of our colleagues' staffs who have worked tirelessly in this endeavor over the period of these last 2 years. This has been an enormous effort on the part of many of them. They have done an extraordinary job working this through.

The passage of the BioShield legislation owes much to the hard work and skill of dedicated staff members on both sides of the aisle in the Senate and the House of Representatives, and in the administration too.

I would like to take a moment to thank the effective and skillful work of Senator GREGG's staff, particularly Vince Ventimiglia and Steve Irizarry. Their expertise was helpful in so many ways. I also want to thank Craig Burton of Senator FRIST's staff for his effective work on the legislation.

Our Republican colleagues on the House Commerce and Homeland Security committees were ably assisted by Tom DiLenge and Nandan Kenkeremath. John Ford worked tirelessly on behalf of the many Democratic Members with an interest in this legislation.

I also commend many senior staff in the Department of Health and Human Services for their work in seeing this important legislation enacted. We owe particular thanks to Stewart Simonsen, the Assistant Secretary for Public Health Preparedness, as well as Raissa Downs, Ken Bernard and Scott Whitaker from the Office of the Secretary, and Amit Sachdev of the FDA.

Staff members from many Democratic Senators made numerous helpful contributions to the success of this legislation. I would like to thank Peter Levine and Gary Leeling from Senator LEVIN's staff, as well as Lisa German from Senator REED's staff. I would also like to thank my health staff, particularly David Nexon, David Bowen, David Dorsey and Paul Kim for their excellent work on this legislation.

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. GREGG. 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. GREGG. Mr. President, I ask that my substitute amendment be accepted.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to.

The amendment (No. 3178) was agreed to.

The PRESIDING OFFICER. Under the previous order, the committee substitute amendment, as amended, is agreed to.

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

BIOSHIELD FUNDING

Mr. GREGG. Mr. President, I appreciate the hard work and cooperation of many of my colleagues to build a program to protect Americans from bioterrorism. I am grateful to Senator COCHRAN for his work last year to ensure that adequate funds were provided in advance to incentivize the immediate development of countermeasures. I also commend Senator NICKLES for his efforts to safeguard these funds and ensure that they remain available solely for the intended purpose of protecting our citizens from biological attack.

Mr. COCHRAN. I was pleased to work with the administration and my colleagues on the Appropriations Committee to secure funding for the program. It is my intention that any unobligated balances of funds appropriated for project BioShield remain available until expended, as the law requires, to ensure that the program has adequate resources in fiscal year 2005 to continue developing necessary countermeasures.

Mr. NICKLES. I appreciate the leadership of my colleague from Mississippi in this effort, and agree that the funds should remain dedicated to the rapid development of effective countermeasures against emerging threats.

Mr. BYRD. Mr. President, I commend Senators GREGG and KENNEDY for their hard work in bringing this important legislation to the floor. I share in their commitment to protect Americans from bio-terrorism. Last year, I worked with Senator COCHRAN, the chairman of the Homeland Security Subcommittee of the Senate Appropriations Committee, to develop an extraordinary funding mechanism for the funding of Project Bioshield. The Congress approved $5.6 billion of advanced appropriations to create incentives for the development of vaccines, pharmaceuticals and other countermeasures for responding to a potential terrorist attack. This funding demonstrated a strong commitment to implementing this important program.

During debate on the budget resolution, the Senate approved an amendment offered by Senator COCHRAN and myself that struck from the resolution a provision that would have established different rules in the House and Senate for the treatment of Project Bioshield funding. I believe such a provision would have created confusion and potentially undermined future funding for homeland security programs.

Is it the understanding of the Senator from New Hampshire that no such provision will be included in the final version of this legislation that will be presented to the President?

Mr. GREGG. I thank the Senator from West Virginia for his cooperation and appreciate his efforts to help secure funding for this important program. While I am unable to guarantee an outcome in conference, I have no intention of including this provision and I will work to ensure that no such provision will be included in the bill presented to the President.

Mr. BYRD. Is it also his understanding that no such provision, which is in neither the House nor Senate-passed budget resolutions, will be included in a conference report on the budget resolution?

Mr. GREGG. I have discussed this with the chairman of the Budget Committee and the Senator's understanding is correct that no such provision will be included.

Mr. BYRD. I thank the chairman for his assurances and cooperation in this matter and I commend both he and Senator KENNEDY for their cooperation in bringing to the Senate this important legislation.

PURCHASE OF VACCINES

Mr. LEVIN. Mr. President, I would like to clarify the understanding of the managers of this bill with regard to the restriction in section 319F–2(c)(9), as amended by the Gregg-Kennedy amendment, on the use of Bioshield funds from paying the costs for purchase of vaccines under procurement contracts

entered into before the date of enactment. Is it the understanding of the bill's managers that this restriction would not apply to the purchase of additional doses of vaccines otherwise qualifying as security countermeasures if they are acquired under either new contracts or modifications to existing contracts to increase the numbers of doses to be procured for the Strategic National Stockpile?

Mr. GREGG. I thank the Senator for his question. That is my understanding.

Mr. KENNEDY. I agree with the Senator from Michigan and the Senator from New Hampshire that that is my understanding of the provision. However, it is also my understanding that the primary intent of the Bioshield program is to accelerate the development of new products rather than providing an additional funding source to pay for products developed prior to the enactment of the legislation.

SPECIAL RESERVE FUND

Mr. KENNEDY. Mr. President, I commend the leadership of our distinguished chairman in bringing the Bioshield legislation to the Senate floor. I am optimistic that our colleagues will approve this urgently needed legislation. I would like to clarify with the chairman the intent behind one of the key provisions in the legislation.

Would the chairman agree that as we have considered this legislation during our bipartisan and bicameral negotiations, it has been clear that the congressional intent is for the Bioshield special reserve fund to be one option for the Secretary with respect to procuring countermeasures against chemical, biological, radiological, or nuclear agents. A second option is ordinary appropriations for the stockpile outside of the special reserve fund. It is clear though that we expect that the Secretary will endeavor not to use the Bioshield special reserve fund as a substitute for the commercial market in procuring such countermeasures.

Mr. GREGG. I thank my colleague from Massachusetts for his comments. I agree that his statements reflect the intent of Congress regarding the use of the Bioshield special reserve fund.

Mr. LEVIN. Mr. President, I come to the floor today to express my support for the Project Bioshield legislation. This bill will make an important contribution to our Nation's preparedness by authorizing the expenditure of $5.6 billion from fiscal year 2004 to fiscal year 2013 for the procurement of biomedical countermeasures for inclusion in a Strategic National Stockpile. Project Bioshield will bolster the Nation's ability to provide protections and countermeasures against biological, chemical, radiological, and nuclear agents that may be used in a terrorist attack. It includes provisions to facilitate research and development of biomedical countermeasures by the National Institutes of Health; to provide for procurement of needed countermeasures through a special reserve fund and to authorize, under limited circumstances, the emergency use of medical products that have not been approved by the Food and Drug Administration.

I am pleased that the final version of the bill requires that any bioshield contract be awarded pursuant to full and open competition unless the Secretary determines that the mission of the bioshield program would be seriously impaired by this requirement. This provision ensures that the bioshield program, like other Federal programs, will be subject to government-wide competition requirements.

I am also pleased that the final version of the bill will not make it more likely that military personnel will be required to take unapproved products without their consent. This subject has been addressed in an appropriate manner in the National Defense Authorization Act for Fiscal Year 2005, which is being debated on the Senate floor right now.

This legislation will help to better prepare our Nation and bolster our critical infrastructure to help us deal effectively with terrorist attacks. The mailing of anthrax and ricin tainted letters to Capitol Hill and other locations in 2001 and 2004, respectively, have highlighted our Nation's weaknesses in this area of biodefense. Now Project Bioshield will help give us the tools we need to develop appropriate countermeasures and combat bioterrorism more effectively.

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

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—99

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

NOT VOTING—1

Kerry

The bill (S. 15), as amended, was passed.

Mr. WARNER. Mr. President, 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 amendment (No. 3180) was agreed to, as follows:

AMENDMENT NO. 3180

(Purpose: To amend the title of the bill)

Amend the title so as to read: To amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.''.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDING OFFICER. The Senate will resume consideration of S. 2400, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

Pending:

Lautenberg amendment No. 3151, to clarify the application of Presidential action under the International Emergency Economic Powers Act.

Mr. WARNER. Mr. President, my understanding is that the pending business is the Lautenberg amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. At this time, Mr. President, my colleague from Arizona is seeking recognition.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

AMENDMENT NO. 3191 TO AMENDMENT NO. 3151

Mr. KYL. Mr. President, I call up amendment No. 3191, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. Kyl], for himself and Mr. CORNYN, proposes an amendment numbered 3191 to amendment numbered 3151.

Mr. KYL. Mr. President, I ask unanimous consent that further 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.'')

Mr. KYL. Mr. President, I pose an inquiry. I am prepared to discuss this amendment and move forward with it. I was advised that possibly the Senator from West Virginia wishes to use this time to make some remarks. I say to the Senator, if he wishes to do that, I would be happy to defer.

Mr. WARNER. Mr. President, that is correct. I thank the Senator from Arizona. It is my understanding that our distinguished Senator from West Virginia desires to address the Senate, in which case the pending business is the amendment in the second degree, and we will return to that.

Mr. REID. Mr. President, may I direct a question through the Chair to the chairman of the committee. Senator LAUTENBERG wishes to modify his amendment, which doesn't take unanimous consent. Can we get that out of the way?

Mr. WARNER. Absolutely.

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

AMENDMENT NO. 3151, AS MODIFIED

Mr. LAUTENBERG. Mr. President, I send a modification to my original amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 184, between lines 16 and 17, insert the following:

Subtitle F—Provisions Relating To Certain Sanctions

SEC. 856. CLARIFICATION OF CERTAIN SANCTIONS.

(a) CLARIFICATION OF CERTAIN ACTIONS UNDER IEEPA.—In any case in which the President takes action under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to prohibit a United States person from engaging in transactions with a foreign country, where a determination has been made by the Secretary of State that the government of that country has repeatedly provided support for acts of international terrorism, such action shall apply to any foreign subsidiaries or affiliate, including any permanent foreign establishment of that United States person, that is controlled in fact by that United States person.

(b) DEFINITIONS.—In this section:

(1) CONTROLLED IN FACT.—The term ''controlled in fact'' means—

(A) in the case of a corporation, holds at least 50 percent (by vote or value) of the capital structure of the corporation; and

(B) in the case of any other kind of legal entity, holds interests representing at least 50 percent of the capital structure of the entity.

(2) UNITED STATES PERSON.—The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the law of the United States (including foreign branches) or any person in the United States.

(c) APPLICABILITY.—

(1) IN GENERAL.—In any case in which the President has taken action under the International Emergency Economic Powers Act and such action is in effect on the date of enactment of this Act, the provisions of subsection (a) shall not apply to a United States person (or other person) if such person divests or terminates its business with the government or person identified by such action within 90 days after the date of enactment of this Act.

(2) ACTIONS AFTER DATE OF ENACTMENT.—In any case in which the President takes action under the International Emergency Economic Powers Act on or after the date of enactment of this Act, the provisions of subsection (a) shall not apply to a United States person (or other person) if such person divests or terminates its business with the government or person identified by such action within 90 days after the date of such action.

SEC. 857 NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.

(a) NOTIFICATION REQUIREMENT.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

''Sec. 42. Notification of Congress of termination of investigation by Office of Foreign Assets Control.''.

''The Director of the Office of Foreign Assets Control shall notify Congress upon the termination of any investigation by the Office of Foreign Assets Control of the Department of the Treasury if any sanction is imposed by the Director of such office as a result of the investigation.''.

Mr. KYL. Mr. President, I ask unanimous consent that at the conclusion of Senator BYRD's remarks, I be recognized to get back on my amendment. Also, I inquire of the Senator approximately how long he wishes to take.

Mr. BYRD. Mr. President, in response to the distinguished Senator from Arizona, I expect to take 15 to 18 minutes.

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

The Senator from West Virginia is recognized.

COMMENDING THE ARMED SERVICES COMMITTEE

Mr. BYRD. Mr. President, I thank all Senators for their courtesies. I especially want to take this moment to thank the chairman of the Senate Armed Services Committee and the ranking member for the splendid hearings they have been conducting.

I have never sat on a committee through such a series of hearings that have been so well ordered and so well chaired by both Members, the distinguished Senator from Virginia and the distinguished Senator from Michigan, as I have experienced in these few days as this committee has been conducting its hearings into the serious matters that have confronted us in the Middle East. I just want to take this occasion to say I could never ask for a chairman to be more fair, more just, more reasonable than the Senator from Virginia.

I marvel at his equanimity, at his good nature. He is always, always a man of good will. I count it a great privilege to serve on his committee.

Mr. WARNER. Mr. President, I thank our distinguished colleague. Senator LEVIN and I have had 26 years on that committee, and we work side by side for the highest degree of bipartisanship achievable.

I want to say to all members of the committee—and the distinguished Senator from West Virginia knows this—this is the third hearing, and it has been 100-percent attendance, except for one individual who is out of town, in each of the hearings, showing the intensity of the subject, the solemnity of the proceeding. I believe all members of our committee, both sides, comported themselves in the finest traditions of the Senate, given the seriousness of this problem. I thank the Senator.

Mr. LEVIN. If the Senator will yield for a thank-you from me for his nice comments.

Mr. BYRD. Yes.

Mr. LEVIN. As always, the Senator from Virginia shares the kudos which properly belong to him. I am grateful to the Senator from West Virginia for bringing to the attention of this body the extraordinary chairman we have on the Armed Services Committee.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I have said along this line that it was a great pleasure serving on this committee with Senator Sam Nunn of Georgia. I thought he was a great chairman. He was. When he left the committee, I felt it would certainly be a long time before his shoes and his chair would be as well filled as one could hope.

I find that the distinguished Senator from Michigan has done a splendid job. He handles himself preeminently well on television, and he approaches each problem on the committee in a very studious fashion. When he reads a bill, one can say that bill has been read. When he writes a bill, one can say it has been written well—every period, comma, semicolon, colon, en dash, em dash, whatever it is. He would have gone over it thoroughly. I thank him. He has certainly stepped into the shoes of Sam Nunn very ably. I have every confidence in him.

Mr. WARNER. Mr. President, we wish to restore the time the Senator asked for, but I want to say I share that about Senator LEVIN. Senator LEVIN and I and Senator Nunn were taught by some of the greatest teachers in the Senate, foremost the Senator from West Virginia, Mr. BYRD, John Stennis, John Tower, Barry Goldwater, and Scoop Jackson.

As I look back on my quarter of a century in the Senate, those were the teachers who set the course and speed of that committee, and the Senator from Michigan and I do our best to do that with the help of the Senator from West Virginia. We thank the Senator from West Virginia.

Mr. BYRD. I thank the Senator. Among those giants who walked these halls, may I add one name: the name of the illustrious Richard Brevard Russell of Winder, GA, who was chairman of that committee when I first came to the Senate.

SECURING OUR ENERGY FUTURE: A NEW STRATEGY

Mr. BYRD. Mr. President, on another matter, a perfect storm has been brewing. Americans have already felt the leading edge of the approaching squalls. Today, we are more dependent upon imported oil than ever before. More than 54 percent of the oil that Americans consume comes from foreign countries, especially OPEC-producing nations. Instead of striving to disentangle ourselves from this foreign oil dependency, the Bush administration seems intent on sinking our military and energy fortunes deeper and deeper into the sands of the Middle East.

Last week, gas prices in many regions of West Virginia were above $2 per gallon. Within days, these prices could easily exceed the $2 per gallon average nationwide. The price of natural gas is at a historic high, and consumers and manufacturers in West Virginia and across the country are struggling to pay their bills. Though some advocate reducing this pressure by importing liquified natural gas in the future, we must also recognize that this will create a new and growing resource dependency. It is hard to believe that the energy and foreign policy decisions made in places elsewhere in the world are having such a dramatic impact on the lives and pocketbooks of our citizens, but that is today's reality.

Another aspect of that gathering storm is the poor state of our electricity grid, the lifeline of our economy. However, decade-long efforts to deregulate electricity markets have, in some cases, led to market manipulation and fracturing rather than producing a more integrated, reliable system. Given the blackout last summer, few observers would doubt that our electric transmission system needs to be made more robust. Furthermore, economic and environmental regulations governing energy production and use are often in conflict with our disjointed energy policies. Continued uncertainties make investment decisions difficult and clearly demonstrate that these ongoing debates must be resolved. Due to the lack of political will, special interest entrenchment, and other constraints, policymakers have been unable to untangle this Gordian knot.

These concerns are central to the long-term interests of our Nation, and they represent very ominous clouds on the horizon. Sadly, our energy problems are being addressed with Band-Aid solutions. In recent years, we have witnessed attempts to put a moratorium on Federal gas taxes, to tap the Strategic Petroleum Reserve, and to make secretive deals with Saudi Arabia to produce more oil. We have unnecessarily endeavored to treat the symptoms and not the core problem for far too long. Instead, our Nation needs to begin defining alternative pathways and new approaches that go beyond the extremist debates and simplistic solutions that define our very demanding energy and environmental challenges.

Three years ago this week, the Bush administration released the National Energy Policy report. Unfortunately, Americans have yet to receive the benefits that this energy plan promised to provide. Given the plan's 3 year anniversary, I am announcing that I, along with other Senators, have asked the General Accounting Office to undertake a broad and comprehensive review of the Federal Government's energy funding, policies, and overall goals to determine whether the U.S. does, in fact, have strategic plan in place.

The U.S. is without a serious energy policy, and no energy bill currently before this Congress can adequately rectify that problem. The U.S. faces the simultaneous challenges of an expanding energy appetite, a need to reduce its dependence on imported resources, and a decreasing tolerance for environmental impacts. Sadly, policymakers have time and time again failed to craft a comprehensive approach—a failure which continues to jeopardize our Nation's security, economic health, and environment. Too much is at stake to continue to ignore these looming problems.

America's energy policies have been driven primarily by a reaction to supply shortages and crises. The energy policy approaches of numerous administrations are littered with false starts and abrupt shifts—lurching first in one direction then in another. When it comes to securing America's energy future, the Bush White House is stuck in short-sighted, high-risk initiatives which seem largely guided by big dollar campaign contributors. Despite its rhetoric, this White House's lipservice and corporate coddling have been the sum total of its energy policy. It began with the Vice President's national energy policy task force and concluded with the exclusion of Democrats from the energy conference. As a result, the Bush administration appears to see energy policy as a way to reward its friends while sidestepping the serious, lingering challenges that face this country and, in fact, the world.

In spite of our Nation's herky-jerky responses to energy policy, there have been some successful energy policy initiatives. Surely, the Strategic Petroleum Reserve, the Public Utility Regulatory Policy Act, and the clean coal technology program have proved invaluable. However, for the most part, there has been little foresight, no coherent framework, and no clear objectives on which to base future decisions. The Nation needs a long-term energy plan that includes criteria and benchmarks by which to measure progress. In short, it requires a more integrated, cohesive roadmap.

Now is the time for the cornerstones of our Nation's energy strategy to be solidly established. Opportunities exist for entrenched parties to come together on a more comprehensive and cohesive approach. This approach must integrate four fundamental principles: Diversity of energy sources to protect our Nation's security; fiscal soundness to ensure stakeholder support and increase economic growth; consumer protections to guard against fraud and manipulation; and safeguards to minimize energy's environmental footprint.

A serious energy efficiency program, bolstered by the promotion of renewable energy and other clean homegrown energy sources, provides a compass point for a U.S. energy strategy. At its core, we must rely on our Nation's domestic energy assets, especially coal. Coal must become a primary fuel source for new energy demands into the 21st century. However, to do so requires that we think differently about coal. We must accelerate the deployment of commercial-scale technologies that move us away from simply burning coal toward the enhanced ability to transform coal into a variety of energy products. We can begin to meet this challenge by deploying advanced power generation and carbon sequestration technologies as well as by producing hydrogen and synthetic fuels for use in other sectors of the economy. Parallel efforts must also be initiated to resolve the outstanding environmental and regulatory issues attendant to coal production and reclamation. This broad approach also requires sending strong and clear regulatory and market signals which can significantly reconcile numerous environmental and climate change concerns, stimulate technology deployment, and set the stage for a renewed era for coal.

Furthermore, our Nation must recognize the incredible impact that U.S. technologies and ideas can have in helping to meet other nations' energy needs in a more sustainable way. We must work to open and expand international markets for a range of U.S. clean energy technologies and simultaneously address global energy security, economic, trade, and environmental objectives.

The path that I am proposing here today goes far beyond the so-called comprehensive energy legislation currently before us. Pursuing this course will take steadfast leadership, hard work, and American ingenuity to move forward in a responsible, balanced, and intelligent way. It is time for industry, labor, academic, environmental, and community interests to work with policymakers to find common ground. Commonsense market-based and regulatory approaches, emerging technology platforms, and new policy perspectives can bring these divergent groups together. By doing so, we can champion a new energy and environmental legacy that will benefit all the world's citizens.

I yield the floor and 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. WARNER. 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. WARNER. Mr. President, the distinguished ranking member, Senator LEVIN, and myself, together with Senator LAUTENBERG and Senator KYL, are endeavoring to structure a program for the next 2 or 3 hours, hopefully.

In the meantime, our distinguished colleague, the Senator from New Mexico, would like to respond to some earlier remarks made in the Senate.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first, I thank the chairman for accommodating me and I thank the Senate for listening for a few minutes.

I was not here in person when Senator BYRD spoke about the need for an energy policy but I heard most of it. I will share with the Senate the reality of the energy problem in the United States.

I heard the distinguished Senator from West Virginia speak about issues such as electricity, the blackout that occurred, the shortage of crude oil that we have to import, natural gas problems, and all of those kinds of issues. I suggest it is wonderful to have somebody come to the Senate, especially from that side of the aisle, and talk about these problems and the need to do something about it, because the truth is, they have prevented the Senate from doing it. The very things he spoke of are in one or the other of the Energy bills we have put before the Senate and been denied. Most of the time the denial was because very few Democrats would support it.

So we did not get alternative fuels, so we did not get a fix to electricity blackout potential, we did not get a bill that produces huge quantities of American natural gas, we did not get a bill that fixed electricity so we would not have blackouts—on and on and on, all the issues and more that were spoken of by the distinguished Senator BYRD.

To talk about the fact that our country needs them or that the President did not do them is to forget, in a short period of time—it did not take long to forget—that all of these proposals have been voted down by the Democrats in this Senate.

Maybe there were other things in the bill they did not like, but I have never had anyone propose that if we change this and added that from that side of the aisle we could get a major energy bill. All we have heard is a filibuster and a vote against it.

One time they claimed there was a provision that was onerous to them and we got 58 votes and lost a filibuster. We removed that provision which they said was onerous. We then tried the bill without it.

And let's go again on the issues: huge production of American natural gas, some quick, some over time; a fix to the blackout problem; incentives for the electric grid to grow and prosper; incentives so we will have wind, which is right on the verge of becoming a major source—wind electricity—solar energy; and on and on. There are incentives for all those.

When you add them up, it was a comprehensive bill that fixed what was broken, added things we needed, and ultimately said to the world: America is ready to do something. They have finally stood up. And where there are no solutions, they did not find them. Anybody who thinks we could have a solution to produce more crude oil, step up. The only way we know is to tell Americans to use small cars. That would save gasoline. We tried it. The Senate is not for it. The House is not for it. I tried it in crowds. People are not for it. So that is the only one. It is out of the way.

So what can we do? We have to take care of the other energy sources. We have to make sure we do not get natural gas dependent, which we are about to be. We should tell the world we have alternatives to produce electricity. And we do, if we pass one of these bills. The problem is not that the President took too long, not that the President did not send us a proposal or that he did something in secret. We did our bill in public. So regardless of what you claim about him, we had an energy bill. We have an energy bill. As a matter of fact, I will offer it again before this session is out.

I understand somebody wants to put energy on this Armed Services authorization bill. Have at it. We will let you vote on the Energy bill at the same time. We will let you do that, and we will stand up and say: Are you ready or do you want to talk? Do you want to increase natural gas or do you want to blame somebody? Do you want to increase wind energy in America or do you want to complain?

I understand somebody around here wants to offer an amendment that we ought to fix this oil problem with the SPR, Strategic Petroleum Reserve. I was talking about that with my staff—and I would not do this, at least as of now—but I am thinking about it.

I say to the Senator, JON, what we ought to do is we ought to offer an amendment, when they offer that, and say that we want bin Laden to turn himself in; a resolution: We resolve that—after this, that, and the other—he ought to turn himself in to America. Why would I do that? Because that is about as apt to happen as we are apt to save anything on the price of gasoline with an amendment that says: Use SPR. We tried it once. It saved 1 cent.

It is there because we are in jeopardy. If somebody has a major explosion, a terrorist action, we need that SPR to take care of us. That is what it is for. That is why it ought to stay there. That is why it ought to be filled.

So if I sound like I am concerned, I am, because I get tired of people saying we need an energy policy and then voting against the very things they talk about.

I understand some Senators are opposed to specific pieces. We are open minded and ready to talk. If there are people who say, the way to get what we are talking about and complaining about is this, that, and the other, we listen. But until they have one, we want to continue to ask them to vote for an energy bill that is almost the same as their rhetoric, that almost does as much as their rhetoric asks for.

Mr. INHOFE. Mr. President, will the Senator yield?

Mr. DOMENICI. Every time this comes up, I will come down here and go through this laundry list, and ask them where they have been.

I will be glad to yield.

Mr. INHOFE. Is the Senator aware in the committee that I chair, the Environment and Public Works Committee, we have held several hearings: one on natural gas and the prices being spiked, one on fuel that we burn in our automobiles. We have had witnesses who have documented that we have two primary causes. One is all of these unreasonable environmental regulations these refiners are exposed to, and it directly relates to the cost of energy in this case. And the other is the Energy bill.

I say to the Senator, as you point out, we had a good energy bill. The House has a good energy bill. In that energy bill we had the ability to drill for oil in places where we cannot right now that would open up ANWR. If you look at the production in States, such as my State of Oklahoma and your State of New Mexico, the marginal wells—those are wells that produce 15 barrels a day or less—the statistic has never been refuted that if we had all of the marginal wells that have been plugged in the last 10 years flowing today, that would equal more than we are currently importing from Saudi Arabia.

So we have a solution to the problem. With all those people crying about the high prices, those are the major reasons we have high prices. I say to the Senator, you are right, we are going to have to have an energy bill to correct this situation. Do you agree?

Mr. DOMENICI. I agree.

I thank the Senator for his comments.

Let me say again, for purposes of discussion, I think we ought to have a resolution—if the Democrats offer a resolution regarding SPR—that says two things. I think the resolution ought to say: We think and we direct that Saudi Arabia pump more oil and sell more oil. The Senate says we resolve that they ought to do that. And, second, we think the terrorist we have been looking all over Afghanistan for should turn himself in. That should be the second part of our resolution.

Why I say that is because we would do as much for the energy crisis with that resolution as we will with one that tries to convince the American

people that the way to do this is to play around with the Strategic Petroleum Reserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, before the Senator leaves, I say to the distinguished Senator from New Mexico, we are prepared to accept, on both sides, the important amendment you had yesterday.

Mr. DOMENICI. Let me get it.

Mr. WARNER. Actually, it is at the desk. We could ask for its adoption, to meet your convenience.

Mr. President, I offered an amendment yesterday. Somebody said it had been withdrawn.

The PRESIDING OFFICER. The amendment has been withdrawn.

Mr. DOMENICI. But does that mean it still might be up there?

Mr. WARNER. Here we are.

Mr. DOMENICI. I have it.

Mr. WARNER. Mr. President, I think the Senator has his amendment.

Mr. DOMENICI. Is it in order?

Mr. LEVIN. You have to set aside the Lautenberg amendment temporarily.

AMENDMENT NO. 3192

Mr. DOMENICI. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I can offer this amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I am shortly going to send the amendment to the desk. It has about 15 cosponsors from both sides of the aisle. This amendment has to do with accelerating internationally the removal of fissile materials; that is, insecure radiological material and related equipment that cause us to be vulnerable to proliferation.

Many of us have worked very hard to put together a program where we and other nations will go to work at ridding the world of proliferation of nuclear products from the nuclear age. We think it is an exciting approach. Eventually, we have to fund it and Presidents have to implement it. But the Senate would be saying today it is good policy to get the world concerned about getting rid of radioactive material that came from the nuclear age.

My principal cosponsors are Senators FEINSTEIN, LUGAR, BIDEN, BINGAMAN, and a whole array of Senators. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mrs. FEINSTEIN, Mr. LUGAR, Mr. BIDEN, Mr. ALEXANDER, Mr. BINGAMAN, Mr. REED, and Mr. AKAKA, proposes an amendment numbered 3192.

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

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

The amendment is as follows:

(Purpose: To accelerate the removal or security of fissile materials, radiological materials, and related equipment at vulnerable sites worldwide)

At the end of subtitle C of title XXXI, add the following:

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) PROGRAM AUTHORIZED.—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) PROGRAM ELEMENTS.—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials and radiological materials and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, nongovernmental organizations, and other international entities as the Secretary considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''fissile materials'' means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated

items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term ''radiological materials'' includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226 and Strontium-90, Curium-244, Strontium-90, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term ''related equipment'' includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term ''highly-enriched uranium'' means uranium enriched to or above 20 percent in isotope 235.

(5) The term ''low-enriched uranium'' means uranium enriched below 20 percent in isotope 235.

(6) The term ''proliferation-attractive'', in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

Mr. DOMENICI. Mr. President, since the collapse of the Soviet Union, I have recognized the danger posed by the potential risk of proliferation of materials or expertise from that nation. Through work with Senators Nunn and LUGAR for the original Nunn-Lugar Cooperative Threat Reduction legislation, and later with the Nunn-Lugar-Domenici Defense Against Weapons of Mass Destruction Act, I have worked to minimize this risk. Through these bills, and through several other initiatives, we have made progress on the nonproliferation front. But these are complex and difficult programs, success is measured in small steps. While we have come a long ways, we still have a long ways to go.

Some of the programs we have established, such as materials protection control and accounting, the initiatives for proliferation prevention, and the nuclear cities initiative, are working fairly well to address some of the major threat issues.

The HEU Deal is working to reduce stockpiles of highly enriched uranium, a prime concern for proliferation, although it has needed congressional help at times to keep it alive. The plutonium disposition deal is seriously stalled and needs attention at the highest levels in both the United States and Russia.

Even though we are making progress, the focus on terrorism over the last few years has substantially amplified the level of our concerns. In the process, we have learned more about the complicated routes through which important equipment technologies, such as enrichment capabilities, have moved to unfortunate destinations.

Our focus on Russia was appropriate a decade ago. But it is very clear today that proliferation must be viewed as a global problem. We must broaden our programs so that they have a global impact, not only focused on the former Soviet Union.

The increased threat of terrorism should encourage us to seek new ways to expedite the management, security, and disposition of materials that could be dangerous to our national security if they were to fall into the wrong hands. These materials include a range of fissile materials, with highly enriched uranium and plutonium being the ones of greatest concern.

Fissile materials and the specialized equipment to produce them aren't the only concerns. We have also heard concerns about radiological dispersion devices, or ''dirty bombs'' as they are usually called. Materials that would be useful in dirty bombs also need to be under far better control all around the world.

The amendment I am offering today is aimed at expediting global cleanout of nuclear materials and equipment that could represent proliferation risks. It includes in one package a range of authorizations, all of which need acceleration toward the overall goal.

Of greatest importance, it provides authorization for global activities, not only for activities focused on the former Soviet Union. And it encourages that we act in partnership with other governments, nongovernmental organizations, and other international groups that can assist us in this undertaking.

Fissile materials are targeted no matter where they are located, from existing vulnerable storage sites to research reactors to other reactor systems. The highly enriched uranium that fuels many of these research reactors, including those supplied by both the United States and Russia, represents a major concern for proliferation. Recent operations have led to removal of some of these materials, but many more reactors need attention.

As one example of a potential concern beyond the research reactors, the Russian ice breakers are powered with nuclear reactors using highly enriched uranium. I hope we can help to convert those reactors in the course of this program.

Authorities are provided to transport materials to secure storage, either here or abroad, along with provision of improved security at vulnerable sites. In addition, attention is paid to the operation of improved security systems once they are installed.

Technical support is authorized for the International Atomic Energy Agency or other countries to help in removal of material or upgrading of security. In addition, several initiatives address some of the current uses of highly enriched uranium.

New fuels are to be developed to replace fuels that use highly enriched uranium. New reactor targets are to be developed to replace targets that involve highly enriched uranium. And assistance with conversion of both reactors and targets to these new alternatives is provided.

Faster blend-down of highly enriched uranium is included in the new provisions. It is vital to get more of this material out of a weapons-ready form more quickly than only relying on the rates of blend-down established in the existing HEU deal.

The amendment also authorizes assistance in closure and decommissioning of sites of proliferation concern. In addition, programs are authorized for helping displaced employees from such sites and converting these sites to other uses. We have had similar programs in place for the former Soviet Union for years, but now with this amendment we can extend these programs to other countries as well.

With this global cleanout amendment, we will take a giant step toward providing the Department of Energy, in coordination with other Federal agencies, with the tools they need to minimize proliferation risks from nuclear materials wherever they are found around the world. In the process, we can help to make this world a safer place.

Mrs. FEINSTEIN. Mr. President, I rise today with my colleague from New Mexico, Senator DOMENICI, to introduce an amendment to address one of the critical security issues in the post-9/11 world: the existence of weapons-usable nuclear materials at hundreds of vulnerable facilities around the world.

President Bush has singled out terrorist nuclear attacks on the United States as the defining threat our Nation will face in the future.

In making the case against Saddam Hussein, he argued: ''If the Iraqi regime is able to produce, buy, or steal an amount of uranium a little bigger than a softball, it could have a nuclear weapon in less than a year.''

What he did not mention is that with the same amount of uranium, al-Qaida, Hezbollah, Hamas, or any terrorist organization could do the same and smuggle a weapon across U.S. borders.

And the fact that Pakistani nuclear scientist A.Q. Khan's network put actual bomb designs on the black market only heightens the need to make sure these materials are not available.

Nonetheless, there are hundreds of vulnerable facilities around the world that store from kilograms to tons of plutonium or highly enriched uranium. The State Department has identified 24 of these locations as high priority sites.

In response to this threat, the administration has focused its efforts on removing vulnerable international nuclear materials through four projects: the take-back by Russia of highly enriched uranium fuels from Soviet-supplied reactors; the ongoing effort to convert Soviet-designed research reactors from using highly enriched uranium to using non-bomb-grade fuels; the decades-long effort to convert U.S.-supplied research reactors from highly enriched uranium to low enriched uranium and the on-going effort to take back U.S.-supplied uranium.

These are important steps, but I am deeply concerned that these efforts are

not sufficient and do not adequately address the seriousness of the issue. For example, the current approach will take 10–20 years to complete at the current rate of about 1 facility per year. This time frame ignores the near-term dangers we face.

Under the current approach to the take-back of Soviet-supplied uranium, there have been only two successful removals of highly-enriched uranium in more than two years, at Vinca and at Pitesti. But the Vinca operation also required the additional contribution of $5 million from the Nuclear Threat Initiative to complete, because of the Bush administration's claim of inadequate authority to pursue various actions to facilitate Serbian cooperation.

The U.S.-Russian bilateral agreement on a broader take-back effort has taken years to complete—and even once final Russian government approval is secured, many obstacles remain. Indeed, Russia has never prepared certain types of environmental assessments related to these weapons. To move forward with this agreement, it will require sustained, high-level pressure.

U.S. efforts to convert highly enriched uranium-fueled reactors within Russia are still moving slowly on the technical front, in part because of insufficient funding. And we are only now beginning to take the first steps toward providing incentives directly to facilities to give up their highly enriched uranium.

The scope of the conversion effort in Russia is inadequate. It covers only research reactors, ignoring critical assemblies, pulsed powered reactors, and civilian and military naval fuels. This leaves numerous vulnerable HEU stockpiles scattered across the former Soviet Union.

Under the current U.S. uranium take-back effort, if no new incentives are offered, tons of U.S.-supplied nuclear materials will remain abroad when the program is complete. And scores of U.S.-supplied reactors may continue to use highly enriched uranium indefinitely.

If weapons of mass destruction, WMD, out of the hands of terrorists is the defining threat to our Nation, then removing weapons-usable material from facilities susceptible to terrorist theft should be a top priority for U.S. national security policy.

Yet, currently there is no single, integrated U.S. government program to facilitate the removal of these materials. To address this problem, Senator DOMENICI and I have offered this amendment to: urge the President to establish a task force within the Department of Energy on nuclear removal; provide a specific mandate for a program to remove nuclear material from vulnerable sites around the world as quickly as possible, whether the material was supplied by the U.S. or the Soviet Union; provide flexible approaches, tailored to each site, to encourage facilities to give up their nuclear material, and; authorize funding to begin these efforts.

Osama bin Laden has declared the acquisition of weapons of mass destruction a ''religious duty.'' After the Taliban was defeated, blueprints for a crude nuclear weapon were found in a deserted al-Qaida headquarters in Afghanistan. It is clear that obtaining a nuclear weapon is a top priority of al-Qaida.

And a report released last year by the John F. Kennedy School of Government at Harvard University demonstrated the severity of the threat posed by a nuclear weapon in the hands of terrorists.

The report described a scenario in which a 10-kiloton nuclear bomb is smuggled into Manhattan and detonated, resulting in the deaths of 500,000 people and causing $1 trillion in direct economic damage.

We must do everything in our power to prevent this from ever happening.

This amendment will give our Government the direction and resources necessary to remove nuclear materials from vulnerable sites around the world in an expeditious manner.

We have little time to spare. I urge my colleagues to support this amendment.

Mr. BIDEN. Mr. President, I am proud to co-sponsor the amendment offered by my colleagues, Senator DOMENICI and Senator FEINSTEIN, which authorizes a program to accelerate U.S. efforts to remove, secure, store, or destroy fissile and radiological material that might otherwise be accessible to rogue states or terrorists.

There could hardly be a higher priority—it is clear that terrorists seek to acquire materials to make a nuclear bomb. Many experts believe that terrorists would be capable of creating a nuclear weapon if they took possession of fissile material. Even the simpler, gun-type design, the type of bomb exploded at Hiroshima, could kill from tens of thousands to a million people if detonated in a large city.

Terrorists are also known to be interested in radiological material for a so-called ''dirty bomb,'' also known as a radiological dispersion device. While an attack with a dirty bomb would not cause many fatalities, it could render large areas uninhabitable and cause long-term economic devastation and psychological damage.

I thank Senator DOMENICI, and Senator FEINSTEIN for their work and leadership on this issue. Senator DOMENICI, in his role as Chairman of the Appropriations Energy and Water Subcommittee, has done much to shape the nuclear non-proliferation programs at the Department of Energy. Senator FEINSTEIN, also a member of that subcommittee, introduced legislation to facilitate the removal of nuclear material from vulnerable sites around the world. They have worked together to craft the bipartisan amendment before us today.

While many raised the alarm about the possibility of terrorists using weapons of mass destruction before September 11, 2001, the events of that day made clear to all what devastation could have been wrought had the terrorists attacked with weapons of mass destruction.

Witnesses at a hearing I chaired before the Senate Foreign Relations Committee on March 6, 2002, emphasized the need for multiple layers of defense against nuclear terrorism and said that the very first priority must be controlling fissile and radioactive material in the United States and abroad.

Since that time, there has been progress in securing, storing and destroying fissile and radiological material. But much more needs to be done.

The Department of Energy's International Materials Protection, Control, and Cooperation Program and its Radiological Dispersion Devices Program seek to secure nuclear weapons, weapons-usable nuclear materials, and radiological sources by upgrading security and consolidating these materials.

From fiscal year 1993 through this fiscal year, 2004, Congress has appropriated $1.58 billion for these Department of Energy programs, mostly to secure nuclear weapons and nuclear material in Russia. Because of them, and the related Cooperative Threat Reduction programs at the Department of Defense, hundreds of tons of bomb material is more secure and the nuclear material that could have been made into thousands of nuclear weapons has been destroyed.

Why, when so much has been accomplished, is this amendment necessary?

One answer is that while much has indeed been accomplished in Russia, highly enriched uranium, or HEU, and plutonium exist in many countries and in both military and civilian sites. There are 345 operational or shut research reactors that used HEU in 58 countries. Many of these countries have inadequate resources to operate or clean up these reactors. Few of them can afford to convert their HEU-fueled reactors, or their HEU targets used to produce medical isotopes, without outside assistance.

Another answer is that even in Russia, only a fraction of its highly enriched uranium has been destroyed. Many experts, including those involved with the Project on Managing the Atom at Harvard University, have urged that efforts be accelerated to ''blend down'' highly enriched uranium to low-enriched uranium, which is usable for nuclear power, but not readily for weapons. At current rates, it could take *decades* to blend down Russia's excess HEU. The urgency of the potential threat from the tons of HEU in Russia argues for a more robust program that would blend down HEU in years, not decades. The amendment before us today wisely authorizes an acceleration of our HEU blend-down programs.

In addition to authorizing accelerated HEU recovery and blend-down programs, this amendment would accelerate our efforts to help move nuclear facilities away from the use of HEU in nuclear reactor fuel and medical isotope production. It will also encourage increased efforts to recover and secure plutonium and radiological sources that might otherwise be accessible to terrorists.

The Domenici-Feinstein amendment provides for a comprehensive program to: securely ship at-risk fissile and radiological materials; raise processing and packing standards; provide interim security upgrades and improve management of vulnerable sites; manage materials at secure facilities; provide technical assistance to the International Atomic Energy Agency, as well as to countries; and provide assistance in the closure of risky sites.

This amendment will also improve our efforts to convert risky sites to, and place displaced nuclear workers in, activities that do not represent a proliferation threat. Both the Department of Energy and the Department of State have programs to help displaced workers, but there many worthy projects in this area go unfunded each year. We can and we must do more to ensure that nuclear weapons scientists and technical personnel are not left prey to the lures of contracts in rogue states or sales to terrorists.

The Domenici-Feinstein amendment will not solve all the problems that our non-proliferation programs face. We also need sustained attention by the President to removing roadblocks that have hindered our existing programs in Russia. Whether the question is access to sites, or immunity from taxation, or immunity from liability for U.S. persons involved in these programs, we need effective intervention at the highest level to solve those problems. It would be ironic, indeed, if our authorization of accelerated efforts were to be undone by the inability of President Bush and Putin to work out the implementation of those programs.

This amendment must do more than spur the Department of Energy to put more resources into our non-proliferation programs. It must galvanize the government at the highest levels to do more and do it quickly, before some terrorist group gains access to fissile our radiological material and uses it against us.

I commend Senators DOMENICI and FEINSTEIN for their important amendment and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend our distinguished colleague. This is a very important, innovative approach to one of the serious problems facing the world. I ask unanimous consent to be added as a cosponsor.

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

Mr. WARNER. I believe my distinguished colleague from Michigan has cleared it on his side and we are ready for action.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I commend Senator DOMENICI. He has worked long and hard on this issue. I am proud to be a cosponsor of the amendment. The bottom line is there are a number of instances where the Department of Energy has run into situations where it does not have, nor do other agencies have, the authorities which are necessary to remove or otherwise deal with this nuclear material which is at risk. The Domenici amendment will provide those essential authorities in order to take some very strong antiproliferation steps. It is a very good amendment. We support it on this side of the aisle.

Mr. WARNER. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 3192.

The amendment (No. 3192) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. 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.

Mr. DOMENICI. Mr. President, I thank the managers for their cooperation and their statements. I am not sure Senator LEVIN is presently a cosponsor. I ask unanimous consent that he be added as a cosponsor.

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

Mr. DOMENICI. And Senator WARNER has already asked.

Mr. WARNER. Yes, I have.

Mr. DOMENICI. I yield the floor.

Mr. WARNER. I see a Senator seeking recognition, so we will withhold a quorum call. My understanding is the Senator from Arizona wishes to talk about the proposal now under consideration, if that is agreeable.

Mr. LEVIN. Of course. If I may ask the chairman a question, I have no problem with that.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Is it still our intention to try to order the sequencing of two votes on these amendments?

Mr. WARNER. The Senator is correct. We have under consideration by our respective leadership at this time a program you and I have put to them to continue debate this afternoon on the Lautenberg amendment and the second degree by my colleague from Arizona at which time votes will be scheduled in the 5 to 6 timeframe.

I yield the floor.

AMENDMENT NO. 3191

The PRESIDING OFFICER. The Senator from Arizona.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona has been recognized to speak on his second-degree amendment.

Mr. KYL. I am happy to yield to the Senator from New Jersey for a question.

Mr. LAUTENBERG. If the Senator from Arizona will yield for a question, is a second-degree amendment still the proposal?

Mr. WARNER. Mr. President, the terminology is being worked on right now. Nothing is agreed upon at the moment.

Mr. LAUTENBERG. I thank the Senator.

Mr. KYL. Mr. President, what we have pending right now is a second-degree amendment to the Lautenberg amendment, and there will be discussions about precisely how that will be treated when this amendment and the Lautenberg amendment are voted on at the end of the afternoon.

Let me begin by noting what some of my objections are to the Lautenberg amendment. Then I will speak to the second-degree amendment which I have offered. The point of the Lautenberg amendment is to change the way in which sanctions are put on companies doing business abroad. The State Department has issued some objections to this amendment which I will speak to later. To summarize: That it would interfere with the President's discretion in conducting foreign affairs; that it would lead to a number of foreign policy problems for the United States; that it is unnecessary because the President exercises authority with respect to these foreign subsidiaries today.

To be precise about a particular concern the State Department expresses, the amendment would actually only focus on ownership, which is a standard that could easily be circumvented by these companies against whom we would all want sanctions to apply, and would be less effective than the administration's current approach utilized by the President. By defining this under the definition of control to mean owning at least 50 percent of the capital structure of the entity, the test could easily be circumvented by manipulating the percentage of ownership so that it remains under 50 percent, but at the same time maintaining control in fact.

Under current law, the U.S. Treasury Department considers both ownership and control so the President has the ability to exert this kind of sanction authority in a much more flexible way than would be the case under the amendment offered by the Senator from New Jersey. The Lautenberg amendment diminishes the President's authority and reduces the scope of the sanctions.

Finally, its impact on existing sanction programs is unclear. The authority exists already. The Lautenberg amendment would raise questions, complications, and reduce the President's flexibility in ways we don't

think would be appropriate. That is one of the reasons we are offering this alternative, this substitute or second-degree amendment, depending upon how we agree to characterize it.

This is an amendment which has been offered as a way to raise revenues for different purposes, but the revenues—perhaps $9 billion in revenues generated here, but in any event some amount, substantial billions of dollars—would be available for expenditures by the Secretary of Defense on a variety of equipment such as replacement of equipment lost in combat, ammunition, and selected items of high priority such as vehicles or night vision devices, Javelin missiles, sensors, unmanned aerial vehicles. In fact, to the degree that we would want to expand the existing program, which will be completed shortly for our own troops for additional add-on protection for shoulder and side-body areas or interceptor body armor for Iraqi troops, for example, or additional add-on ballistic protection for medium and heavy wheeled vehicles or multipurpose wheeled vehicles, all of those things could be paid for with the fees that would be generated out of this particular amendment.

What is this amendment? I had actually offered versions of this before. The point was to try to prevent the tobacco settlement of 1998 from resulting in a windfall to certain of the trial lawyers who were involved in that settlement. What we did is to utilize an existing Tax Code provision which says in cases of trusts, for example, where the trustee pays himself too much or an unreasonable fee, the IRS can impose an excessive tax. I say excessive because it is 200 percent of income. The purpose of it is to discourage the behavior of a trustee who would bilk the trust in effect by charging himself fees that are not deemed reasonable. And we utilize that same concept here, adding a second section immediately following that section of the Internal Revenue Code to provide similar treatment with respect to these unreasonable lawyer fees. So the concept is already in the Tax Code. We would simply apply it to the master settlement agreement for lawyer fees as well.

I make it very clear that, first of all, the amendment does not apply to any fees that have already been judicially reviewed and approved by courts under appropriate standards. It does not apply retroactively. It is only prospectively, to fees paid in the future out of the tobacco settlement on which taxes have yet to be collected. And by the way, there are about $100 million in fees paid out of this settlement every year. The trial lawyers will still receive billions of dollars in fees under this amendment, far more than their actual legal work would justify.

What we have done is to say that the cap on fees we had suggested before of $2,000 an hour—if you stop and think about it, that is a lot of money—we have scrapped that. Some people said, no, some lawyers might actually have been worth $2,000 an hour. Think about your plumber and what he charges per hour.

But we said, OK, how about $10,000 an hour. And they said, no, that is still not enough. These lawyers need more than $10,000 an hour. So what we have done in this amendment is to say: OK, we will bend over backward here, be fair to these poor trial lawyers. We are going to let them earn $20,000 an hour for every hour they put in. I think that is enough.

I am not sure that would meet most people's definition of reasonable, but we are going to say that that is reasonable, that they can earn $20,000 an hour. But that isn't enough. Some people have said this is the ''one yacht per lawyer rule.'' I am not sure what a yacht goes for.

The bottom line is that there is a point at which the fees are obscene and unreasonable and unethical, and under the existing IRS Code, this kind of conduct is taken care of by a special tax that is imposed of 200 percent. The same thing would be true here. Obviously, what the lawyer would do is to limit his fee to $20,000 an hour and then return anything in excess of that, so he would not be taxed at 200 percent—returning that money, in this case, to the Treasury of the United States of America.

So the tobacco companies are still going to pay every dime they committed to pay in lawyer fees. But the money, instead of going to the trial lawyers, after they have collected $20,000 an hour, will go to the U.S. Treasury to pay for the military equipment that is the subject of the bill before us right now.

Now, let me make a point about these fees being excessive. Some may dispute this, although, in view of the history, I cannot imagine anybody seriously disputing it. Let me give you some examples. I will start with reminding my colleagues exactly how the tobacco fees were awarded.

In the State of Texas, for example, trial lawyers were awarded $3.3 billion for their legal work—work that amounted in this case to filing a copycat lawsuit. The fee would amount to an effective hourly rate for these lawyers of over $100,000 an hour. Most people don't make $100,000 in a year. I don't even know how many hours there are in a year, but it is a lot. This is $100,000 an hour. That is wrong. I don't think they would suffer too much if we cut them down to $20,000 an hour.

My colleague from Texas, Senator CORNYN, was attorney general of the State of Texas and he had a firsthand relationship with this issue. In fact, it was a pretty difficult situation. Let me read to you some of the things he described about what happened in Texas. I am quoting the junior Senator from Texas:

> In my home State of Texas, trial lawyers have accused the then Attorney General of demanding $1 million in campaign contributions in exchange for their being included on the State's tobacco litigation team. One prominent lawyer—a former President of the Texas Trial Lawyers Association—has since said that the attorney general's solicitation was so blatant that ''I knew that instant . . . that I could not be involved in the matter,'' and he even later wondered if the meeting had been a ''sting operation.'' Another lawyer simply characterized his encounter with the attorney general as a bribery solicitation.

He describes the rewards these trial lawyers reaped for their political investment:

> As for the five law firms that actually did represent Texas in the tobacco litigation, they filed relatively late lawsuits based on other lawyers' work—and were awarded $3.3 billion in attorneys fees. This award amounts to compensation that, even had these attorneys worked all day, every day during the entire period of the litigation, is well in excess of $100,000 an hour. As one newspaper editorial has noted, for the amount of money that these lawyers were awarded, Texas could hire 10,000 additional teachers or policemen for ten years.

Senator CORNYN also described how these excessive and, I suggest, clearly unethical fees were obtained by lawyers in other States:

> In Maryland, [a tort lawyer, a billionaire] demanded a $1 billion fee for his work on that State's case, even though, according to the State senate President, the State legislature had retroactively ''changed centuries of precedent to ensure [his] win in the case. [He] ultimately received an accelerated $150 million payment for this no-risk lawsuit.
>
> In Massachusetts, according to other tobacco plaintiffs' lawyers, Massachusetts' suit piggybacked on the work of other lawyers and was not pivotal to the outcome of the tobacco litigation. Result: $775 million was awarded to the Massachusetts lawyers in that [State's arbitration on the tobacco case.]
>
> In Missouri, a State supreme court justice in Missouri resigned his post in order to join one of the private law firms expected to receive a portion of the [tobacco fee award.] Ultimately, the firms representing the State spent just 5 months on the State's lawsuit. They received a fee award of $111 million. One State leader has described the award as ''the biggest rip-off in the 180-year history of the State.'' The law firms receiving these fees had donated more than $500,000 to State politicians and parties in the years leading up to their selection as the State's outside counsel.

As I mentioned earlier, these fee contracts were awarded in a variety of ways, including through political cronyism, and really resulted in very little original legal work. That is my assertion to you. Don't take my word for it. On this tort reform issue, even many of the trial bar lawyers are in full agreement that the lawyers' fees here were excessive. They certainly should know; they are experts in this area. This is what some folks, including some tobacco lawyers, had to say:

Michael Ciresi, a pioneer in tobacco litigation who represented the State of Minnesota in its lawsuit, and who is very familiar with these lawsuits, has said that the Texas, Florida, and Mississippi lawyers' fees awards ''are far in excess of these lawyers' contribution to any of the State results.''

Washington, DC lawyer and tobacco industry opponent, John Coale, has denounced the fee awards as ''beyond human comprehension'' and stated that ''the work does not justify them.''

Even the Association of American Trial Lawyers, the Nation's premier representative of the plaintiffs bar, has condemned attorneys' fees requested in the State tobacco settlement. The President of ATLA stated:

> Common sense suggests that a $1 billion fee is excessive and unreasonable and certainly should invite the scrutiny [of the courts.] [ATLA] generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of $1 billion.

Perhaps the best gloss on the tobacco fee awards is that provided by Professor Lester Brickman, a professor of law at Cardozo Law School, a noted authority on legal ethics and attorney fees:

> Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be ''clearly excessive.'' Indeed, that standard has now been superseded in most States by an even more rigorous standard: Fees have to be ''reasonable.'' Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands—and even hundreds of thousands—of dollars an hour, reasonable? I think to ask the question is to answer it.

Let me emphasize one more point. Lawyers are universally held in the law to be fiduciaries. That is, they owe a duty of trust to their clients, a special duty of trust. One can easily understand why that is so. As such, as a fiduciary, under the legal ethics that apply to every lawyer, lawyers are not allowed to take advantage of their clients with regard to their fees. A contract for an unreasonable or unethical fee, for example, is unenforceable in the courts, and the excessive portion of the fee must be returned to the client. Numerous legal authorities confirm that lawyers are fiduciaries whose fees have always been subject to enforceable reasonableness requirements. I say this because, of course, that is what we are doing right here.

We have done that with respect to other fiduciaries in the Tax Code—the trustees I spoke of earlier—and we can obviously do it here also. One court said:

> We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable, or harsh. However, a fee agreement between lawyer and client is not an ordinary business contract. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.

I will tell you what another court said:

> An attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true no matter what fee is specified in the contract, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have a right to demand if no contract had been made. Therefore, as a matter of public policy, reasonableness is an implied term in every contract for attorney's fees.

So the choice before the Senate is either to allow the tobacco settlements to be diverted to self-dealing billionaire tobacco lawyers, or to provide our troops in Iraq and Afghanistan with additional combat equipment to help them perform their missions.

The choice could not be more clear: We can either allow the de facto taxes imposed by the tobacco settlement to continue to be diverted to pay $100,000-an-hour fees to these politically connected billionaire lawyers or we can put those taxes to use providing our troops with additional equipment.

We already have the precedent of doing this with respect to other fiduciaries in the Tax Code, specifically section 4958. This adds a new section immediately following, section 4959, that applies the very same concept to these particular fees. It is prospective only. It does not apply to anything that the court has already approved.

I cannot imagine how this would not be a good idea. The amendment is a sense of the Senate to pass this proposition. I urge my colleagues to support it, assuming we have a vote on this perhaps in an hour and a half or so this afternoon.

Mr. President, if there is no one else seeking recognition, 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. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, we have had some discussion about what we can do to help raise the funds to finance our fight against terrorism. At this point, we are spending $5 billion a month in Iraq. I think if we wanted to really get some money raised to continue that assignment, which we must, then perhaps we ought to consider repealing the top tax rate cut for all millionaires and raise even more money for our troops than what has been offered.

I have an amendment. It has been modified. It is fairly obvious that we are talking around the issue. It is surprising that we cannot get together in an effort to dissuade companies, to prevent companies that are doing business with terrorist states from continuing to do that. My amendment says if a U.S. company owns 50 percent or more of a corporation, that it would be a violation of law for them to continue to do business with terrorist states.

I do not know what the concerns are about this amendment. It is fairly clear we are spending so much money, so much effort, and so many lives to fight terrorism. When we register concern about American companies doing business with these terrorist states, we seem to have created a climate that has people objecting and, frankly, I don't understand why.

When we talk about supplying revenue opportunities to Iran, we have to remember that they funded the 1983 terror attack in Beirut, killing 240 U.S. marines. We are talking about an Iranian Government that funds Hamas, Islamic jihad, and Hezbollah. I ask my colleagues whether there is anyone here who would stand up and tell the American people why we should be helping Iran. Is there anyone here who can explain how it helps our soldiers to make sure that funds and potential profits are funneled to Iran? How does it help our troops to make sure Iran has more money to pass on to terrorists? We want to shut that down.

My amendment offers a simple proposition: You are either with us or against us, and if we are serious about the war on terror, then we have to cut off every revenue source we can of those sponsors of terror. President Bush said himself, ''Money is the lifeblood of terrorist operations.'' He is right. We know that terrorist groups, such as Hamas and Islamic jihad, are funded by Iran and other rogue states, and we need to cut off that funding opportunity.

Terrorist operations cannot survive without funds, and that is why our sanctions program is so critical. No American business should provide revenues to state sponsors of terror, and the nations that sponsor terrorism need to learn they will be denied business opportunities as long as they are funding terror groups.

Right now, American companies are doing business with terrorist states through foreign subsidiaries, and we must stop this practice. As long as this loophole is in place, our sanctions laws have no teeth.

We know that many companies find tax loopholes or regulatory loopholes that they exploit from time to time, but in this case, we are talking about companies exploiting loopholes just so they can do business with terrorists—sham corporations.

I urge my colleagues to look at this chart because it demonstrates how companies utilize this loophole.

If a U.S. corporation has a foreign subsidiary, they can send money to Iran. Iran can then send money to support Hezbollah or Hamas in their terror, suicide bombings, with their interests in developing weapons of mass destruction. We all believe that is in the works now. We should not in any way permit these companies—American companies created here, earning their living here, the executives earning their bonuses here—to be able to get some of that money as a result of sending funds to places such as Iran and other terrorist states.

U.S. companies often have several subsidiaries, and most U.S. companies

and their subsidiaries do not cross the line that prevents business with terrorist states, but some do.

President Bush also has declared that Iran is part of the ''axis of evil,'' and he couldn't be more right. My amendment says that if we are going to impose sanctions on rogue nations such as Iran, then let's be serious about it. Let's make sure Iran is isolated for their sponsorship of terrorism.

In addition to the 240 marines who were brutally murdered in their sleep in 1983 in Beirut, Iranian-backed terror killed these 2 young American women, 22-year-old Sara Duker and 14-year-old Abigail Litle. They were traveling in Israel. Sarah Duker was a constituent of mine from Teaneck, NJ. A summa cum laude graduate of Barnard College, Sara was killed with her fiancé when the bus she was riding on in Jerusalem was blown up in 1996 by Hamas. Again, Hamas receives funding and support from the Iranian Government.

Last year, 14-year-old Abigail, originally from New Hampshire, was riding home from school in Haifa when her bus exploded as a result of a suicide bombing. That attack killed 15 people and was directly linked to terrorists funded by Syria and Iran.

Iran sponsors terrorism, and they glow in that relationship. They love to let the world know they are out to harm Americans. The terror they help fund has killed hundreds of Americans and yet American companies are utilizing a loophole in order to do business with the Iranian Government. I want to close the loophole.

It is inexcusable for U.S. companies to engage in any business practices that provide revenue for terrorism. The bottom line is that big businesses, even those with financial ties to the top members of our Government, do not get a free pass in this war on terrorism.

I hope that when my amendment comes up for a vote later on that all of my colleagues will step up and ask the questions of themselves: Why do we want to promote anything that would send funds to Iran or other rogue terrorist nations? I cannot understand why that would be.

There are laws that say it should not happen, but they lack teeth. The process does not work. So I urge my colleagues, when the opportunity comes a little later in the day, to pass this amendment to close a terrorist funding loophole.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, today I join Senators LAUTENBERG and FEINGOLD in cosponsoring an amendment to the Department of Defense authorization bill.

This amendment will close loopholes that have allowed some American companies to skirt U.S. law by working with and operating in countries that have been identified by the President as supporters of terrorism.

Although Federal law prohibits U.S. companies from conducting business with nations that sponsor terrorism, a few firms have exploited a loophole in the International Emergency Economic Powers Act and are doing business through foreign subsidiaries, thereby providing terrorist states with revenue and other potentially important benefits.

Under the amendment we are introducing today, foreign subsidiaries are barred from engaging in commercial transactions with terrorist-sponsoring states under the same standards and under the same circumstances as their parent companies.

The definition of corporate entity would include not only U.S. companies and all foreign branches, but also foreign subsidiaries.

Subsidiaries of certain companies have been using foreign subsidiaries to conduct business in countries such as Iran.

Many of these foreign subsidiaries are often formed and incorporated overseas for the specific purpose of bypassing U.S. sanctions laws.

This amendment does not change which countries are subject to U.S. sanctions or interfere with the President's ability to invoke the International Emergency Economic Powers Act; and it does not change the sanctions under the act in anyway.

It simply clarifies who is subject to the sanctions when and if they are invoked by the President.

Currently Iran, North Korea, Cuba, and Libya have been targeted by the President under the International Emergency Economic Powers Act, all countries that we can agree deserve to be on the list.

Despite the tens of billions of dollars that we are spending on the defense of our homeland, we still have a law on our books that allows U.S. companies to assist the very nations that support terrorist activities aimed at us. This is unconscionable.

I want to applaud the efforts of New York City Comptroller, the New York Police Department, and the New York Fire Department to bring this problem to the Nation's attention.

Mr. LAUTENBERG. 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. WARNER. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. WARNER. Mr. President, on behalf of the leadership, and working with my ranking member, the Senator from Michigan, I make the following unanimous consent request.

I ask unanimous consent that the time until 5:30 be divided between the chairman and ranking member or their designees as follows: 55 minutes to Senator LEVIN, 30 minutes to the Senator from Virginia; provided further that the Senate vote in relation to the Kyl amendment, which is to be drafted as a first-degree, to be followed by a vote in relation to the Lautenberg amendment; provided further that no second-degree amendment be in order to either amendment prior to the votes. Finally, I ask unanimous consent that following the votes the Senator from Virginia or his designee be recognized in order to offer the next amendment, and following that, that the Senator from Michigan be recognized in order to offer the sequential amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, using what the Senator, the distinguished chairman outlined, we would vote at 5:30 or thereabouts; is that right?

The PRESIDING OFFICER. That is correct.

Mr. REID. No objection.

The PRESIDING OFFICER. It is so ordered.

Mr. WARNER. Mr. President, I would like to say a few words about the underlying amendment. In the opinion of the Senator from Virginia, the amendment would make it more difficult for the President to impose sanctions on states that support terrorism. At present, the President must weigh the benefits of imposing sanctions against the costs of such sanctions, including costs to U.S. businesses that may be affected. Second, the amendment will introduce a new factor into this balance, weighing against the imposition of sanctions: the objections of foreign countries to the extension of U.S. sanctions laws to reach companies organized under their jurisdiction. European countries in particular have strenuously objected to U.S. actions they perceive to involve the extraterritorial application of U.S. law.

Because the amendment leaves the President no discretion not to cover companies organized under the laws of other countries, and thus avoid such objections, the amendment introduces a new cost the President must overcome in any decision to use sanctions to fight terrorism.

The amendment is unnecessary because existing law already provides the President the ability to prevent U.S. companies from evading U.S. sanctions through the use of foreign subsidiaries. Existing U.S. sanctions regulations prohibit actions by U.S. companies to evade or avoid U.S. sanctions. U.S. companies that create foreign subsidiaries for the purpose of evading U.S. sanctions laws may be prosecuted for such evasions. Existing U.S. sanctions regulations also prohibit U.S. companies from approving or facilitating actions by their foreign subsidiaries that would constitute violations of U.S. sanctions laws if undertaken by a U.S. company. Similarly, U.S. sanctions regulations prohibit any U.S. citizen employed by a foreign company from taking actions in violation of relevant U.S. sanctions.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. I yield such time as the distinguished Senator from Kentucky may wish.

The PRESIDING OFFICER. The Republican whip.

Mr. MCCONNELL. Mr. President, I commend my friend from Arizona, Senator KYL, for offering his important amendment. It seeks to remedy an unethical fee schedule and provide a way for us to protect the soldiers, the taxpayers, and the public treasury all at the same time.

Lawyers, of course, have a fiduciary duty to their clients and one component of that duty is, to put it plainly, not to rip them off. But in the tobacco cases, as my friend noted, plaintiffs' lawyers got as much as $100,000 an hour for providing ''legal services,'' and I use the term ''services'' loosely. Their efforts were often duplicative of legal work others had done.

I think the notion that those who file what are in large part copycat lawsuits should get paid as much as $100,000 per hour for such work is absurd on its face. Absolutely absurd.

If anyone does not believe me, let's look at what some of the lawyers themselves have said about the situation I have described. Michael Cerisi, who pioneered the tobacco litigation and who represented the State of Minnesota in its lawsuit against the tobacco industry, said the fees of the lawyers who brought the lawsuits on behalf of Texas, Florida, and Mississippi ''are far in excess of these lawyers' contribution to any of the state results.''

John Coale, Washington, DC, lawyer and noted opponent of the tobacco industry, has denounced the fee awards as ''beyond human comprehension'' and stated that ''the work does not justify them.''

Even our friends at the American Trial Lawyers Association have found it very difficult to defend this practice. The past president of ATLA has said:

> Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite. . . . scrutiny.

That is the past president of ATLA. He goes on to say that ATLA:

> . . . generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney . . . is seeking a fee in excess of one billion dollars.

The Tax Code already provides a remedy for abuses by certain fiduciaries. It requires trustees to disgorge themselves of ill-gotten gains that are due to the violation of their duty as fiduciaries. The Kyl amendment simply expresses the sense of the Senate that we ought to amend this section of the Tax Code so that it encompasses other important fiduciaries—namely, personal injury lawyers in mass tort cases. I would be shocked if my colleagues opposed it. If they do, they would be saying it is more important for personal injury lawyers to receive more than $20,000 an hour than it is to use excessive fees to protect our troops.

The Kyl amendment notes some of the things that could be purchased by requiring the disgorgement of these ill-gotten gains: up-armored high-mobility multipurpose wheeled vehicles; add-on ballistic missile protection for medium and heavy wheeled vehicles; interceptor body armor including add-on protection for the shoulder and side body areas; unmanned aerial vehicles; ammunition; night-vision devices; sensors; Javelin missiles; and replacement of equipment lost in combat.

This amendment does not turn personal injury lawyers into paupers. It only applies in mass tort cases where the judgment is over $100 million, and it merely ensures that lawyers do not take advantage of their own clients.

With respect to the tobacco litigation in particular, it provides that plaintiffs' lawyers are guaranteed to make no less than $20,000 an hour. That is right—not $20,000 a week, not $20,000 a day, but $20,000 an hour. In short, it guarantees plaintiffs' lawyers a minimum wage of $20,000 per hour. If they can show somehow that it is appropriate for them to be paid more, then I suppose they could even get more than $20,000 per hour. What it will prevent, however, is personal injury lawyers being able to get, as a matter of course, unjustified and excessive fees from their clients to the tune of $100,000 per hour or even more. My friend from Arizona has referred to this as the ''one yacht per lawyer'' rule. With a minimum wage of $20,000 per hour, I think it is more appropriate to term it the ''one yacht per lawyer per week'' rule.

I hope my colleagues will not choose trial lawyers over the troops.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I ask my friend to yield whatever time I may consume.

Mr. LEVIN. I am happy to do that.

Mr. REID. Mr. President, I have been called upon in the past, as have other Members of this body, to interfere with what goes on in corporations—that is, to tell corporations they are limited in what they can pay their corporate executives. I have chosen not to become involved in that. I truly believe, even though some of these compensation packages are outlandish, in my opinion, it is not up to me. In our free enterprise system, it is up to the board of the directors of those corporations to determine what someone is worth. It is inappropriate, in this free enterprise system in which we are living, we take away the ability of corporations to run corporations.

I have always looked at the salaries of ballplayers. We have a 14-year-old boy named Freddie Adu, who is the highest paid player in the American Soccer League. Now, are they paying a 14-year-old boy too much money? He is making more than people who have played soccer for 20 and 25 years. It is kind of up to them to determine how much money he should get.

The average salary of a professional Major League baseball player in America today is around $2 million a year. That is a lot of money for a person who bats a ball, throws a ball, catches a ball, and runs around the bases, but that is what they get in our free market system. They get a lot of money.

My friend Greg Maddux from Las Vegas made $15 million last year. He pitched about 30 times. I don't know how much that amounts to, but that is a lot of money he makes. This year he has taken a tremendous cut in pay. He is only making $8 million a year. However, Greg Maddux is being paid what the market determined he was worth. He was released by the Atlanta Braves and he shopped around. The Mets wanted him, the Baltimore Orioles looked at him, and he determined, rather than go with San Diego and the other teams I mentioned, he would play in Chicago for $7 million or $8 million a year. That is what America is all about, the free enterprise system.

If we want to be picky and talk about how much is too much, we might want to take a look at a man by the name of Reuben Mark—Colgate-Palmolive—who in 2003 was paid $149,970,000. That is a lot of money. That does not take into consideration a lot of the stock options he could have exercised if he had wanted to. I have the amount of money he could make from the stock options he could exercise if he chose to. It is, again, in the tens of millions of dollars. I cannot find it right now. Let's see if I can flip over to that. But it is a lot of money.

George David, of United Technologies, last year made almost $71 million. Again, it does not take into consideration the other money he could have made had he wanted to. Is United Technologies paying him too much money? It is none of my business, I believe, as a Member of Congress to tell United Technologies how much money they can pay George David.

Is it my business to determine how much Lehman Brothers can pay Richard S. Fuld, Jr? Last year he made almost $68 million. I do not think so. I think it is up to this company. Even though I think this is a huge figure to be paid, and I think it is unfair to the stockholders, I am not on the board of directors, and they may know things I do not know. And, in fact, they do.

Henry R. Silverman, with a company called Cendant, made over $60 million last year. Should we interfere with this? The answer is no.

Right here in the Washington, DC, area, there is a man by the name of Dwight Schar. I wish I had known this guy was as rich as he was. Or maybe I do not wish that. When we moved here 22 years ago, we bought the home that he lived in. He was living there. I went and met Dwight Schar, kind of a quiet guy. He did not say much. I understand now why he was unwilling to negotiate

the price of that home. He said that is what he wanted, and he was unwilling to change that. Obviously, he is a good negotiator because last year he made over $58 million from NVR. They build homes.

Oracle Company paid Lawrence Ellison almost $41 million last year. And on and on, with these huge corporate salaries.

Using the logic of my friend, the distinguished junior Senator from Arizona—a fine man; I have great respect for him, but using the logic he used today, then, the free enterprise system really must not apply to everybody, only to some. We know there are companies that are well known around here. As I indicated, Reuben Mark of Colgate-Palmolive was the champion last year, that we know of at least, at $148 million. He did quite well. He had, just from stock alone, $131 million last year. And he is just one of a number of people.

But we have others who did quite well last year who are almost household names around here—not because they are known as good businesspeople, as are those people I have mentioned to this point; every one of these men I have talked to, Dwight Schar and all the rest, are known as extremely good businesspeople. But as we get down to some of these corporations, for example, we could take a look at David Lesar, who is the chairman and president of the Halliburton Company. Last year he did not do as well probably as some. He only made about $8 million last year from Halliburton. But he has, of course, $26 million in unexercised stock options that he could have used. But I guess with all that is going on with Halliburton—and that, of course, is the basis for this amendment that has been offered by my distinguished friend from New Jersey, Senator LAUTENBERG.

We do not, as Members of Congress, have the right, in my opinion, to interfere with the private sector. I have no right to say that Freddie Adu is making too much money playing soccer as a 14-year-old boy, or that Barry Bonds is making too much money, or that some guy who is batting .220 playing in the Major Leagues is making too much money being paid $15 million a year. Should we in Congress say that because he is not batting more than .240, his salary should not be more than $6 million? I do not think so.

Do we have any right to tell these companies that I have mentioned here that they are paying their people too much money and that Congress should step in and stop them from doing so? I do not think so. I have never felt that way.

We have here before us now a situation where we have a sense-of-the-Senate resolution. It was filed in that sense because had it been filed any other way there would be technical objections to it. So this is a so-called message amendment. It has no real impact. Even if it passed, it does not mean anything. But it is an attempt to embarrass people. It was offered because people are very uncomfortable with the amendment offered by my friend from New Jersey.

The distinguished Senator from New Jersey has offered an amendment that directs attention to some of the things that are going on with American companies, saying their foreign subsidiaries should not be able to do business with terrorist organizations and countries that work with terrorist organizations.

Mr. President, I was a lawyer. I am not ashamed, embarrassed, or concerned that in the past I have taken cases on contingent fees. What does that mean? It means someone came to me, and they had no money to prosecute their own case, and they said: Mr. REID, here is what has happened to me.

I can give you a couple examples that come to my mind. I can remember a woman by the name of Billie Robinson who came to me. I mentioned her name once before on this floor several months ago. Billie Robinson came to me. She was from Searchlight, NV, where I was born and raised. When she came to see me, I did not know her. I, of course, had been gone from Searchlight since I was a little boy. But she knew my mother who lived in Searchlight.

She could not talk very well. I proceeded to visit with her, and her problem was this: Billie Robinson had headaches, and she would come over to Searchlight to see various doctors. They told her: The only thing wrong with you, Billie, is you need to sober up. You are a drunk.

What they did not know and she tried to explain to these people is her headaches were so bad she drank a lot. By the time they realized, after about a year and a half, that she was having headaches because she had a tumor—they had misdiagnosed her condition—they operated. That is when it affected her a lot. She was not the same person after the surgery.

So she came to me and said: What should I do? So I represented her. I took that case on a contingent fee. For every dollar I got for Billie Robinson, I got a third of it. That was a standard fee. It still is a fairly standard fee. I did not know if I was going to be able to recover anything because when you go against doctors sometimes these cases are very complicated and involve expert witnesses. They fought this case for a while. Finally, I was able to arrive at an agreement, and we settled the lawsuit for Billie Robinson. I got a third of what we recovered.

Now, how much was I paid an hour? I really do not know. I was probably paid pretty good by the hour. But it was a case that she had shopped around, and other people would not take her case. I took a chance. I advanced fees for Billie Robinson, and I got her enough money that she led a comfortable life. She bought a new mobile home that she parked there in Searchlight. She had someone who could come in and help her. Now, does this Congress have the right to come in and say that the agreement she made with me was a bad deal, that I was paid too much money? I do not think so.

I remember a woman by the name of Joyce Martinez who came to see me. She was a really nice woman. She had been all over town trying to find a lawyer to take her case. This woman was a cocktail waitress at the Hacienda Hotel on the Strip in Las Vegas. She was there in her little skimpy gown they have, serving drinks to people, and the Las Vegas Police Department came and arrested her, took her off to jail because of her having written bad checks. She had not written any bad checks.

So I filed a lawsuit against Safeway Stores, and people, including the judge, said: What are you doing taking our time on this case? I demanded a jury. And I got a lot of money for Joyce Martinez. That was on a contingent fee. I took a chance on that case, and I won the case. I was paid pretty good by the hour. I do not have any reservations about having been paid a pretty good sum by the hour.

This Congress has no right in our free enterprise system to second-guess what Joyce Martinez did. What we are doing here is saying that attorneys, who entered into contracts to represent people—and sometimes not contracts, sometimes the State came in later and looked at the good works that they did—I do not know all the facts of this tobacco stuff, but I do know there were a number of lawyers, a handful of lawyers, in America who decided they would take on the tobacco industry.

It took a lot of money to fight one of the biggest businesses in the world, tobacco. And after many years, they won. It is a benefit to everyone in America that they won because now they cannot at will go out and solicit young children to smoke cigarettes and to become sick and addicted to tobacco. We owe those lawyers a debt of gratitude, not to say they are making too much money. Had it not been for those lawyers, we would still be having children openly and notoriously being attacked by advertising and other means to start smoking. That is what they did. The lawsuits uncovered the fact that they knew how much tobacco was addictive, and they went after these children. These children now are dying of emphysema.

I don't know for sure, but Smarty Jones' owner, I will bet, was a big smoker, and I bet he started as a kid. That is why you see him now being wheeled around and trying to breathe through that apparatus.

At my home in Searchlight, Fritz Hahn had a place there and watched my home for 15 years. He started smoking as a teenager. He is dead now, having died within the past 6 weeks as a result of tobacco, cancer of the throat. He suffered and suffered, and he is

dead. Now as a result of the work of these tobacco lawyers, there are going to be fewer Fritz Hahns in the world. I don't apologize for how much money these lawyers made. They did me, my children, my grandchildren, and my children's children a favor.

I also believe the pending amendment is discriminatory, unprecedented, unconstitutional, and just plain bad policy. This amendment endorses the idea that Congress should fix the rates attorneys are allowed to charge for providing services, not for everybody but certain types of clients. If a lawyer earns more than Congress allows, that person will have to pay back the extra or pay a 200-percent penalty. A 200-percent tax on income is unprecedented in this great Nation. Our Nation's tax system has never had this before. Never in the history of this Nation have we assessed a 200-percent tax on income that is legally earned that I have heard of.

Justice Marshall said it best when, in the infancy of this country, he declared the power to tax is the power to destroy. There could be no better illustration of that concept than this amendment.

In this Congress, my friends on the other side pay a lot of lipservice to the free market. But they don't like the free market very much now in this case with this amendment. First of all, this amendment would interfere with legal private contracts just like the one I had with Joyce Martinez, just like the one I had with Billy Robinson. Legal fees are not assessed taxes. They are not assessed out of the control of the clients. When someone wants to hire a lawyer, they can generally choose from a variety of attorneys who will perform the necessary services.

I gave two examples where these women couldn't find anybody else to represent them. I have taken a lot of cases, I am sorry to say—I am not sorry to say, it is part of the system. I have taken cases where I didn't get anything back, but I thought I was doing the right thing by taking them. I can remember a case where a little girl stepped off a schoolbus and was hit by a car on Russell Road in Las Vegas. I tried that case to a jury. I thought I deserved to win that case. I lost it. I felt bad about that. But that is what our free enterprise system is all about, the free market system.

This amendment would interfere with legal private contracts. Clients don't have the power to negotiate rates with attorneys they retain all the time. If a client feels a rate is unfair, there is nothing to prevent that client from taking the business elsewhere.

Beyond being bad policy, I oppose this amendment because it encourages constitutional taking of private property. By forcing attorneys to return their fees or suffer a 200-percent penalty without any semblance of legal process, this amendment demands these professionals simply hand over to others income they have lawfully earned.

There may be some who believe a tobacco lawyer earned too much money, just as I feel Reuben Mark made too much money, just as I feel George David made too much money, Richard Fuld made too much money, Henry Silverman made too much money, and Dwight Schar made too much money. But it is not my right as a Member of this Congress to tell them they can't make that much money.

It is no secret why Members of the other side of the aisle, in my opinion, are interested in passing this kind of amendment. This amendment uses the Tax Code and the full power of big Government to punish one particular kind of lawyer, the kind who tries to protect consumers from big corporations.

A Republican governor in the State of Nevada, Kenny Guinn, my friend, established what is called in Nevada the millennial scholarships, giving scholarships to large numbers of children who have a B average when they graduate from high school. With what are those scholarships paid? Tobacco money. From where did the tobacco money come? From these lawyers who went to court and took a chance. That is where the money comes from.

In Nevada, as in many other States, there are programs similar to that. We are saying, what did these lawyers do to earn their money? Ask a kid going to college in Nevada who wouldn't have the opportunity to go to college but for Kenny Guinn's millennial scholarships.

These lawyers, the ones they are trying to castigate and punish here, are the lawyers who try to protect consumers from big corporations. These tobacco companies are big corporations, and due to the lawyers they are getting smaller all the time. The same people who want to cut taxes for the wealthiest corporations in our country now want to impose an unprecedented 200-percent tax on attorneys who hold these powerful companies accountable when they cause injury to ordinary Americans and their families.

This amendment sets a terrible, horrible precedent that next we are going to be looking at these salaries. Next we are going to be looking at Freddie Adu's salary to see if he is making too much money or that man who plays baseball who is batting .210 and getting paid $18 million a year.

If we look back, it is a dark chapter in the history of our Federal Government, but one of the articles of impeachment against President Nixon dealt with his abusive and discriminatory use of tax laws to harass his political enemies. I don't compare this to that, but I think it is something that draws reference, that what we have here is an effort to punish and use discriminatory tax laws to harass someone you don't like, the tobacco lawyers.

This is a bad amendment. I am confident people of goodwill will join together, Democrats and Republicans, and resoundingly defeat this very un-American amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to respond to the comments of my friend from Nevada. He had five basic arguments. I think they could all be dispensed with fairly quickly.

His first argument is there are a lot of people who make money in this country, a lot of money, CEOs of businesses, sports figures, and others who receive very large salaries. He wondered if there is any difference between that and the tobacco lawyers who are billionaires because of the money they have made off the tobacco settlement. The answer is, yes, there is a huge difference. The CEOs and the sports figures are not fiduciaries. They are not in a trust relationship with the people who pay their salary. A sports figure, for example, uses a representative of the union and negotiates a fee with the baseball team, and they do pretty well. But it is all a contract negotiation.

If George Steinbrenner is willing to take any New York Yankee player, whatever he is willing to pay him, that is what he thinks he is worth, that is what he brings in the gate, that player is not taking advantage of George Steinbrenner or the New York Yankee fans based upon any fiduciary responsibility.

It is the same thing with respect to the boards of directors who set the salaries of CEOs of major corporations. What I quoted before from professors of law and others is that there is a special category of people who are in a fiduciary relationship. I know my friend from Nevada, as a good lawyer, knows this concept. Lawyers owe their clients a very special duty, a duty far and above what normal contract law is. You cannot take advantage of your client. Even if you can get your client to sign an agreement regarding fees, that agreement will be thrown out of court if the court determines it is unfair.

That doesn't apply with the rich CEOs or the rich sports figures, but it applies in the case, for example, of lawyers, of fiduciaries who are trustees of a trust.

That gets to the second argument—that this is unprecedented. No, it is not. I refer my colleague to section 4958 of the Tax Code. The section deals with an intermediate sanctions tax on fiduciaries, trustees who pay themselves too much money out of a trust. They are held to a standard of a reasonable fee. If they exceed that fee, they pay what? A 200-percent tax.

We got the idea from the Tax Code. We didn't make this up. It is not unprecedented. So our section follows that section; it is 4959. So 4958, existing law, says if you are a fiduciary, a trustee, and you charge your trust too much money for your salary so that the beneficiary is being hurt and it is unfair, then you are going to pay a 200-percent tax to the IRS unless, of course, you give the excessive part back and the tax is waived. That is the whole idea. We never collect the 200-percent tax because nobody is foolish enough to take

the money and pay twice as much back.

They just don't take the money in excess of what is fair. It is in the code and it applies to fiduciaries, people in this special trust relationship.

The third argument was that the tobacco settlement was good, and it is good. There were scholarships, and a lot of people benefited from it. What bothers me is the fact that lawyers benefited unreasonably from it—not all lawyers; a lot of tobacco lawyers did a lot of work and got paid a lot for it, but they put the work in. Others rode along on the work of others and charged far in excess of what any reasonable fee would be.

That gets to the next argument. My friend from Nevada talked about cases he took on a contingency fee, a one-third fee. He is correct. That is common for plaintiffs' lawyers. When they win, they get a third of the settlement. In many cases, that is a totally fair and reasonable fee. I know in the case of my colleague of Nevada, it was fair and reasonable because that is exactly the kind of person he is. If for some reason it would not have been, the court would not have allowed it because of this special fiduciary relationship with his clients. The court would not have allowed it if it exceeded that amount. I am sure—and I would not ask my colleague—that none of those fees topped $20,000 an hour. That is the amount we have set forth in this bill.

Again, these are not my words. I will quote a couple of people. John Coale, who is a big tobacco industry opponent in Washington, DC, denounced these fee awards as ''beyond human comprehension'' and stated that ''the work does not justify them.''

The president of the organization to which these lawyers belong, the Association of American Trial Lawyers, said:

> Common sense suggests that a $1 billion fee is excessive and unreasonable and certainly should invite the scrutiny [of the courts.]

The point is, a one-third contingency fee in a typical case is perfectly fine. But a one-third contingency fee in tobacco litigation—the kind of reward these lawyers are receiving—is totally unreasonable by any standard, including that of the president of the organization to which these few lawyers belong. These lawyers have already received about $4 billion in awards. None of that will be touched. They are going to get another $½ billion a year under the settlement.

All we are saying is that a reasonableness test has to apply, just as it does to other fiduciaries under the Tax Code. The excess refers to the Treasury so we can pay for things the Defense Department needs.

Another argument was this would interfere with private contracts. No, it doesn't. It has no applicability between lawyers and clients—none. All this applies to is this master settlement agreement that automatically pays out a $½ billion in fees per year to these lawyers. It doesn't apply retroactively; it only applies if and when the collection by the lawyer gets to the point that it represents more than $20,000 an hour. These lawyers can be paid until the cows come home at $19,999 an hour. But when the level finally gets to $20,000, we say that is enough. Just as the Tax Code today makes the trustee pay the rest of it back, we say the rest of it gets paid back. It doesn't hurt the plaintiffs at all. The plaintiffs have received what they are going to receive out of the settlement. It doesn't help the tobacco companies. They still have to pay the money. But the tax—in effect, the money the tobacco companies pay goes partially to the trial lawyers, and the rest goes to the U.S. Treasury, rather than all of it going to the trial lawyers. So the tobacco lawyers get paid what is fair—more than fair—and the plaintiffs have already received their reward. The tobacco companies still have to pay what they had to pay originally. The benefit is to the U.S. Treasury, Department of Defense, and the people we put in harm's way to carry out their missions.

The final argument made was one that I am not sure why it was made. My colleague acknowledged he knew this wasn't my motivation. Since I offered the amendment, it is unclear whose motivation therefore it would be—that it was a discriminatory tax policy to get at political enemies. This is what Nixon is alleged to have done. Of course, that is not the case here. I don't even know who these people are. I could not give you the name of one of them. I don't know how many there are. I don't know their politics or anything else. All I know is what others have said about them, which is that their fees are unconscionable, beyond human comprehension, that the work doesn't justify them, that the fees are excessive and unreasonable and should invite scrutiny, and so on and so on.

The question the law professor asked after going through the ethics rules about lawyers fees always having to be reasonable, the kind of fee contracts that my colleague from Nevada had with his clients—he goes through that and says fees cannot be clearly excessive. The fees have to be reasonable. Then he asked:

> Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands—and even hundreds of thousands—of dollars an hour, reasonable? I think to ask the question is to answer it.

At the end of the day, the arguments raised against this amendment, frankly, are all fallacious. There is no relationship to CEOs or other people who make a lot of money. They don't have the same fiduciary relationship that a lawyer has to his client. A one-third contingency fee is a good thing. We all stipulate to that. But it still cannot be unreasonable.

In this case, the amounts are so egregious that they go far beyond what the Senator from Nevada was talking about. Unprecedented? No. It is in the Tax Code today—the same 200-percent tax, the same application to the fiduciaries who charge more than reasonable fees.

By the way, that also applies to another kind of fiduciaries—these particular tobacco lawyers. It would not interfere with other private contracts. By its terms, it doesn't apply to that.

I think the bottom line here is that we are faced with the same choice we had before. We have an opportunity to generate some funds to pay for the things our troops need. We are on the Defense authorization bill. We are trying to authorize a lot of programs. Eventually, we are going to have to appropriate money for them. This amendment provides additional funds of, by my calculation, something on the order of about $9 billion, that we can apply toward the acquisition of this important equipment and the other things needed in our Defense bill.

I suggest we need to give that stuff to our troops, that this is a way to pay for it, and that we have the added benefit of conforming our Tax Code to a situation here that is totally unreasonable and unconscionable, in the words of many, and that is that some of the tobacco lawyers are reaping a windfall.

Money that is paid by the tobacco companies instead would be paid to the Treasury because it is far in excess of what is a reasonable fee. We have said, OK, we will not limit it at $2,000. Some people said a reasonable fee might be more than that. We said, how about $10,000 an hour? No, that might be a reasonable fee someplace. We said $20,000. I have not found anybody who can come on this floor and say to me that a legal fee, even in this case, of $20,000 an hour for all of these hours of work is reasonable and will meet the laugh test or the reasonableness test, which is the test all lawyers must meet and the test of the IRS Code with respect to fiduciary duties in the trustee context.

It seems to me we have a great opportunity to help our troops. We are not hurting anybody by this amendment. I do not even think we can argue we are hurting these billionaire lawyers. I think it would be hard for them to spend all they have, and the little bit they are going to be denied here can do a whole lot more good in equipment in the hands of our troops. They cannot justify those fees coming to them in a prospective way under the settlement agreement they are taking advantage of today.

This is the amendment we will vote on first. I urge my colleagues to vote for it.

Then I urge my colleagues to vote against the underlying Lautenberg amendment. The easiest way to summarize the Lautenberg amendment—the Senator from New Jersey presented photographs and told some very disheartening stories of people who had been taken advantage of by other countries that harbor terrorists and that

the United States does not consider places where American companies should do business.

I totally agree with the Senator from New Jersey. We need to have a provision for sanctions in a case such as that. If it were not for the fact we already have one, I would be supportive of the Senator's amendment. But we do already have a provision. It is being applied by the President of the United States.

The point I tried to make earlier is that—and I am sure he did not mean to do it this way, but the language of the amendment of the Senator from New Jersey is even more restrictive than current law because it talks about ownership and control and defines it as at least 50 percent when, in fact, you can keep the ownership under the 50 percent and still have effective control of the corporation.

In the case of the application of sanctions the way the President does it, he takes into account both factors so that a company that keeps the ownership at that level, under 50 percent, is not at all exempt from the application of sanctions imposed by the President of the United States because we also take into account the element of control.

The Treasury Department and the State Department oppose the Lautenberg amendment because it restricts the President's authority in ways it is not restricted today.

If there are any situations in which we need to apply these sanctions to countries where they are not applied today, I am perfectly willing to discuss that with anybody and urge the administration to do so. We have the authority today. The President is utilizing it. It does not seem to me, therefore, that the amendment of the Senator from New Jersey should be supported.

I urge my colleagues to support the Kyl amendment, which will be voted on first, and oppose the Lautenberg amendment. That vote, I understand, will begin at 5:30 this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada, the Democratic whip.

Mr. REID. Mr. President, Senator LEVIN is in the Chamber. I asked that he allow me to speak again, which he indicated he will.

Mr. LEVIN. Mr. President, I am happy to yield time to the Senator from Nevada. I do not know if we have other speakers. How much time remains?

Mr. REID. There is 32 minutes left; is that right, Mr. President?

The PRESIDING OFFICER. That is correct.

Mr. KYL. Mr. President, will the Senator from Nevada yield for a question? Is there a division of time for both sides? Has the Chair announced how much time remains on both sides?

The PRESIDING OFFICER. There is 8 minutes remaining on the majority side; 31½ minutes on the minority side.

Mr. REID. Mr. President, a great book, certainly a classic, was written in 1776 by Adam Smith called ''The Wealth Of Nations.'' This was the first time it was put down on paper that someone understood, from an economist's point of view, what the free enterprise system was and could be, and that is the basis for our country, this free enterprise system we hear so much about, capitalism, free markets. That is, in effect, what this debate is all about.

It is about free markets; what people have the right to do and not do. We have given an illustration of baseball players and other court cases. The top 10 executives, as far as compensation in 2003, made about $14.6 million a month. That is what they made. I think my math is right. No, the top 10 executives made last year about $600 million. That is a whole lot of money, as we know. Is that too much money, more than half a billion dollars for the top 10 corporate executives in America to make?

As I said before, I think so, but what right do I have to go to Nevada businesspeople—take, for example, the MGM corporation. MGM corporation, the vast majority of stock is owned by one of my former clients, Kirk Kerkorian, a great businessman, a wonderful human being. I have no idea how much Kirk Kerkorian makes, but he does not pay himself much money. He drives a relatively small car. He has a few things that appear to be luxurious, but not too many. He pays his corporate executives lots of money. Why? Because they deserve it.

His No. 1 executive is a man by the name of Terry Lanny. Terry Lanny makes lots of money. According to the figures here, he did not make the top 10, but he is way up at the top. Why? Because the marketplace indicates that is what Terry Lanny is worth. It is no different than these lawyers. Terry Lanny has a contract. I have not seen it, but it calls for compensation today, next year, and I am sure years after that. If he left today, Kirk Kerkorian's company would keep paying him deferred compensation. That is what it is all about. That is what these lawyers have. We have no right to interfere.

We are talking about some law professor. I have the highest respect for law professors, but they are some of the most underpaid people in America, and I bet they are so jealous of people making money that they could hardly wait to run to tell somebody they are being paid too much. Windfall—anything to a law professor is a windfall. So I am not impressed with a law professor saying some lawyer is making too much money.

What I would like to say is that law professor should be out seeing how much money he can make, but I am not going to say that. What he is doing is second-guessing what the free market does.

I understand the examples my friend from Arizona has given, how he thinks my argument is distinctive from the facts, but I think it is pretty clear what I am talking about, the points I have made.

The example he has given with the fiduciary trust relationship is a totally different situation. The distinguished Presiding Officer is a lawyer who is certainly qualified to discuss legal matters, having been the attorney general of one of the most populated States in America. We know problems arise with people who have trust agreements. Many of them are not lawyers, and there has to be some control set because they do have a fiduciary relationship. Many of the people they represent are babes in the woods, so to speak, and there has to be some oversight there, and I agree with that. But I am not here to say corporate executives make too much money, or, I repeat, ballplayers make too much money, and lawyers make too much money. I think we should let the market control this situation.

I hope this Congress, which talks so much about our capitalistic form of Government, this Senate which talks about it, I hope they will put their votes where their mouths have been in the past.

I suggest the absence of a quorum and ask that the time run against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. I ask unanimous consent that the distinguished Senator from Nevada, Mr. ENSIGN, be allowed to speak as in morning business and the time that he uses run equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nevada.

HONORING OUR ARMED FORCES

Mr. ENSIGN. Madam President, I rise to speak for a few minutes about the men and women in uniform who are serving this Nation in Iraq, Afghanistan, and around the world.

I know the recent news has focused on the actions of a few of our service men and women, but I rise today because they truly are the exception.

I want to thank the members of our armed services who continue to exhibit extraordinary bravery, integrity, and commitment. I want to remind them we are grateful for them each and every day as they defend our freedom and our security.

My State of Nevada is proud and blessed to have many sons and daughters among the ranks of those on the front lines of our war on terrorism, people such as Jon Carpenter. Jon Carpenter is a 42-year-old marine reservist on his second tour in Iraq. Back in Las Vegas he has a wife and five children, and a proud community.

Jon wrote a letter earlier this year to his friends and family explaining why he would return to Iraq with the First Marine Division.

I ask unanimous consent that the entire letter be printed in the RECORD.

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

Why is Jon going back to Iraq?

It is a question my wife and I have heard from quite a few people recently after announcing that I am getting orders to return to Iraq with the 1st Marine Division.

Some have asked with a quizzical tone, assuming that I had already done my duty for the country with my first trip to Iraq last spring.

Some have asked with expressed concern that I have a good wife, five good kids, a good church and a good job here at home that all need me, and that I should let the younger men and women run off to war and serve their country.

When people ask why I am going back to Iraq, I say ''Because the country has asked.''

Our country is at war, and even though the battlefields are different than those of WWII, the dangers of not winning this war are at least as great as those of our country's previous wars.

It is very easy to forget that we are at war, due to the level of prosperity we have here and the lack of terrorists attacks we have had since the beginning of this war on terror. But we are at war, and during times of war, men and women must make sacrifices.

I look at the sacrifices that our fellow countrymen have made during the world wars; and my previous deployments pale in comparison.

When people ask why I am going back to war, to fight on foreign soil, to prevent the war from being fought on our soil, endangering my family and friends, I say, ''Because I can.''

The next question is usually, ''What will Jon be doing there?''

I will be deployed with 1st Marine Division (Forward), when they go back to an area near Baghdad. I will be part of the Government Support Team, and assigned to the Police Training team, responsible for retraining the Iraqi Police to retake control of law enforcement functions and maintaining the peace.

The next question is usually ''How can we help you or your family?''

I usually say to pray regularly for my wife, family and I, and to be supportive of the President and his policies in Iraq. Both of these are extremely important, especially in light of the relentless attack on the President, during a time of war, by our country's own extremist citizens; i.e. the liberals and media elite who hate that another socialist country has fallen (Iraq), and that conservatives can take credit for the tremendous successes we have had in the war on terrorism.

From experience, I can tell you how demoralizing all of the criticism of the military and the dissension in the country is on the troops in Iraq. It also encourages the radical criminals and terrorists we are fighting over there to continue fighting in hopes we will pull out.

We are doing the right thing there, we are winning, and the majority of the Iraqi citizens truly appreciate what we are doing for them.

So, thank you for your past support and thank you for your future support of this next mission in Iraq.

Sincerely—Jon Carpenter.

Mr. ENSIGN. He states:

When people ask why I am going back to Iraq, I say, ''Because the country has asked.'' Our country is at war, and even though battlefields are different than those of WWI, the dangers of not winning this war are at least as great as those of our country's previous wars.

He continues on to write:

But we are at war, and during times of war, men and women must make sacrifices.

Jon was wounded a few weeks ago when he was shot through the neck. He has recovered now, pinned with a Purple Heart, has returned to his work training Iraqi police officers. Actually, he could not wait to get back to his fellow troops.

It is commendably common for our wounded troops to return to the front lines when given the option. That is because they are focused on the mission and determined to get the job done.

Army PFC Sean Freeman, Sparks, NV, is another example of a determined soldier. He was wounded in a June 22 ambush last year in Baghdad where he was stationed as an artillery crewman. Sean suffered back, shoulder, and arm wounds and is stationed in Germany while he recovers. He is motivated to do so, so he can return to Iraq.

The stories of bravery and heroism are truly inspiring and there is no shortage.

Dr. Thom Merry in Douglas County, NV, volunteered for duty in Iraq as a flight surgeon and has since been decorated with a Bronze Star for entering a minefield, without regard for his own personal safety, to rescue a severely injured marine.

TSgt William Kudzia, stationed at Nellis Air Force Base in Las Vegas, was engaged in ground operations against an opposing armed force in Iraq and hand-excavated 226,000 pounds of high explosive bombs buried by fleeing Iraqi forces.

With disregard for his own personal safety, he hand-removed a burning projectile, saving the lives of his team members and averting a catastrophic detonation. He was also awarded the Bronze Star with Valor.

As brave as our men and women are, I think there is an equal amount of emotional bravery exhibited by the spouses, parents, and children left behind to wait for their loved one's safe return. Nevada Highway Patrol Trooper SGT Jim Olschlager's son, James Jr., is on an aircraft carrier. His daughter Laurie is in the Army and will be sent to Iraq in September, and his son-in-law Kendall is currently serving in Karbala, near Baghdad.

In Fallon, NV, Juanita and Kevin Porteous got to visit with their son Jon for only a few days before his leave was cut short and he had to return to Iraq. I had looked forward to meeting and thanking Jon on a recent trip to Fallon, but was honored to deliver my appreciation via his parents. They are extremely proud of him, but that does not make the waiting or the worrying any easier.

My prayers are with the Olschlager and Porteous families and every other family which is anxiously awaiting the return of a loved one. We all thank them for the sacrifices they have made to keep this Nation safe. The men and women of our Armed Forces are truly defending our security. Our missions in Iraq and Afghanistan are critical to the continued ability to fight terrorism on foreign soil rather than on our shores.

Make no mistake about it, a war on our homeland would be devastating. That is why it is so important for us to continue steadfastly supporting our troops. Although we cherish our freedom of speech and the opportunity to debate, our united voice of support is essential if we want our troops to continue giving 110 percent to the mission.

It is easy to pretend what we as elected officials say is not heard by the men and women on the front lines, or for that matter by our enemies, but listen to what Jon Carpenter, the marine I talked about earlier, wrote before heading back to Iraq:

From experience, I can tell you how demoralizing all the criticism of the military and the dissension in the country is on the troops in Iraq. It also encourages the radical criminals and terrorists we are fighting over there to continue fighting in hopes we will pull out. We are doing the right thing there, we are winning, and the majority of the Iraqi citizens truly appreciate what we are doing for them.

God bless Jon Carpenter and all of the men and women who are willing to lay their lives down for this Nation. Our prayers are with you and your families. God bless America, truly the home of the brave.

I yield the floor, and 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. WARNER. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. FEINGOLD. Mr. President, I want to express my unwavering support for the men and women who wear this country's uniform and who are so bravely serving in dangerous areas throughout the world on our behalf. I have strongly supported and will continue to strongly support efforts to ensure that these courageous men and women continue to receive all of the resources they need to perform their duties. This is a serious issue that deserves serious focus. It should not be a part of gimmickry or a political sideshow and for that reason I oppose the amendment offered by the Senator from Arizona, Mr. KYL.

Mrs. BOXER. Mr. President, Senator KYL has offered an amendment expressing the sense of the Senate that an excise tax should be imposed on any lawyer's contingency fees in tobacco cases when those fees exceed the equivalent of $20,000 per hour.

I oppose this amendment because it singles out only one group of people who will be subjected to a government-

imposed salary cap—lawyers who go after the tobacco companies.

The Kyl amendment does not apply to the CEO of Halliburton or Enron. It does not apply to the CEO of an HMO or a drug company. It does not even apply to lawyers who defend tobacco companies.

I would be happy to consider a fair and balanced amendment. But this one-sided amendment that goes after lawyers because they go after the tobacco companies should be defeated.

Mr. WARNER. Madam President, I understand the vote is set for 5:30.

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. I see the distinguished Senator from Alabama, and I yield the floor.

The PRESIDING OFFICER. Without objection, the Senator from Alabama is recognized.

Mr. LEVIN. Madam President, how much time is left on both sides?

The PRESIDING OFFICER. There is no time left on the majority side. There is 3½ minutes left on the minority side.

Mr. LEVIN. Madam President, is the Senator from Alabama speaking in opposition or in support of the amendment?

Mr. SHELBY. I am speaking in opposition to the Lautenberg amendment.

Mr. LEVIN. There is a chance Senator LAUTENBERG may be returning. If so, he would have wanted time. I have no problem agreeing to that.

Mr. SHELBY. Madam President, I ask unanimous consent for 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. REID. If Senator LAUTENBERG wants to come, he can come.

Mr. LEVIN. We ask unanimous consent, if Senator LAUTENBERG does return after Senator SHELBY is finished, that Senator LAUTENBERG be recognized for 3 minutes immediately prior to the vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Alabama.

Mr. SHELBY. Madam President, I rise in strong support of the motion to table the amendment of the Senator from New Jersey, Mr. LAUTENBERG.

As chairman of the Banking Committee which has jurisdiction over legislation pertaining to U.S. economic sanctions, I am more than a little familiar with the issue addressed by the amendment of the Senator from New Jersey. While his intent may be laudatory, the language of his amendment and the manner in which it has been proposed are not.

There is a reason all administrations oppose legislation such as this amendment. Not only do they argue that it infringes on their constitutional right to conduct foreign policy—an argument we admittedly employ or ignore as the need arises—but, more importantly, the White House invariably recognizes the potential for the law of unintended consequences to come into play. There has been no opportunity for those consequences to be considered in a truly deliberative manner because the legislation has not been brought before the Banking Committee for any type of hearing.

I take a backseat to no Member in this body in my support of strong economic sanctions as a vital tool in our foreign policy and national security arsenal, and I have been a strong advocate of closing loopholes that weaken those sanctions. My support for the Helms-Burton legislation was a case in point.

In addition, as one of the few Members of the Senate who opposes weakening the Government's ability to prevent the flow of military-sensitive technologies to countries with poor records in the areas of proliferation and support for terrorists, I believe my credentials in this area are quite strong.

The intent, as I understand it, behind the amendment of the Senator from New Jersey is certainly meritorious. We all support the war against terrorism and the need to staunch the flow of dollars to terrorist organizations. Under my chairmanship, the Banking Committee has been investigating the issue of terrorist financing for over a year, and has additional hearings scheduled on the subject in the weeks ahead.

We are taking this issue very seriously. We are examining the structure of the Federal Government to stem the flow of dollars to terrorist organizations. We work very closely with the Treasury Department Office of Foreign Assets and Control which is the Government's vehicle for enforcing U.S. economic sanctions to further prevent these organizations from gaining access to sources of revenue with which to fund their operation. OFAC, the Federal office responsible for enforcing sanctions, opposes the Lautenberg legislation.

I stand ready to work with the Senator from New Jersey to ensure U.S. economic sanctions have the requisite team to accomplish the objective for which they are imposed. But this amendment is not the way to go.

I urge my colleagues to support the motion to table.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered.

Mr. REID. I ask unanimous consent that after we vote on the Kyl amendment, there be 4 minutes equally divided prior to the vote on the Lautenberg amendment.

Mr. WARNER. Reserving the right to object, I will not object, but that does not preclude a motion to table.

Mr. REID. That is right.

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

The question is on agreeing to the amendment offered by Senator KYL, as modified.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 37, nays 62, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—37

Alexander	Enzi	Murkowski
Allard	Fitzgerald	Nickles
Bond	Frist	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Snowe
Campbell	Hutchison	Stevens
Cochran	Inhofe	Sununu
Cornyn	Kyl	Talent
Craig	Lugar	Thomas
Dole	McCain	Warner
Domenici	McConnell	
Ensign	Miller	

NAYS—62

Akaka	Dayton	Levin
Allen	DeWine	Lieberman
Baucus	Dodd	Lincoln
Bayh	Dorgan	Lott
Bennett	Durbin	Mikulski
Biden	Edwards	Murray
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Graham (FL)	Pryor
Byrd	Graham (SC)	Reed
Cantwell	Harkin	Reid
Carper	Hatch	Rockefeller
Chafee	Hollings	Sarbanes
Chambliss	Inouye	Schumer
Clinton	Jeffords	Shelby
Coleman	Johnson	Smith
Collins	Kennedy	Specter
Conrad	Kohl	Stabenow
Corzine	Landrieu	Voinovich
Crapo	Lautenberg	Wyden
Daschle	Leahy	

NOT VOTING—1

Kerry

The amendment (No. 3191) was rejected.

The PRESIDING OFFICER. The Senator from Idaho.

CHANGE OF VOTE

Mr. CRAPO. On rollcall vote 100, I voted ''yea.'' It was my intention 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. Without objection, it is so ordered.

The Senator from Maine.

Ms. COLLINS. Mr. President, on rollcall vote 100, I voted ''aye.'' It was my intention 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. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. HOLLINGS. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3151

Mr. WARNER. Parliamentary inquiry, Madam President: Is not the Lautenberg amendment the pending amendment?

The PRESIDING OFFICER. There are 4 minutes equally divided prior to the vote on the amendment.

Who yields time?

Mr. LEVIN. I think Senator LAUTENBERG has 2 minutes, and Senator KYL has 2 minutes.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I ask my colleagues please to permit us to have order in the Senate. We don't have much time to talk about this. I would appreciate the opportunity to speak.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senate will be in order.

Mr. LAUTENBERG. Mr. President, please try to help us maintain order.

This is very quick, very simple. My amendment is straightforward. Current sanctions law has a loophole that permits foreign subsidiaries of U.S. companies to do business with nations that sponsor terrorism, such as Iraq. My amendment closes the loophole. It is that simple. It only applies to foreign subsidiaries in which U.S. parent companies have a majority interest.

The question is, do we want U.S. companies to sell oilfield equipment through a sham foreign subsidiary to a country such as Iran—which the President has rightly called the axis of evil—so Iran can sell its oil at greater profits and funnel those profits to Hezbollah, Hamas, or Islamic Jihad, terrorist groups that killed 240 marines in Beirut, Lebanon.

These two young women in this photo, from New Jersey and New Hampshire, were killed in Israel by terrorist activities sponsored by Iran. It is very simple. The amendment says: Are you with us or against us? If you are with us and want them to stop killing our kids in Iraq, then you have to stand up and say, yes, this amendment counts, and, yes, we want to close this loophole. We just had a vote relating somewhat to my amendment. I hope my colleagues will stand up and say close the door.

I thank the Chair.

Mr. WARNER. Mr. President, I yield our time to Senator KYL.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, the State Department and Treasury Department strongly oppose this amendment because it is more restrictive than the current authority exercised by the President under IEEPA. The amendment would focus solely on ownership, which is a standard that can easily be circumvented and would be less effective than the administration's approach, which applies not only to ownership but also to control.

It is very easy for a company to get just under 50-percent ownership but still control the subsidiary. Under the Senator's amendment, no sanction would be permitted in that circumstance. So rather than broadening the authority and making it more capable of adding sanctions to what we already have, it would actually restrict the authority the President currently has.

That is why both Treasury and the State Department say let the President exert the current authority he has, which is broader. It is not a choice between helping people such as the Senator alluded to. This President is applying sanctions in those countries precisely where this condition exists.

I urge my colleagues to vote against the Lautenberg amendment and don't weaken the provisions already existing. Allow the President the flexibility he needs.

Mr. WARNER. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. LEAHY. Mr. President, 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 assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—49

Akaka	Durbin	Lincoln
Bayh	Edwards	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham (FL)	Nelson (NE)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Collins	Kennedy	Schumer
Conrad	Kohl	Snowe
Corzine	Landrieu	Specter
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Wyden
Dodd	Levin	
Dorgan	Lieberman	

NAYS—50

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Baucus	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chafee	Hagel	Stevens
Chambliss	Hatch	Sununu
Cochran	Hutchison	Talent
Coleman	Inhofe	Thomas
Cornyn	Kyl	Voinovich
Craig	Lott	Warner
Crapo	Lugar	

NOT VOTING—1

Kerry

The amendment (No. 3151) was rejected.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote.

Mr. WARNER. 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 Virginia.

Mr. WARNER. Mr. President, several colleagues are anxious to address the Chair, so I yield the floor momentarily.

Mr. LAUTENBERG. Mr. President, I just want to say I thank my colleagues who worked so hard to get this legislation passed. But I want everybody to remember that this vote that was just taken said it is all right to do business with Iran. Look at the list of the dead and missing and see whether it is all right to vote for companies that sell to Iran. When we had a chance to close the loophole, the party lines were clear. No, stick with the companies. Forget about those who are serving in Iraq. Forget about those kids who want to come home in one piece. That is the kind of vote that just took place, and I hope the constituents back home will note it and remember it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, the distinguished Senator from Michigan, the ranking member on the committee, Mr. LEVIN, and I will momentarily process a number of agreed-upon amendments. So at this time, seeing no Senator seeking recognition, I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. WARNER. Mr. President, as is the practice with my distinguished colleague, Mr. LEVIN, we have arrived at an agreement on a series of amendments. I would like at this point in time to proceed with perhaps a dozen or so.

AMENDMENT NO. 3205

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

the PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Mr. LEVIN, proposes an amendment numbered 3205.

The amendment is as follows:

(Purpose: To correct the characterization of the funding authority for up-armored high mobility multi-purpose wheeled vehicles and wheeled vehicle ballistic add-on armor protection)

On page 18, strike line 11, strike "**AUTHORIZATION OF APPROPRIATIONS FORK**".

On page 18, strike lines 15 through 24, and insert the following:

(a) AMOUNT.—Of the amount authorized to be appropriated for the Army for fiscal year 2005 for other procurement under section 101(5), $610,000,000 shall be available for both of the purposes described in subsection (b) and may be used for either or both of such purposes.

(b) PURPOSES.—The purposes referred to in subsection (a) are as follows:

On page 19, beginning on line 7, strike ''authorized to be appropriated in'' and insert ''available under''.

On page 19, line 17, strike ''authorized to be appropriated'' and insert ''available under''.

Mr. WARNER. Mr. President, this is a technical amendment which has been cleared by both sides.

Am I correct?

Mr. LEVIN. The amendment has been cleared.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 3205) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3206

Mr. WARNER. Mr. President, I offer an amendment that makes a technical correction. The amendment has been cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3206.

The amendment is as follows:

(Purpose: To correct a funding discrepancy)

On page 25, line 25, strike ''$9,698,958,000'' and insert ''$9,686,958,000''.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3206) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3207

Mr. WARNER. I offer an amendment to make a technical correction related to military construction.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3207.

The amendment is as follows:

(Purpose: To make a technical correction relating to military construction)

On page 318, line 2, strike ''$980,557,000'' and insert ''$1,062,463,000''.

Mr. LEVIN. That has been cleared on this side.

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

The amendment (No. 3207) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3208

Mr. WARNER. Mr. President, on behalf of myself and Senator LEVIN, I offer an amendment to make a technical change in title 10, to conform with actions taken in last year's bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia, [Mr. WARNER], for himself and Mr. LEVIN, proposes an amendment numbered 3208.

The amendment is as follows:

(Purpose: To make a technical correction to a cross reference in title 10, United States Code)

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. TECHNICAL CORRECTION TO REFERENCE TO CERTAIN ANNUAL REPORTS.

Section 2474(f)(2) of title 10, United States Code, is amended by striking ''section 2466(e)'' and inserting ''section 2466(d)''.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3208) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3209

Mr. WARNER. Mr. President, I offer an amendment for myself and Senator LEVIN to authorize the Secretary of Defense to continue home health benefits for covered beneficiaries as the Department implements legislative changes to home health services enacted in fiscal year 2002.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Mr. LEVIN, proposes an amendment numbered 3209.

The amendment is as follows:

(Purpose: To provide for continuation of part-time or intermittent home health care benefits during transition to the sub-acute care program)

At the end of title VII, add the following:

SEC. . CONTINUATION OF SUB-ACUTE CARE FOR TRANSITION PERIOD.

Section 1074j(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.''.

Mr. LEVIN. It has been cleared on this side.

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

The amendment (No. 3209) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3210

Mr. WARNER. I offer an amendment for myself and Mr. LEVIN that will provide temporary authority to the Secretary of Defense to waive collection of TRICARE payments made on behalf of certain individuals who were unaware of the requirement to obtain Part B coinsurance under Medicare in order to remain eligible for TRICARE actions underway by the Centers for Medicare and Medicaid Services to offer a new enrollment period for those individuals as a remedy to this matter.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Mr. LEVIN, proposes an amendment numbered 3210. The amendment is as follows:

(Purpose: To provide temporary authority for waiver of collection of payments due for CHAMPUS benefits received by disabled persons unaware of loss of CHAMPUS eligibility and continuation of such benefits)

At the end of subtitle B of title VII, insert the following:

SEC. 717. TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY DISABLED PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) AUTHORITY TO WAIVE DEBT.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, may waive (in whole or in part) the collection of payments otherwise due from a person described in subsection (b) for health benefits received by such person under section 1086 of title 10, United States Code, after the termination of that person's eligibility for such benefits.

(2) If the Secretary of Defense waives collection of payments from a person under paragraph (1), the Secretary may also authorize a continuation of benefits for such person under such section 1086 for a period ending not later than the end of the period specified in subsection (c) of this section.

(b) ELIGIBLE PERSONS.—A person is eligible for relief under subsection (a)(1) if—

(1) the person is described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) except for such paragraph, the person would have been eligible for the health benefits under such section; and

(3) at the time of the receipt of such benefits—

(A) the person satisfied the criteria specified in paragraph (2)(B) of such subsection (d); and

(B) the person was unaware of the loss of eligibility to receive the health benefits.

(c) PERIOD OF APPLICABILITY.—The authority provided under this section to waive collection of payments and to continue benefits shall apply, under terms and conditions prescribed by the Secretary of Defense, to health benefits provided under section 1086 of title 10, United States Code, during the period beginning on July 1, 1999, and ending at the end of December 31, 2004.

(d) CONSULTATION WITH OTHER ADMINISTERING SECRETARIES.—(1) The Secretary of Defense shall consult with the other administering Secretaries in exercising the authority provided in this section.

(2) In this subsection, the term ''administering Secretaries'' has the meaning given such term in section 1072(3) of title 10, United States Code.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3210) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3211

Mr. WARNER. Mr. President, on behalf of Senator ALLARD, I offer an amendment which clarifies that local stakeholder organizations working in cooperation with the Department of Energy after closure of environmental management sites will be made up of local elected officials and their designees.

This amendment, I believe, has been cleared on the other side.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. ALLARD, proposes an amendment numbered 3211.

The amendment is as follows:

(Purpose: To improve section 3120, relating to local stakeholder organizations for Department of Energy Environmental Management 2006 closure sites)

Strike section 3120 and insert the following:

SEC. 3120. LOCAL STAKEHOLDER ORGANIZATIONS FOR DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITES.

(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish for each Department of Energy Environmental Management 2006 closure site a local stakeholder organization having the responsibilities set forth in subsection (c).

(2) The local stakeholder organization shall be established in consultation with interested elected officials of local governments in the vicinity of the closure site concerned.

(b) COMPOSITION.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall be composed of such elected officials of local governments in the vicinity of the closure site concerned as the Secretary considers appropriate to carry out the responsibilities set forth in subsection (c) who agree to serve on the organization, or the designees of such officials.

(c) RESPONSIBILITIES.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall—

(1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site;

(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and Tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site;

(3) transmit to appropriate officers and employees of the Department of Energy questions and concerns of governments, persons, and entities referred to paragraph (2) on the closure and post-closure operations of the site; and

(4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.

(d) DEADLINE FOR ESTABLISHMENT.—The local stakeholder organization for a Department of Energy Environmental Management 2006 closure site shall be established not later than six months before the closure of the site.

(e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to local stakeholder organizations under this section.

(f) DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITE DEFINED.—In this section, the term ''Department of Energy Environmental Management 2006 closure site'' means each clean up site of the Department of Energy scheduled by the Department as of January 1, 2004, for closure in 2006.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3211) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3212

Mr. LEVIN. On behalf of Senator BYRD, I offer an amendment which would require the Secretary of Defense to increase the size of the acquisition workforce to address the huge management challenges that we face in this area.

I believe this amendment has been cleared on the other side.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. BYRD, proposes an amendment numbered 3212.

The amendment is as follows:

(Purpose: To require an increase in the size of the defense acquisition and support workforce during fiscal years 2005, 2006, and 2007)

On page 177, strike lines 14 through 24, and insert the following:

(b) INCREASE AND REALIGNMENT OF WORKFORCE.—(1)(A) During fiscal years 2005, 2006, and 2007, the Secretary of Defense shall increase the number of persons employed in the defense acquisition and support workforce as follows:

(i) During fiscal year 2005, to 105 percent of the baseline number (as defined in subparagraph (B)).

(ii) During fiscal year 2006, to 110 percent of the baseline number.

(iii) During fiscal year 2007, to 115 percent of the baseline number.

(B) In this paragraph, the term ''baseline number'', with respect to persons employed in the defense acquisition and support workforce, means the number of persons employed in such workforce as of September 30, 2003 (determined on the basis of full-time employee equivalence).

(C) The Secretary of Defense may waive a requirement in subparagraph (A) and, subject to subsection (a), employ in the defense acquisition and support workforce a lesser number of employees if the Secretary determines and certifies to the congressional defense committees that the cost of increasing such workforce to the larger size as required under that subparagraph would exceed the savings to be derived from the additional oversight that would be achieved by having a defense acquisition and support workforce of such larger size.

(2) During fiscal years 2005, 2006, and 2007, the Secretary of Defense may realign any part of the defense acquisition and support workforce to support reinvestment in other, higher priority positions in such workforce.

Mr. BYRD. Mr. President, it's difficult to imagine a subject that is more obscure and more arcane than the federal procurement process. At times, it seems as though an impenetrable fog hangs over government contractors, clouding the process by which taxpayer funds are awarded and spent.

Nowhere is the issue of federal procurement more clouded, more obscured from public scrutiny than in the Defense Department.

What little information makes it into the mainstream media usually reinforces the worst cliches about government waste. The stories are familiar. We have all heard them. They are a grotesque litany of negligence and greed.

We read that the Pentagon has awarded billions of dollars to a contractor to produce a new supersonic stealth fighter. Twenty aircraft come off the production line and hundreds more are planned—only then do we find out that nobody has tested the new fighter to see if it actually works.

We read of how a contractor has charged the Federal Government for products and services never provided, and then of how the government must engage in lengthy, costly efforts to get the taxpayers' money back.

And then there is the over-billing.

We read about Defense Department officials who must wrestle with contractors over inflated pricing of spare parts. A disputed bill for airplane parts in 1999 includes: $2,522 for a 4½-inch metal sleeve, $744 for a washer, $714 for a rivet, and $5,217 for a 1-inch metal bracket.

Whatever the excuses—and I am sure there are legions of them—it is unfathomable to me that, year after year, administration after administration, our Government continues to endure the waste of billions and billions of taxpayer dollars on incompetent and negligent defense contractors who continually fail to deliver products and services on time and at a cost commensurate with what they promised.

Even with our troops overseas in Iraq—where, in too many cases, some of their most basic needs for armor and food are going unaddressed—the Defense Department continues to tolerate enormous waste from its contractors. Not enough questions asked, not enough accountability required.

In March, the new inspector general of the U.S.-led authority in Iraq, with

colossal understatement, identified ''improper procedures and limited competition'' as ''issues of concern'' with regard to contractors in Iraq.

The Inspector General reported only 20 percent of the 1,500 contracts awarded last fiscal year—about $2 billion of the $10 billion in taxpayer funds awarded to defense contractors in Iraq—has been awarded through full and open competition.

The Inspector General noted that the Defense Contract Audit Agency has issued more than 187 audit reports related to nearly $7 billion in reconstruction work. These audits have found $133 million in questionable costs and $307 million in unsupported costs and have led to $176.5 million in suspended billings.

The Inspector General reported that the Defense Criminal Investigative Service has opened four bribery and corruption cases, four theft cases, two false claims cases, three weapons recovery cases, four counterfeit cases, and one conflict of interest case.

The Inspector General's report is the tip of an enormous and largely hidden iceberg. The Defense Department's contract oversight system is a sloppy, incomprehensible mess, and it has left the Defense Department with the unfortunate reputation of ignoring contractor rip-offs.

Procurement managers must be held accountable. Agency heads must be held accountable. Contracting officers must be held accountable. And, yet, they are not. The abuse and waste of the taxpayers' dollars is somehow allowed to continue.

The problem is attributable, in part, to the draconian staff cuts in the federal acquisition workforce. These are the civil servants who analyze proposed prices on bids, who keep tabs on cost overruns, who commit contractual fine print to memory so they can make sure requirements and standards are met. Since 1989, the number of these civil servants has been cut in half—one of the most dramatic reductions in the entire federal workforce since the end of the cold war.

Meanwhile, as procurement and contract oversight staffs have been shrinking, Defense's contracting activity has soared. It is now routine for the Pentagon to award multi-billion dollar contracts for logistics support for an entire weapon system or a host of support services for U.S. troops deployed in an overseas operation. These are the contracts the American public reads about most in the newspapers, where companies are alleged to have overcharged the taxpayers for fuel and meals supplied to U.S. troops in Iraq.

The Pentagon's Inspector General has rightly urged more vigilance by Defense auditors. But the Defense Department hasn't the staff or the resources to do it. Understaffed auditing agencies must pick and choose where to focus their resources. Likewise, the Congress remains woefully unprepared to oversee how taxpayer funds are being spent on defense contracts in Iraq and elsewhere. Congressional committees, along with the Defense Contract Audit Agency, the Inspector Generals' offices, and the Justice Department, do catch abuses, but not all of them.

All of this makes it increasingly tempting for companies to inflate their prices and to hide the real costs behind impenetrable contractual jargon.

Contractors have no incentive to contain costs. The more a contractor bills, the more money the contractor makes.

This is the dark side of acquisition. For all of the benefits and contributions provided by defense contractors—and there have been many contributions over the years—the lack of oversight makes it impossible for any Member of Congress to vote for additional defense dollars and honestly tell their constituents that those taxpayer funds will be well spent.

Every acquisition dollar frittered away on negligent contractors is one less taxpayer dollar available to support our troops. It is one more dollar that will be taken from our domestic needs here at home.

The American people should demand more from their Congress. They should demand better from their President.

We are asking men and women to make the ultimate sacrifice in Iraq and around the world. The food that nourishes them and the armor that shields them should not provide a blank check for avarice and imprudence.

I intend to offer an amendment that would require the Secretary of Defense to increase the size of the Pentagon's acquisition workforce. Under my amendment, the Secretary of Defense would be allowed to waive this required increase, but only if the Secretary can certify to the Congress that such an increase in the workforce would not yield sufficient savings to offset the cost of the additional personnel.

I recognize that the scope of the problems with the Pentagon's procurement system is larger than this amendment.

Gross waste, negligent oversight, and rampant abuse are embedded deep within our federal procurement system.

The procurement abuses that have been widely reported in Iraq—the allegations of favoritism, the lack of oversight, the fraudulent charges, the rampant waste—are common to other departments and agencies of the federal government.

Recently, far too much of the contracting debate has focused on individual agencies or individual contracts being negotiated by the administration. Many of them are important, but we also need to look at the bigger picture of what is wrong with the overall procurement process.

What is needed are comprehensive hearings by the Committees with jurisdiction, primarily the Senate Governmental Affairs and the Armed Services Committees, to identify the most serious problems and to make recommendations to fix them. Extensive hearings are needed not only to educate the Congress, but also the American public about the waste in the procurement system and the statutory changes needed to address them.

Comprehensive legislation should be reported to the full Senate, which should take the time necessary to debate the bill and to consider amendments.

It will require an enormous effort. It will require skilled legislators with an adroit understanding of the issues. At the end of the day, the procurement system should be transparent and open to public scrutiny and understanding it. In the meantime, I offer my amendment to help the administration better oversee the defense contractors it employs.

Each year, the Congress appropriates billions of taxpayer dollars to federal agencies to pay federal contractors with little means of ever fully accounting for how those funds are spent. Staff must be properly trained. Resources must be provided. Contractors must be held accountable to make sure they do their job right.

This is a common sense approach to a problem that has been ignored for far too long.

I urge the adoption of my amendment.

Mr. WARNER. The amendment has support on this side.

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

The amendment (No. 3212) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3169

Mr. WARNER. On behalf of Senators DOMENICI and BINGAMAN, I offer an amendment which clarifies how the Department of Energy, working with the contractor for the Los Alamos National Laboratory, will provide support for the Los Alamos public schools.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. DOMENICI and Mr. BINGAMAN, proposes an amendment numbered 3169.

The amendment is as follows:

(Purpose: To provide a substitute for section 3144, relating to support for public education in the vicinity of Los Alamos National Laboratory, New Mexico)

Strike section 3144 and insert the following:

SEC. 3144. SUPPORT FOR PUBLIC EDUCATION IN THE VICINITY OF LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

The Secretary of Energy shall require that the primary management and operations contract for Los Alamos National Laboratory, New Mexico, that involves Laboratory operations after September 30, 2005, shall contain terms requiring the contractor

under such contract to provide support to the Los Alamos Public School District, New Mexico, for the elementary and secondary education of students by the School District in the amount of $8,000,000 in each fiscal year.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3169) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3213

Mr. LEVIN. I offer an amendment requested by Mr. REED of Rhode Island as a technical clarification to section 1005 of S. 2400 to clarify the types of recreational programs that can be supported by this section.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. REED, proposes an amendment numbered 3213.

The amendment is as follows:

(Purpose: To clarify the programs of the service academies that may be subject to uniform funding and management)

Strike section 1005, and insert the following:

SEC. 1005. UNIFORM FUNDING AND MANAGEMENT OF SERVICE ACADEMY ATHLETIC AND RECREATIONAL EXTRACURRICULAR PROGRAMS.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 4359. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''4359. Athletic and recreational extracurricular programs: uniform funding.''.

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 6978. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Naval Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''6978. Athletic and recreational extracurricular programs: uniform funding.''.

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 9358. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''9358. Athletic and recreational extracurricular programs: uniform funding.''.

(d) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect on October 1, 2004, and shall apply with respect to funds appropriated for fiscal years beginning on or after such date.

Mr. WARNER. It has been cleared on this side. I urge its adoption.

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

The amendment (No. 3213) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3214

Mr. WARNER. I offer an amendment on behalf of Senator SESSIONS to authorize the Secretary of the Air Force to authorize the exchange of land at Maxwell Air Force Base, Alabama.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. SESSIONS, propose an amendment numbered 3214.

The amendment is as follows:

(Purpose: To authorize the exchange of land at Maxwell Air Force Base, Alabama)

On page 365, between lines 18 and 19, insert the following:

SEC. 2830. LAND EXCHANGE, MAXWELL AIR FORCE BASE, ALABAMA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the City of Montgomery, Alabama (in this section referred to as the ''City''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately ____ acres and including all of the Maxwell Heights Housing site and located at Maxwell Air Force Base, Alabama.

(b) CONSIDERATION.—(1) As consideration for the conveyance of property under subsection (a), the City shall convey to the United States all right, title, and interest of the City to a parcel of real property, including any improvements thereon, consisting of approximately 35 acres and designated as project AL 6–4, that is owned by the City and is contiguous to Maxwell Air Force Base, for the purpose of allowing the Secretary to incorporate such property into a project for the acquisition or improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code. The Secretary shall have administrative jurisdiction over the real property received under this subsection.

(2) If the fair market value of the real property received under paragraph (1) is less than the fair market value of the real property conveyed under subsection (a) (as determined pursuant to an appraisal acceptable to the Secretary), the Secretary may require the City to provide, pursuant to negotiations between the Secretary and the City, in-kind consideration the value of which when added to the fair market value of the property conveyed under subsection (b) equals the fair market value of the property conveyed under subsection (a).

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the City in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsections (a) and (b) shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under subsections (a) and (b) as the Secretary considers appropriate to protect the interests of the United States.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3214) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3215

Mr. LEVIN. On behalf of Senators SARBANES and MIKULSKI, I offer an amendment that would authorize a land exchange between the Navy and the State of Maryland at Patuxent River Naval Air Station.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. SARBANES, for himself and Ms. MIKULSKI, proposes an amendment numbered 3215.

The amendment is as follows:

(Purpose: To authorize a land conveyance, Naval Air Station, Patuxent River, Maryland)

At the end of subtitle C of title XXVIII, add the following:

SEC. 2830. LAND EXCHANGE, NAVAL AIR STATION, PATUXENT RIVER, MARYLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Maryland (in this section referred to as ''State''), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately five acres at Naval Air Station, Patuxent River, Maryland, and containing the Point Lookout Lighthouse, other structures related to the lighthouse, and an archaeological site pertaining to the military hospital that was located on the property during the Civil War. The conveyance shall include artifacts pertaining to the military hospital recovered by the Navy and held at the installation.

(b) PROPERTY RECEIVED IN EXCHANGE.—As consideration for the conveyance of the real property under subsection (a), the State shall convey to the United States a parcel of real property consisting of approximately five acres located in Point Lookout State Park, St. Mary's County, Maryland.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, relocation expenses incurred under subsection (b), and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

AMENDMENT 3215

Mr. SARBANES. Mr. President, this amendment would authorize a land exchange between the State of Maryland and the Naval Air Station, Patuxent River.

Specifically, the amendment directs the Secretary of the Navy to convey approximately 5 acres, including the Point Lookout Lighthouse and related facilities, as well as an archaeological site and recovered artifacts pertaining to the military hospital located on the property during the Civil War. In exchange, the State of Maryland would transfer a similar parcel to the Navy for the location of the new tracking station.

At present, the Navy's Range Theodolite Tracking System is located on an historic parcel at the edge of Point Lookout State Park in St. Mary's County, Maryland. Navy Range Operations operates and maintains support facilities in historically significant structures formerly associated with the operation Point Lookout Lighthouse. These facilities, which date to the 19th century, now house radio relay, range surveillance radar, and a Remote Emitter System, all of which are controlled at Cedar Point via fiber optic link. Over the years, the facilities have deteriorated and can no longer meet the critical needs of the Navy.

This amendment has the support of both the Navy and the State of Maryland. In fact, last year, the State made available $450,000 for the preservation and restoration of the lighthouse so that it might be incorporated into the park and open for public use.

In my view, this amendment represents a real win-win for both the Navy and the people of the State of Maryland. This transfer will ultimately result in overall cost-savings for the Navy—and the preservation of the structures and the historic site.

I am pleased that Senator MIKULSKI has joined me in cosponsoring the amendment. I urge my colleagues to join us in supporting its adoption.

Mr. WARNER. We accept on this side.

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

The amendment (No. 3215) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3165

Mr. WARNER. This is our final amendment. I offer an amendment on behalf of Senator COLEMAN, which would direct the Secretary of Defense to carry out a study on feasibility of the use of Camp Ripley National Guard Training Center in Minnesota as a mobilization station for Reserve components ordered to active duty.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. COLEMAN, proposes an amendment numbered 3165.

The amendment is as follows:

(Purpose: To require a study of establishment of mobilization station at Camp Ripley National Guard Training Center, Little Falls, Minnesota)

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. STUDY OF ESTABLISHMENT OF MOBILIZATION STATION AT CAMP RIPLEY NATIONAL GUARD TRAINING CENTER, LITTLE FALLS, MINNESOTA.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall carry out and complete a study on the feasibility of the use of Camp Ripley National Guard Training Center, Little Falls, Minnesota, as a mobilization station for reserve components ordered to active duty under provisions of law referred to in section 101(a)(13)(B) of title 10, United States Code. The study shall include consideration of the actions necessary to establish such center as a mobilization station.

Mr. LEVIN. The amendment has been cleared on this side.

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

The amendment (No. 3165) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT 3158

Ms. SNOWE. Mr. President, I rise today to speak in support of the amendment offered by Senators DORGAN, LOTT, FEINSTEIN and myself to refocus the provisions in the Fiscal Year 2002 Defense Authorization Bill that authorizes a base closure round in 2005 from our domestic installations to our overseas military infrastructure. I do so because I am firmly convinced that today, in this unprecedented era of our global war on terrorism, as we continue operations in Afghanistan to root out the seeds of terror, as we are engaged in ensuring a free Iraq in the heart of the Middle East, it makes no sense to consider closing nearly a quarter of our domestic military infrastructure in addition to the 21 percent already lost over the past 15 years here in America.

I arrive at this debate as a veteran of a number of issues key to our deliberations. First, I have been all too intimately acquainted with every base closure round since the first in 1988 as well as the accompanying pitfalls, failures and foibles of each—and believe me, there were many. Second, with 12 years as ranking member of the House Foreign Affairs International Operations Subcommittee, as chair of the subcommittee's Senate counterpart, as a former member of the Senate Armed Services Committee and former chair of the Seapower Subcommittee, I cannot and will not ignore the pattern I have discerned of a failure to ''connect'' critical ''dots'' in the past—and the implications of these shortfalls for our ability to project into the future.

For starters, having fought battle after battle after battle to preserve the former Loring Air Force Base in Maine, only to have criteria changed and added literally at the 11th hour, you can feel free to label me a ''skeptic'' when it comes to the integrity of the process. In fact, we had not one but two Air Force generals defending Loring

before the BRAC Commission but in a fundamental breach of confidence in the process, when they could not counter our strategic arguments for Loring, it was a brand new factor—so-called ''quality of life''—that tipped the scales against strategic location and military value at the very last moment when the Air Force claimed its facilities were ''well below average'' despite the fact that $300 million had been spent there over a 10 year period to replace or upgrade nearly everything on the base.

To date, 49 bases in the Northeast alone have been lost to BRAC while the region—closest to Europe of anywhere in the United States I might add—has already suffered about a 50 percent reduction in infrastructure under BRAC. And now further cuts are being discussed, when it was the northeast that suffered the worst attack ever on American soil? When 18 percent of America's population lives in that region? And when we know the Department of Homeland Security is not going to be building any bases—should we be considering closing the very military facilities that are required to protect the Nation?

The fact is, once our critical bases are lost, they are lost forever. In that light, given the transformational times in which we live, given the requirement to make fiscal year 2005 BRAC projections 20 years into the future, while the track record of 6 year projections in the past has been so poor, as I will illustrate, given these projections will be the foundation upon which all infrastructure assessments will be built, and given that I have never been convinced of the alleged cost savings resulting from BRAC—an underpinning of the effort to even have a BRAC process in the first place—I do not believe this BRAC round should proceed at this time.

Advocates of BRAC allege that billions of dollars will be saved, despite the fact that there is no consensus on the numbers among different sources. These estimates vary because, as the Congressional Budget Office explained in 1998, BRAC savings are really ''avoided costs.'' Because these avoided costs are not actual expenditures and cannot be recorded and tracked by the Department of Defense accounting systems, they cannot be validated, which has led to inaccurate and overinflated estimates of savings.

These estimated savings also do not include the very real costs of economic cleanup and financial assistance provided by Federal agencies to BRAC-affected communities and individuals. According to a 1998 report by the General Accounting Office, the unaccounted costs for environmental cleanup beyond the 6-year BRAC implementation period can exceed $2.4 billion and an additional $1.1 billion was in community assistance—and also not accounted for in the Department's estimated savings that result from BRAC.

That same General Accounting Office report also found that land sales from the first base closure round in 1988 were estimated by Pentagon officials to produce $2.4 billion in revenue; however, as of 1995, the actual revenue generated was only $65.7 million. That's about 25 percent of the expected value. This type of overly optimistic accounting establishes a very poor foundation for initiating a policy that will have a permanent impact on our national defenses, the military and the civilian communities surrounding these bases.

So the bottom line is, no one really knows what the bottom line is. But what most concerns me is the inadequacy of the military's threat assessment projections time after time accompanying the requirement included in the enacting BRAC legislation in 1991, that stipulates that the Secretary:

> shall include a force structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made.

I can say this because I have reviewed the military threat assessments contained in the force structure plans that the Department provided along with the justifications for the 1991, 1993 and 1995 BRAC rounds as well as other key assessments made by the Department during that time such as the 1993 Bottom Up Review, the 1997 Quadrennial Review and the 2001 Quadrennial Review. Specifically, I wondered, how did actual events and results match with their expectations? How did their threat assessments dovetail with new realities like ''terrorism,'' ''asymmetric threat,'' ''homeland security'' or ''homeland defense.'' I then went back a little more than 21 years ago to the bombing of the U.S. embassy in Beirut and looked at significant terrorist events directed against Americans throughout the world as chronicled by the State Department.

In the 1980's, American interests were clearly and constantly under attack—6 months after the embassy bombing in Beirut, we lost 242 brave Marines there to a suicide bomber. In 1985, TWA flight 847 was hijacked and a U.S. Navy diver, Robert Stethem was killed, and that October, four terrorists seized the *Achille Lauro* and killed Leon Klinghofer. In 1986, another two servicemen were killed and 79 American servicemen injured when a Berlin disco was bombed—my colleagues will recall this action resulted in President Reagan's launching of Operation El Dorado Canyon against Libya—and, tragically, in December of 1988, Pan Am 103 was destroyed over Lockerbie. Those are just a few of the significant incidents out of the 17 listed by the State Department in the 1980's in which Americans were the targets of terror.

Yet after all these events, let's look at what the four page 1991 BRAC military threat assessment submitted for the years 1992–1997 had to say:

> Threats to US interests range from the enmity of nations like North Korea and Cuba, to pressures from friend and foe alike to reduce US presence around the world.
>
> The most enduring concern for US leadership is that the Soviet Union remains the one country in the world capable of destroying the US with a single devastating attack.
>
> The Soviet state still will have millions of well armed men in uniform and will remain the strongest military force on the Eurasian landmass.
>
> While Iraq will require perhaps a decade to rebuild its military capabilities to pre-hostilities levels, Baghdad will likely remain a disruptive political force in the region.

As for terrorism, there was just a passing mention of the issue as an impediment to regional stability and the enhancement of democracy worldwide but no discussion of it in the context as a threat to the United States.

No mention of ''asymmetric threats,'' and no ''homeland security.''

Then, on February 26, 1993, the World Trade Center was badly damaged when a car bomb planted by Islamic terrorists exploded in an underground garage, leaving 6 people dead and 1,000 injured. Yet the military threat assessment contained in the 1993 BRAC report told us:

> The vital interests of the United States will be threatened by regional crises between historical antagonists such as North and South Korea, India and Pakistan and Middle East/Persian Gulf states.
>
> The future world military situation will be characterized by regional actors with modern destructive weaponry, including chemical and biological weapons, modern ballistic missiles and, in some cases, nuclear weapons.
>
> In the Middle East, competition for political influence and natural resources along with weak economies, Islamic fundamentalism and demographic pressures will contribute to deteriorating living standards and encourage social unrest.

Please note, now, in this report, oddly there is suddenly once again no mention of ''terrorism'' at all, and no ''asymmetric threat,'' no ''homeland security.''

Furthermore, the Bottom Up Review, a wide ranging review of strategy, programs and resources to delineate a national defense strategy, signed out in October 1993 described four new dangers to U.S. interests after the end of the Cold War:

> No. 1, The proliferation of nuclear and other weapons of mass destruction,
>
> No. 2, Aggression by major regional powers or ethnic and religious conflict,
>
> No. 3, Potential failure of democratic reform in the former Soviet Union, and
>
> No. 4, The potential failure to build a strong and growing US economy.

This report was issued just 8 months after that 1993 bombing of the World Trade Center, yet there was still no mention of ''asymmetric threat,'' no ''homeland security'' and just a passing reference to ''state-sponsored'' terrorism. And even at that, the World Trade Center bombing was not conducted by ''state-sponsored'' terrorists but rather the Sheikh Omar Rahman, a non-state-sponsored terrorist.

Back to the timeline, in March 1995 we see the Tokyo subway attack by the Aum-Shinrikyo cult using sarin gas, the same gas discovered in Iraq this

week, killed 12 and injured 5700 and, a month later, Timothy McVeigh and Terry Nichols destroyed the Federal Building in Oklahoma City with a truck bomb, killing 166 of our fellow citizens.

By contrast, I was astounded that the 1995 Force Structure Plan addressing threats from 1995 through 2001 was—other than the removal of a few sentences—the same as the 1993 BRAC threat assessment—so much for rigorous analysis. Still no ''terrorism,'' no ''asymmetric threat,'' and no ''homeland security''—and this less than 6 years before September 11th! Remember this BRAC round requires DoD to look outward 20 years!

In 1996, a fuel truck carrying a bomb exploded outside the Khobar Towers housing facility in Dhahran. The Global Security Environment piece of the 1997 Quadrennial Defense Review described the world as a highly dangerous place with a number of ''significant'' challenges facing the U.S. including:

> Foremost among these is the threat of coercion and large-scale, cross-border aggression against U.S. allies and friends in key regions by hostile states with significant military power.
>
> Second, despite the best efforts of the international community, states find it increasingly difficult to control the flow of sensitive information and regulate the technologies that can have military or terrorist uses.
>
> Third, as the early years of the post-Cold War period portended, U.S. interests will continue to be challenged by a variety of transnational dangers. . . . The illegal drug trade and international organized crime will continue to ignore our borders, attack our society, and threaten our personal liberty and well-being.
>
> Fourth, while we are dramatically safer than during the Cold War, the US homeland is not free from external threats. . . . In addition, other unconventional means of attack, such as terrorism, are no longer just threats to our diplomats, military forces, and private Americans overseas, but will threaten Americans at home in the years to come.

So by 1997, the Department was acknowledging the fact that terrorists using asymmetric means might attack the homeland—again, I might add yet it still remained a fourth tier concern for the Pentagon in spite of the continuing onslaught of terrorism around the world—and the 1993 bombing here at home.

Then, in 1998, two bombs exploded almost simultaneously outside US embassies in Kenya and Tanzania. In Aden, Yemen 2 years later, a small dingy carrying explosives rammed the USS *Cole*. And then, September 11th, 2001 changed our lives forever. What did the 2001 Quadrennial Defense Review—issued, I might add, 19 days after the attack—find? They found that ''as the September 2001 events have horrifically demonstrated, the geographic position of the United States no longer guarantees immunity from direct attack on its population, territory or infrastructure,'' and that ''the United States is likely to be challenged by adversaries who possess a wide range of capabilities, including asymmetric approaches to warfare, particularly weapons of mass destruction.''

That was an astute observation considering what happened 19 days before. And by the way, I also noted in examining the 80 page 2001 Quadrennial Defense Review the lack of any mention of al Qaeda by name—not once.

All this illustrates the significant dose of skepticism with which we should examine the current force structure plan and accompanying threat assessment submitted by the Department to justify the BRAC 2005 round—again, considering that we would now base decisions on a 20 year assessment, never mind just 6—and even the 6 year projections proved spotty at best—and considering the volatile times in which we live. And I have to say that what we received—over a month later than required by the BRAC legislation, I might add—is about what I expected—not much. Indeed, my sense is they took the assumptions made for the Future Year Defense Plan and simply extended them out to 2009.

Even after 20 years of constant terrorist attacks, the Defense Department still hasn't matched its force structures with the threats to our Nation. In fact, they avoided the entire issue of the threats this Nation will face over the next twenty years by claiming that today's security environment is ''impossible to predict, with any confidence, which nations, combinations of nations or non-state actors may threaten U.S. interests at home and abroad.''

And when the department claims they have adopted an approach to force development based on capabilities rather than threat-based requirements and will need a ''flexible, adaptive, and decisive joint capabilities that can operate across the full spectrum of military contingencies.''—what exactly does that mean? Is that the kind of bureaucratic ''gobbledygook'' and uncertainty upon which we should be considering closing our military bases. I do not think so and neither do other Americans. For example, retired Navy captain Ralph Dean succinctly observed in a recent Maine newspaper column that:

> Secretary of Defense Donald Rumsfeld released his 20-year force structure plan as an input to BRAC. Surprisingly, it showed virtually no changes in overall force structure during that long period. This may indicate that DoD is unable to make projections with any degree of certainty. This uncertainty must be addressed, because BRAC actions are irreversible.

Let there be no mistake, as the President has said, our global war on terror will be a long struggle that is just beginning. These are unconventional threats for an unconventional era—how can we possibly project outward 20 years to know our needs? At the same time, we are learning that quantity of troops matters—as DoD was forced to recalibrate and send an additional 20,000 troops to Iraq. Moreover, this very legislation before us would authorize an increase in the Army's end strength of 30,000 soldiers—yet we want to reduce our number of bases? Indeed, the BRAC 2005 force structure plan addresses neither the potential surge requirements we may face in this protracted struggle nor the need for more troops. In its May 2004 report, the GAO has said:

> The department must consider ongoing force transformation initiatives in its BRAC analysis as well as factor in relevant assumptions about the potential for future force structure changes—changes that will likely occur long after the timeframes for the 2005 BRAC round. This includes consideration of future surge requirements.

Frankly, there is even confusion between DoD and the services. On May 12, 2004 the Boston Globe reported the Navy is conducting an internal study and considering slashing its attack submarine force by as much as a third as they work toward their 2006 budget submission. This despite the fact that information we have been provided by the Navy indicates no changes in the Future Year Defense Plan.

Where is the coordination in assessing the threat or planning force structure needs? And what of the ''joint'' war-fighting plans that are still being developed? If BRAC decisions are based on untested and untried ''joint'' concepts, then DoD could well face limited options down the line because of limitations of facilities if all the anticipated efficiencies are not realized.

The Force Structure Plan clearly states the limits of their excess capacity analysis, saying:

> The results presented in this section cannot be used to project the number of potential BRAC closures or realignments that could be achieved in each installation category.

Without this projection, how are the savings from BRAC being estimated and what is driving the scope of BRAC? What is needed is a rigorous analysis that determines the number of BRAC closures or realignments that are expected to be achieved for each type of military installation.

Finally, the Pentagon was also instructed to consider the effects of overseas bases and joint tenancy in its assessment of excess capacity, and while the submitted Force Structure Plan tells us how many installations the US currently operates overseas, it provides no information about the number of bases and troops expected to be located overseas over the next 20 years or where these bases would be located nor does it detail the functions that are being considered for joint operations and how much efficiency is expected to be gained by these changes.

The amendment proposed by Senators DORGAN, LOTT, FEINSTEIN and myself ensure that Congress is provided with sufficient time to deliberate on what infrastructure is needed to provide for our Nation's security now and well into the future. While I would have preferred to cancel the process altogether, the amendment offered today ensures that these irrevocable decisions are made with sufficient deliberation. The amendment provides for an

expedited consideration by Congress for a domestic base closure round in 2007—after the completion of an overseas BRAC action.

The amendment is a recognition that the operation, sustainment, and recapitalization of unneeded overseas bases diverts scarce resources from the nation's defense capabilities and requires the Secretary of Defense to establish a management structure and initiate a process for eliminating excess physical capacity at overseas bases.

After conducting this review of overseas facilities, the Secretary would provide to Congress and the BRAC Commission a list of military installations, a detailing of the reassignments of troops and equipment from affected bases, and an estimate of the cost savings to be achieved. The Secretary would also be required to provide a certification whether a domestic round of BRAC would be necessary.

The BRAC Commission would then evaluate the Secretary's recommendations and provide an assessment of the extent that the Secretary accounted for the final report of the Commission on the Review of the Overseas Military Facility Structure of the United States, whether the Secretary maximized the amount of savings and whether a domestic BRAC round in 2007 is warranted.

After the BRAC Commission completes its work, there is a process for an expedited consideration of an additional domestic BRAC. The amendment requires a ''joint resolution'' be introduced within 10 days after the President transmits to Congress an approval and certification for a domestic base closure round. If passed by Congress, then within 15 days, the Secretary will publish in the Federal Register the selection criteria to be used and a schedule for the BRAC round, and the domestic BRAC would proceed as originally planned.

According to the Congressional Budget Office, the U.S. military has approximately 197,000 active-duty personnel stationed permanently outside the United States—that is 14 percent of our active duty military and 19 percent of the Army active-duty forces. And, while the Secretary of Defense has estimated an excess capacity of 29 percent in the Army domestic infrastructure, the Congressional Budget Office, in a May 2004 report on overseas basing has said:

> Because of the various rounds of base realignment and closure (BRAC) that have occurred since the late 1980s, the Army has little excess capacity at its bases to absorb so many additional troops and units.

And according to former DoD Comptroller Dov Zakheim:

> BRAC does . . . make it difficult to move our forces directly to where they ought to go if you don't want them to be overseas.

Most of these overseas troops are stationed in Germany and South Korea, where the United States currently maintains 330 bases at an estimated cost of $1.2 billion annually. The administration has raised a number of concerns about these forces, including the fact that Army forces in Germany may not be able to deploy quickly to conflicts in Africa or the Caspian Sea region of Central Asia. Additionally, many of the bases in South Korea, which were formerly isolated, are becoming increasingly surrounded by commercial and residential communities, leading to greater friction with the local communities and limiting the training that can be conducted.

The Congressional Budget Office has determined that removing the Army forces from Germany and South Korea and relocating them in the United States would not affect deployment times, make available 4,000 to 10,000 more troops for sustained overseas operations, and reduce family separation by 22 percent, improving troop morale and retention rates. These changes would also result in an estimated annual savings of $1.2 billion. More important than financial considerations, today's uncertain environment requires our troops to be more agile and mobile and the time is long past to reevaluate an overseas base structure that was developed to meet the threats of the Cold War.

Some people contend that the overseas basing decisions will be completed in time to be accounted for by the BRAC process. But the current legislation provides for the Commission on Review of Overseas Military Facility Structure of the United States to report on their findings to Congress no later than December 31, 2004—only 4½ months before the BRAC decisions are to be completed. This timeline does not allow the Department of Defense to fully account for these overseas facilities in their domestic BRAC analysis nor does it include any time to include any of the changes to the report that Congress may determine are necessary.

Significant changes are being considered for our overseas bases and forces and these decisions potentially have an enormous impact on our domestic base infrastructure. According to the Congressional Budget Office ''the need to house forces in the United States that are now stationed overseas could preclude some'' of the closures in the upcoming BRAC round.

I want to protect the military's critical readiness and operational assets. And I want to make absolutely sure that this nation maintains the military infrastructure it will require in the years to come to support the war on terror and protect our homeland. The amendment my colleagues and I have proposed today will ensure that the evaluation of military facilities by the Department of Defense, both overseas and within the United States, is conducted with rigor and in a deliberative, systematic manner. As Senator HUTCHISON correctly observed:

> It would be irresponsible to build on an inefficient, obsolete overseas base structure, as we face new strategic threats in the 21st century, taking valuable dollars needed elsewhere.

Likewise, it would be irresponsible to continue with a domestic BRAC without a complete understanding and evaluation of our overseas basing requirements. This amendment will allow Congress time to exercise its oversight responsibilities and ensure that these important decisions—which cannot be undone—are serving the Nation's interests.

In closing, I believe that we must give the Department the time it needs to conduct a legitimate analysis of our security environment and the underpinning force structure and infrastructure requirements. Therefore I urge my colleagues to support the amendment before us.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

SUPPORT FOR U.S. TROOPS

Mr. DASCHLE. Mr. President, earlier today I heard a particularly egregious comment made on the Senate floor that I cannot in good conscience allow to pass unchallenged.

If there is one individual whose support for our troops and their effort I never thought would be subject to attack, it is JOHN MURTHA.

I served with Representative MURTHA in the House. I know full well the honorable service he has rendered to his country. And I know how hard he labors every day to promote the interests of our nation and its citizens—in particular our men and women in uniform.

JOHN joined the Marine Corps during the Korean War, and he later volunteered to serve in Vietnam. His public service continued back home when he became the first combat Vietnam veteran elected to Congress. JOHN has been awarded both the Navy Distinguished Service Medal and the USO's Spirit of Hope Award.

As most know, Representative MURTHA was a strong advocate for the Iraq war. And not too long ago, my Republican colleagues were praising him for his position. But now that he has raised reasonable questions about how the war has been handled by the Administration, he is being accused of aiding our enemies.

There should be no room in our debate for such personal attacks.

JOHN MCCAIN. Max Cleland. And now JOHN MURTHA. All of these men honorably served our country, and all have had their character impugned.

JOHN MURTHA is an honorable man with a long history of public service. No one should question his dedication to our troops and their families, and to the national interest.

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 Enhancement 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.

On August 25, 2000, in Baton Rouge, LA, a jury convicted Quincy Powell of second-degree murder for the beating and stomping death of Michael Fleming, a gay man, in June 1999. Prosecutors said that Powell killed the victim because he was gay and subsequently referred to the victim at ''faggot Mike'' when he recounted the 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.

MARIANNE LAMONT HORINKO

Mr. INHOFE. Mr. President, I rise today to honor Marianne Lamont Horinko who currently serves as the Assistant Administrator of the Office of Solid Waste and Emergency Response at the Environmental Protection Agency. Marianne has served our Nation in that post since October 1, 2001, and just a few weeks from now will return to private life and to spend more time with her family.

As Assistant Administrator of OSWER, Marianne demonstrated outstanding leadership and has met the unprecedented challenges of a post September 11th America. Ms. Horinko realized the incredible challenges that lay before her just one month after the horrific attacks of that day. Immediately upon assuming office, Marianne refocused the traditional missions of OSWER from waste management and related reclamation work of contaminated sites to emergency response of historic proportions. She led the clean-up effort at Ground Zero in New York City and the Pentagon, a mission that no one could have contemplated before then and still haunts us today.

While managing the emergency response of the September 11th destruction, Congress itself was the victim of a cowardly anthrax biological attack. Facing yet another unprecedented event, Marianne led the emergency response and clean up effort not of a Superfund site, but of the Senate office buildings, and ensured that the Capitol community was safe from harm and helping Congress return to doing the work for the Nation.

In 2003, as National Program manager, Ms. Horinko oversaw EPA's response to the Columbia Space Shuttle Disaster. Again, Marianne charted a new course for OSWER and crafted the groundbreaking National Approach to Response.

Marianne has accepted challenge after challenge head on as Assistant Administrator of OSWER, and assumed responsibility when called upon. Not only did she exceed expectation in that role, but she also performed as acting administrator of the entire Environmental Protection Agency after the resignation of Governor Whitman.

Marianne has brought dynamic new approaches to environmental protection using partnerships, flexibility and innovation to create environmental improvements rather than the old command and control systems of the past. The Brownfields program, signed into law by President Bush in 2002, is just one of the many ways that Marianne's results-based leadership led to environmental protection.

Marianne Lamont Horinko proved to be one of the most diligent, dynamic, and outstanding leaders in the history of the Environmental Protection Agency. We thank her for her service to our Nation, and wish her all the best in her future pursuits.

ROSIE THE RIVETER

Mrs. BOXER. Mr. President, the famous poster of ''Rosie the Riveter,'' created by J. Howard Miller in 1943, was quite well known throughout America during World War II. The slogan on the poster—''WE CAN DO IT!''—captured the spirit and dedication of our Nation's women during World War II. ''Rosie the Riveter'' became a nickname for the women who entered the workforce during the war.

World War II profoundly changed the role and status of American women. During this war, over 6 million women joined the workforce, filling jobs that had been traditionally held by men. For the first time in history, women in large numbers worked to produce ships, planes, tanks, trucks, guns and ammunition that were essential to the war effort. They worked in factories while raising their kids—often by themselves as their husbands were fighting abroad.

In California, women worked in factories across the state, from the Douglas Aircraft Company plant in Long Beach to the Ford Assembly plant in Richmond, CA.

These women's contributions on the homefront were invaluable to our nation's victory in World War II. As we approach Memorial Day—and the dedication of the World War II Memorial—I want to express my gratitude to our Nation's ''Rosies'' for their effort in helping America win the war.

In 2000, Congress enacted legislation, introduced by Representative GEORGE MILLER, to create the Rosie the Riveter/World War II Home Front National Historical Park in Richmond, CA. Senator FEINSTEIN and I introduced the Senate companion bill.

Richmond, CA was chosen as the site since the city played a significant role in the World War II effort on the homefront. Fifty-six war industries operated in Richmond, and the Kaiser Shipyards produced more ships than any other shipyard in the United States. The Ford Assembly Plant prepared for shipment overseas more than 20 percent of all tanks and other combat vehicles used by the United States during World War II.

The Rosie the Riveter/World War II Home Front National Historical Park is the first park created to commemorate the contributions of men and women on the U.S. home front during World War II and to preserve the historic sites, structures and stories associated with World War II.

I am so pleased that the park, in partnership with Ford Motor Company and the National Park Foundation, has initiated a campaign to find ''Rosies'' across the country to collect their personal stories and memorabilia to share with future generations. I commend Ford Motor Company and the National Park Foundation for their efforts to preserve such an important piece of our history.

In this historic year—the 60th anniversary of D-Day—while we are honoring the Nation's veterans, let us not forget to honor the women whose contributions were critical to our success in World War II.

IN RECOGNITION OF OLDER AMERICANS MONTH

Mr. SARBANES. Mr. President, in 1963, President Kennedy began an important tradition of designating a time for our country to honor our older citizens for their many accomplishments and contributions to our Nation. I rise today to continue that tradition and recognize May as ''Older Americans Month.'' Those of us who have worked diligently in the U.S. Senate to ensure that older Americans are able to live in dignity and independence during their later years welcome this opportunity to pause and reflect on the contributions of those individuals who have played such a major role in shaping our great Nation. We honor them for their hard work and the countless sacrifices they have made throughout their lifetimes, and look forward to their continued contributions to our country's welfare.

In line with the theme of this year's Older Americans Month, ''Aging Well, Living Well,'' I want to take this opportunity to highlight the importance of quality and comprehensive health care for our seniors. They deserve nothing less. I have significant concerns about what the future holds in this regard. I voted against the Medicare Prescription Drug and Modernization Act of 2003, which is currently being phased in, because I believed it would jeopardize promises we as a Nation have made to seniors. Many of the concerns that I shared with a number

of my colleagues at that time and during the Senate's consideration of this measure are unfortunately now coming to fruition.

One of my principal concerns is that the new law will fail to provide a comprehensive, consistent and affordable prescription drug benefit to Medicare beneficiaries. And now as we look at the uncertainty of monthly premiums and incomplete coverage for drug costs under the new law, it is increasingly clear that corporate interests won out over the interests of the elderly. Indeed, at least 2.7 million retirees are expected to lose their existing retiree prescription drug benefits—which are of higher quality—and will instead have to use the Medicare drug benefit.

Moreover, I continue to be deeply concerned that existing Medicare beneficiaries will be forced into managed care organizations in order to receive substantial prescription drug benefits. Because of the recent history with Medicare+Choice plans, it has been suggested that requiring seniors to rely on the private market for coverage represents a significant threat to the very existence of Medicare as we have known it for the last 40 years.

On top of all of this, the Medicare trustees have predicted exhaustion of the Medicare Trust Fund 7 years earlier than previously predicted. With the rising costs of drugs and health care in general, and the implicit lack of means to reduce drug costs in the new law, we will be faced with hard decisions sooner than originally anticipated. Hopefully, the answer will not be to seek to decrease benefits.

To address these concerns, I am in favor of proposals to provide Medicare beneficiaries with full prescription drug coverage. In fact, a number of my colleagues and I supported legislation during the Senate's consideration of the Medicare overhaul that would have controlled drug prices by allowing our Government to negotiate directly with drug companies.

Unfortunately this amendment was defeated when it came to the Senate for a full vote, but I continue to work with my colleagues on this and other proposals in an effort to bring these prices under control.

In addition to health care access, our seniors deserve adequate protection through our Social Security Program. There are those who have suggested that to enable the Social Security fund to meet the expanding demand of our growing number of retirees, we should decrease benefits.

The key strength of the Social Security system is its guaranteed benefit and we must work to preserve it rather than diminish it. Social Security has been effective in improving the standard of living and reducing poverty among the elderly and disabled by providing an inflation-indexed, defined benefit no matter how long an individual lives. Throughout their lives, seniors have paid into a system with the understanding that their benefits will be there for them when they retire. We ought to uphold our end of the bargain and ensure that these benefits are available.

President Franklin Roosevelt signed the Social Security Act into law against a backdrop of increasing poverty among elderly Americans. President Roosevelt sought to give ''a measure of protection for the average citizen and to his family against the loss of a job and against poverty-ridden old age.'' In my view, the words of President Roosevelt should continue to guide our conscience.

America's Older Americans add great value to our Nation. We ought to take this month as an opportunity to show our appreciation for the value they add and redouble our efforts to support their needs.

RETIREMENT OF FRANCES PRESTON

Mr. LEAHY. Mr. President, I would like to take a moment to recognize the remarkable career of Frances Preston. When Ms. Preston began working for Broadcast Music Incorporated in Nashville in 1958, she had only one assistant and her office was her parents' garage. She soon saw the company grow to more than 400 employees in that city alone. In 1985, she became Senior Vice President, Performing Rights, and in 1986 she was named President and CEO of BMI.

Since 1958 when she joined BMI, Ms. Preston has been an invaluable resource to the entire music industry. Her steady and visionary leadership has spanned unprecedented industry growth and several revolutions in technology and popular culture. Over that time, she has overseen the development of BMI's nearly 4.5 million musical works and has delivered a royalty system that meets the needs of this massive repertoire. Fortune magazine has rightly called her ''one of the true powerhouses of the pop music business.''

And for more than two decades she has proven herself an equally invaluable resource for those of us in Washington who appreciate the unique importance of the community of songwriters, composers and publishers. She has testified frequently and has vigilantly defended the rights of these individuals. She has also been a key player in the debates regarding music in the digital age. Her dedication to the many participants in the music world, and her unfailing willingness to assist us in Congress in understating their concerns and issues, made her an incomparable asset as we tried to make sound policy and good law in the areas that matter most to music.

Along with her many professional accomplishments, she has devoted herself to a multitude of charitable efforts. Her charitable work ranges from serving as president of the T.J. Martell Foundation for Leukemia, Cancer and AIDS Research, to her work for Goodwill of Nashville. She has received numerous humanitarian awards, including a ''Woman of Achievement'' Award from the Society for the Advancement of Women's Health Research, the first Distinguished Service Award from New York's Elaine Kaufman Cultural Center, and the Lester Sill Humanitarian Award presented at the Retinitis Pigmentosa International Awards.

Ms. Preston's skill and passion will be greatly missed. It is a comfort to know that she will be staying on at BMI in the role of President Emeritus. I thank her for her efforts and wish her well in all her future endeavors.

ADDITIONAL STATEMENTS

TRIBUTE TO DR. OSWALD P. BRONSON, SR.

• Mr. NELSON of Florida. Mr. President, I want to pay tribute to an outstanding leader, administrator and advisor, Dr. Oswald Bronson, the retiring president of Bethune-Cookman College in Daytona Beach, FL.

Dr. Bronson's list of accomplishments, honors and contributions are long and distinguished. Because of Dr. Bronson, Bethune-Cookman has earned a national reputation for excellence in liberal arts education. In his 29 years at Bethune-Cookman, he doubled the enrollment, boosted its endowment from $1.2 million to $25 million, increased its economic impact on the community to $300 million and raised its operating budget to $45 million.

A recognized ''key power broker'' for the Nation's black colleges by Black Issues in Higher Education, Dr. Bronson advised President Clinton on higher education issues and served as chairman and president of several national, influential educational organizations, including the United Negro College Fund, the National Association for Equal Opportunity in Education and most recently the National Association of Independent Colleges and Universities.

And not only is Dr. Bronson a respected voice on higher education issues, but also a leading religious figure. He served as President of the Interdenominational Theological Seminary and President of the United Methodist Church Council of Presidents. As a pastor in three States, Dr. Bronson lectured and taught in numerous mission schools, pastoral institutes and leadership training seminars.

For his dedicated service and distinguished career, Dr. Bronson earned many honors including an honorary Doctor of Divinity Degree, and honorary Doctor of Laws degree and keys to several cities in Florida.

I am honored to call Dr. Bronson a friend and thank him for his remarkable tenure at Bethune-Cookman College and extraordinary contribution to our country. He will be missed, but I know he will continue to make a contribution.•

OHIO COUNTY HIGH SCHOOL

• Mr. BUNNING. Mr. President, I pay tribute and congratulate the students of Randy Brown for winning the ''Role of Citizen'' unit award at the national finals of We The People: The Citizen and the Constitution program. This class hails from Ohio County High School of Hartford, KY.

This program is run by the Center for Civic Education, a Los Angeles-based organization that strives to get students involved in government and civic affairs. The event simulates a congressional hearing whereby high school students testify as constitutional experts before a panel of judges.

The members of the winning class are: Jeffrey Ashby, Samantha Beck, Hannah Benton, Jonathan Brown, Crystal Clayton, Jeffrey Coulter, Amanda Critchelow, Jessica Culbertson, Lauren Danks, Shellena Davis-Roberts, Ashley Evans, Raven Evans, Judson Hunter, Savannah Johnson, Daniel Justice, Julie Leach, Brian Mayes, Mallory Nauman, Mallory Phelps. Lauren Pieper, Emily Renfrow, Anthony Rusher, Jonathan Shrewsbury, Ashton Variot, Chase Vincent, Amy Walsh, Meredith Ward, Bailey Westerfield, Britney Westerfield, and Emily Williams.

The citizens of Ohio County can be very proud of these students. Their achievement should be an inspiration to all throughout the entire Commonwealth of Kentucky. Congratulations.•

FRED F. ZELLER

• Mr. BOND. Mr. President, I wish to pay special tribute to Mr. Fred F. Zeller, the American Legion District 11 and 12 Legionnaire of the Year. Fred and the millions of other veterans that have served have earned our Nation's most sincere thanks for the service and sacrifices they rendered. It is their service that provided the umbrella of freedom under which we live today.

Mr. Zeller earned his eligibility to be a member of The American Legion by serving in the U.S. Navy in World War II as part of the greatest generation and has enjoyed 57 continuous years in The American Legion.

After being discharged from the Navy in 1946, Fred joined Post 225 in Ohio. He was transferred by his company to Minnesota in 1951 where he joined Post 257. He served on various committees, the executive board and Captain of the Color Guard and the Firing Squad for 8 years. His job took him to many places and he landed in Missouri and settled in St. Louis in 1978, becoming a member of Post III where he took part in all of the Post activities.

Fred is presently serving as Judge Advocate and President of G.A.P.L., the building and grounds part of the post. For sharing all of his knowledge, skill and hard work, Mr. Zeller was presented a gold card and life membership in 1999. Fred is a member of The Past Commanders Club, having served twice on the Executive board.

Fred exemplifies the true meaning of the word service. As you can see, Fred continued to serve long after he was discharged from the military and we should all be proud of his many accomplishments. Again, I wish to extend my most sincere thanks for Mr. Zeller's service and my congratulations to him on being chosen as Legionnaire of the Year.•

SISTER GERALDINE BERNARDS

• Mr. SMITH. Mr. President, I am proud to pay tribute today to a remarkable woman who is one of Oregon's true health care heroes. For the past 40 years, Sister Geraldine Bernards has devoted herself to the work of Maryville Nursing Home in Beaverton, OR. First as a nurse, then as director of nurses, and for the last 10 years as Administrator, Sister Geraldine has made a positive difference in the lives of countless Oregonians. Sister Geraldine will be retiring this summer, and before she does, I wanted to take the opportunity to share her inspiring story.

Founded in 1963, Maryville Nursing Home is owned and operated by the Sisters of St. Mary of Oregon, and offers ''service with love'' to the elderly. During the four decades of Sister Geraldine's service, Maryville has expanded to include an Alzheimer's unit, a physical therapy unit, an eye clinic, a dental clinic, an activities center, and a multi-purpose gathering center.

In her 10 years as Maryville's administrator, Sister Geraldine has initiated many valuable programs to guarantee quality health care and safety for the residents. Two courtyards have been enclosed, making them attractive and safe places for the residents to enjoy the outdoors with their families. A wireless phone system was introduced which enables nurses to be contacted immediately anywhere in the facility. A security system has been installed. New patient lifts were purchased. The volunteer program has seen a tripling in the number of participants, and a full time director of volunteers has been hired.

Some of the most inspiring words about Sister Geraldine come from those who know her best. Activity Director Hilee Jackson says that Sister Geraldine is ''consumed by making sure that others' needs are met.'' Terry Shrum, Quality Assurance Director, says ''Sister Geraldine would do anything for anyone.''

It is a fitting tribute to her lifetime of service that a Sister Geraldine Bernards Continuing Education Fund is being established to provide financial resources for on-going career education in the fields of health care and early childhood development.

I am proud to join with many other Oregonians in saluting the work of this true health care hero, and I wish her many more years of health and happiness.•

RECOGNIZING THE WORK OF ARTHUR PRATT

• Mr. LUGAR. Mr. President, I want to share with my colleagues a few highlights from the remarkable lifetime of leadership and good works displayed by Mr. Arthur Pratt, the founder and leader of Life Effectiveness Training in Indianapolis, IN.

Over the past 35 years, Mr. Pratt has been a dedicated leader in going into prisons around the country and assisting drug addicted men and women break their dependence on mind altering substances. His work has improved countless lives and the success is particularly evident in the reduced recidivism rates of the prisoners who have completed his program. His expertise and active contributions were the impetus behind legislation that I sponsored and passed requiring at least ten percent of all money allocated to Residential Substance Abuse Treatment programs to be allocated to programs in the jails.

Currently, at the age of 80, Mr. Pratt is a continual voice in advocating proven treatment service for our Nation's state and county jails. Yearly, his program provides approximately 250 alcoholics and drug addicts 90 days of treatment in Marion County Jails. Of the more than 7,000 people he has treated, over two-thirds have not been subsequently arrested. Through Life Effectiveness Training, he counters addiction and recidivism using a tested program that instills strength and confidence in their lives.

Arthur Pratt has dedicated his life to public service, and I am pleased to have this opportunity to congratulate him on his many worthwhile accomplishments.•

OUR PRECIOUS GIFT OF FREEDOM

• Mr. CRAPO. Mr. President, in a few days, a very special dedication will be held a short distance from here. Thanks to the diligence, commitment, and hard work of many people across the United States, our Nation's capital will officially be the proud home to the long-overdue World War II Memorial. It is definitely a time for celebration—a celebration of freedom, life, and honor, a celebration of the United States of America. Most of all, it is a celebration of all the soldiers and citizens who gave life and limb during the early years of the 1940s.

Idaho is home to many World War II veterans. This Memorial Day weekend, those veterans, along with veterans from every State and others who helped at home and abroad, can celebrate a very special Memorial Day. Many fought and many died to defend the United States in a war that ended 59 years ago. Sixteen million served, and 400,000 did not return to families and friends. Each one of these lives increased the value of our citizenship exponentially and immeasurably. This memorial, the design of which was selected after careful review of 400 submissions, stands as a reminder of the

sacrifice of many. It is a most profound honor to their memory.

Watching the evening news is a sobering reminder of what this memorial stands for. It represents freedom from tyranny, peace and justice for all people, bravery in the face of terror and death, and love for America that surpasses words while challenging complacency. The World War II Memorial has an important role to play in teaching us about the price of freedom. It reminds each one of us that we cannot take our United States citizenship lightly. It calls on us to be vigilant in preserving those freedoms as those who have gone before have done with such conviction and singleness of purpose. Many veterans know all too well the physical and emotional challenges that the current generation of military personnel and their families are facing. Their wisdom, insight, and experience will help those who themselves are brand new veterans. These young men and women face the same challenges that others did over half a century ago. This memorial serves as a reminder of the debt of honor and gratitude we owe all veterans. We have a responsibility to care for them and, in our national leadership roles, we must take steps which do the most to support these brave defenders of our freedom.

This memorial represents those who have given life and limb in military service, and it also reminds all Americans of the gift of immeasurable cost—the gift of freedom—that the lives of brave men and women have purchased for all of us. And I can think of no better reason to celebrate.●

HONORING P.J. KEELEY

● Mr. DURBIN. Mr. President, I wish to honor P.J. Keeley, a great husband and father, a fine grandfather, and an outstanding golfer, on the eve of his 75th birthday.

It's appropriate that P.J. is turning 75 this year, having shot an impressive round of 75 on the links in March.

P.J. Keeley married Elizabeth L. Holten Keeley on February 3, 1951, and had 10 children by that union. In addition, P.J. has 24 grandchildren and one great grandchild.

After the death of his wife, Betty, P.J. married Virginia McKee Keeley on August 22, 1998.

P.J.'s passion is golf. In the course of his golfing career, P.J. Keeley won 16 championships at St. Clair Country Club in Belleville, IL. He won his first championship in 1958, at the age of 16, and his last championship in 1987 at the age of 58.

In addition to being an avid golfer, P.J. is an Army veteran who has honorably served his country.

P.J. Keeley served as president of Keeley & Sons, Inc., a well-known highway construction firm, for 23 years, from 1967 through 1989. Keeley & Sons was founded in 1947. In addition, P.J. was president of the Associated General Contractors of Illinois for two terms. Throughout my life, the name Keeley has been synonymous with construction in Southwestern Illinois.

I congratulate P.J. Keeley on the occasion of his 75th birthday and wish him many more years of happiness and accomplishment, both on and off the golf course.●

MESSAGE FROM THE HOUSE

At 3:16 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 bills, in which it requests the concurrence of the Senate:

H.R. 2728. An act to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration; and to amend the Paperwork Reduction Act and titles 5 and 31, United States Code, to reform Federal paperwork and regulatory processes.

H.R. 3740. An act to designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the ''Oscar Scott Woody Post Office Building''.

H.R. 4176. An act to designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the ''Bobby Marshall Gentry Post Office Building''.

MEASURES REFERRED

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

H.R. 3740. An act to designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the ''Oscar Scott Woody Post Office Building''; to the Committee on Governmental Affairs.

H.R. 4176. An act to designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the ''Bobby Marshall Gentry Post Office Building''; to the Committee on Governmental Affairs.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 2728. An act to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration.

S. 2448. A bill to coordinate rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with other Federal laws.

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–7565. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense, transmitting, pursuant to law, the Fiscal Year Defense Environmental Restoration Program report; to the Committee on Armed Services.

EC–7577. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''2002 Farm Bill Regulations—Loan Eligibility Provisions'' (RIN0560–AG81) received on May 12, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7578. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Farm Loan Programs Account Servicing Policies—Elimination of 30-Day Past Due Period'' (RIN0560–AG50) received on May 12, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7579. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Phosphomannose Isomerase and the Genetic Material Necessary for Its Production in All Plants; Exemption from the Requirement of a Tolerance'' (FRL#7358–9) received on May 14, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7580. A communication from the Acting Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense, transmitting, pursuant to law, a report entitled ''Report on Activities and Programs for Countering Proliferation and NBC Terrorism''; to the Committee on Armed Services.

EC–7581. A communication from the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–7582. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations: 69 FR 12084'' (FEMA–B–7744) received on May 12, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7583. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations: 69 FR 12081'' (44 CFR 65) received on May 12, 2004 ; to the Committee on Banking, Housing, and Urban Affairs.

EC–7584. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, the report of a transaction involving U.S. exports to Algeria; to the Committee on Banking, Housing, and Urban Affairs.

EC–7585. A communication from the Director, Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Rule; Extension of Effective Date; Risk-Based Capital Guidelines, Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets'' (RIN3064–AC74) received on May 12, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7586. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Secretary, Department of Housing and Urban Development received on May 12, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7587. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development received on May 12, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7588. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Public Affairs, Department of Housing and Urban Development received on May 12, 2004; to the Committee on Banking , Housing, and Urban Affairs.

EC–7589. A communication from the Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report relative to research on cabin air quality; to the Committee on Commerce, Science, and Transportation.

EC–7590. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Closure of Directed Fishing for Pacific Cod by Catcher/Processor Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area'' received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7591. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fishery Closure; Prohibiting Directed Fishing for Pollock in Statistical Area 610 of the Gulf of Alaska'' received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7592. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Closing Pacific Cod by Catcher/Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area'' received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7593. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeaster United States; Summer Flounder; 2004 Specifications; Commercial Quota Restoration'' received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7594. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fishery Closure; Prohibiting Directed Fishing for Species That Comprise the Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska (GOA)'' received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7595. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule; Final 2004 Specifications, and Preliminary Quota Adjustment; Notification of 2004 Commercial Summer Flounder Quote Harvest for Delaware'' (RIN0648–AQ80) received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7596. A communication from the Assistant Chief Counsel, Transportation Security Administration, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Protection of Sensitive Security Information'' (RIN1652–AA08) received on May 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7597. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Extension of Amended Special Regulations for the Preble's Meadow Jumping Mouse'' (RIN1018–AJ26) received on May 14, 2004; to the Committee on Energy and Natural Resources.

EC–7598. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Santa Ana Sucker (Catostomus Santaanae)'' (RIN1018–AJ26) received on May 14, 2004; to the Committee on Energy and Natural Resources.

EC–7599. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Astragalus Pycnostachyus var. Lanosissimus (Ventura Marsh Milk—Vetch)'' (RIN1018–AJ26) received on May 14, 2004; to the Committee on Energy and Natural Resources.

EC–7600. A communication from the Secretary of Energy, transmitting, a draft of proposed legislation to amend section 161k of the Atomic Energy Act to provide executive protection authorities for the Department of Energy (DOE) Federal protective force; to the Committee on Energy and Natural Resources.

EC–7601. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District'' (FRL#7657–3) received on May 12, 2004; to the Committee on Environment and Public Works.

EC–7602. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation; State of Missouri'' (FRL#7661–4) received on May 12, 2004; to the Committee on Environment and Public Works.

EC–7603. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District'' (FRL#7659–8) received on May 12, 2004; to the Committee on Environment and Public Works.

EC–7604. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Control of Emissions of Air Pollution from Non Road Diesel Engines and Fuel'' (FRL#7662–4) received on May 12, 2004; to the Committee on Environment and Public Works.

EC–7605. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''HAS/FSA/HRA Interaction'' received on May 14, 2004; to the Committee on Finance.

EC–7606. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Section 601.204: Changes in Accounting Periods and in the Method of Accounting'' (Rev. Proc. 2004–33) received on May 14, 2004; to the Committee on Finance.

EC–7607. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Weighted Average Interest Rate Update Notice—Pension Funding Equity Act of 2004'' (Notice 2004–40) received on May 14, 2004; to the Committee on Finance.

EC–7608. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Section 602.204: Changes in Accounting Periods and in Methods of Accounting'' (Rev. Proc. 2004–32) received on May 14, 2004; to the Committee on Finance.

EC–7609. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Examination of Returns and Claims for Refund, Credit, or Abatement; Determination of Correct Tax Liability'' (Rev. Proc. 2004–26) received on May 14, 2004; to the Committee on Finance.

EC–7610. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Reduction of Tax Attributes Due to Discharge of Indebtedness'' (RIN1545–BC47) received on May 14, 2004; to the Committee on Finance.

EC–7611. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—March 2004'' (Rev . Rule 2004–48) received on May 14, 2004; to the Committee on Finance.

EC–7612. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''RIC REPOs'' (Rev. Proc. 2004–28) received on May 14, 2004; to the Committee on Finance.

EC–7613. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''REMIC Inducement Fees Automatic Method Change'' (Rev. Proc. 2004–30) received on May 14, 2004; to the Committee on Finance.

EC–7614. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''TD: Real Estate Mortgage Investment Conduits: Application of Section 446 With Respect to Inducement Fees'' (RIN1545–BB73) received on May 14, 2004; to the Committee on Finance.

EC–7615. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Advance Payment Revenue Procedure'' (Rev. Proc. 2004–34) received on May 14, 2004; to the Committee on Finance.

EC–7616. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Implementation of Notice Provisions of Section 102 of H.R. 3108'' (Ann. 2004–43) received on May 14, 2004; to the Committee on Finance.

EC–7617. A communication from the Acting Chief, Publications and Regulations Branch,

Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Section 1.45–1; Taxable Year of Inclusion'' (Rev. Rule 2004–52) received on May 14 , 2004; to the Committee on Finance.

EC–7618. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Guidance Under Section 1504(a)(C) and (D) Regarding Affiliation'' (Notice 2004–37) received on May 14, 2004; to the Committee on Finance.

EC–7619. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Changes in Method of Accounting for Transfers to 461(f) Trusts'' (Rev. Proc. 2004–31) received on May 14, 2004; to the Committee on Finance.

EC–7620. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Section 601–204 Changes in Accounting Periods and in the Method of Accounting'' (Rev. Proc. 2004–33) received on May 14, 2004; to the Committee on Finance.

EC–7621. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to information on U.S. military personnel and U.S. individual civilians retained as contractors involved in the anti-narcotics campaign in Colombia; to the Committee on Foreign Relations.

EC–7622. A communication from the Director, Office of Inspector General, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Eligibility of Suspended Health Care Providers to Receive Payment of Federal Employees Health Benefits Program Funds; Financial Sanctions of Health Care Providers Participating in the Federal Employees Health Benefits Program'' (RIN3206–AJ42) received on May 12, 2004; to the Committee on Governmental Affairs.

EC–7623. A communication from the Director, Office of Inspector General, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Changes in Health Benefits Enrollment'' (RIN3206–AK04) received on May 12, 2004; to the Committee on Governmental Affairs.

EC–7624. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15–419, ''Practice of Naturopathic Medicine Licensing Amendment Act of 2004''; to the Committee on Governmental Affairs.

EC–7625. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15–420, ''Mount Vernon Triangle Business Improvement District Temporary Amendment Act of 2004''; to the Committee on Governmental Affairs.

EC–7626. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''Official Seals and Logos'' (RIN3095–AB19) received on May 12, 2004; to the Committee on Governmental Affairs.

EC–7627. A communication from the Secretary of Labor, transmitting, pursuant to law, a report entitled ''The Department of Labor's 2003 Findings on the Worst Forms of Child Labor''; to the Committee on Health, Education, Labor, and Pensions.

EC–7628. A communication from the Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled ''Underground Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed'' (RIN1219–AA76) received on May 12, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–7629. A communication from the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor'' (RIN1291–AA21) received on May 12, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–7630. A communication from the Assistant Secretary for Indian Affairs, Division of Transportation, Bureau of Indian Affairs, transmitting, pursuant to law, the report of a rule entitled ''Distribution of Fiscal Year 2004 Indian Reservation Roads Funds'' (RIN1076–AE50) received on May 14, 2004; to the Committee on Indian Affairs.

EC–7631. A communication from the Chairman, Dwight D. Eisenhower Memorial Commission, transmitting, pursuant to law, the Commission's Report; to the Committee on Rules and Administration.

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 Ms. COLLINS (for herself, Mr. LEVIN, Mr. CHAFEE, Mr. LIEBERMAN, Mr. AKAKA, Mr. SARBANES, and Ms. MIKULSKI):

S. 2438. A bill to amend title 31, United States Code, to provide Federal Government employees with bid protest rights in actions under Office of Management and Budget Circular A-76, and for other purposes; to the Committee on Governmental Affairs.

By Mrs. HUTCHISON (for herself, Mr. FRIST, and Mr. CORNYN):

S. 2439. A bill to award a congressional gold medal to Michael Ellis DeBakey, M.D; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MCCAIN:

S. 2440. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study of certain land adjacent to the Walnut Canyon National Monument in the State of Arizona; to the Committee on Energy and Natural Resources.

By Mr. BOND (for himself and Mr. TALENT):

S. 2441. A bill to designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the ''General John J. Pershing Post Office''; to the Committee on Governmental Affairs.

By Mr. BOND (for himself and Mr. TALENT):

S. 2442. A bill to designate the facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, as the ''Richard G. Wilson Processing and Distribution Facility''; to the Committee on Governmental Affairs.

By Mr. HATCH (for himself, Mr. KYL, Mr. CORNYN, Mr. SESSIONS, and Mr. CHAMBLISS):

S. 2443. A bill to reform the judicial review process of orders of removal for purposes of the Immigration and Nationality Act; to the Committee on the Judiciary.

By Mr. SCHUMER:

S. 2444. A bill to amend the Controlled Substances Act to treat drug offenses involving crystal meth similarly to drug offenses involving crack cocaine; to the Committee on the Judiciary.

By Mr. EDWARDS:

S. 2445. A bill to amend the Federal, Food, Drug, and Cosmetic Act relating to direct-to-consumer prescription drug advertising; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN:

S. 2446. A bill to amend the Harmonized Tariff Schedule of the United States to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved does not include the weight of the preservative materials of the cherries; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mr. BROWNBACK, Mrs. CLINTON, Mr. SANTORUM, and Ms. LANDRIEU):

S. 2447. A bill to amend the Public Health Service Act to authorize funding for the establishment of a program on children and the media within the National Institute of Child Health and Human Development to study the role and impact of electronic media in the development of children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GREGG:

S. 2448. A bill to coordinate rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with other Federal laws; read the first time.

By Mr. BAUCUS (for himself, Mr. ROBERTS, and Mr. ENZI):

S. 2449. A bill to require congressional renewal of trade and travel restrictions with respect to Cuba; to the Committee on Finance.

By Mr. CAMPBELL:

S. 2450. A bill to amend title 10, United States Code, to revise the requirements for award of the Combat Infantryman Badge and the Combat Medical Badge with respect to service in Korea after July 28, 1953; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWNBACK (for himself and Mr. BINGAMAN):

S. Res. 365. A resolution expressing the sense of the Senate regarding the detention of Tibetan political prisoners by the Government of the People's Republic of China; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 569

At the request of Mr. ENSIGN, the name of the Senator from California (Mrs. BOXER) 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. 847

At the request of Mr. SMITH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 884

At the request of Ms. LANDRIEU, the name of the Senator from Washington

(Mrs. MURRAY) was added as a cosponsor of S. 884, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 985

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1368

At the request of Mr. LEVIN, the names of the Senator from Vermont (Mr. LEAHY), the Senator from New York (Mr. SCHUMER), the Senator from Wisconsin (Mr. KOHL) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 1368, a bill to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

S. 1733

At the request of Mr. KOHL, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1733, a bill to authorize the Attorney General to award grants to States to develop and implement State court interpreter programs.

S. 1900

At the request of Mr. LUGAR, the names of the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 1900, a bill to amend the African Growth and Opportunity Act to expand certain trade benefits to eligible sub-Saharan African countries, and for other purposes.

S. 1957

At the request of Mr. BINGAMAN, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1957, a bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes.

S. 2275

At the request of Ms. MIKULSKI, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2275, a bill to amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to provide for homeland security assistance for high-risk nonprofit organizations, and for other purposes.

S. 2321

At the request of Mr. BYRD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2321, a bill to amend title 32, United States Code, to rename the National Guard Challenge Program and to increase the maximum Federal share of the costs of State programs under that program, and for other purposes.

S. 2338

At the request of Mr. BOND, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2365

At the request of Mr. COLEMAN, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 2365, a bill to ensure that the total amount of funds awarded to a State under part A of title I of the Elementary and Secondary Act of 1965 for fiscal year 2004 is not less than the total amount of funds awarded to the State under such part for fiscal year 2003.

S. 2389

At the request of Mr. ENSIGN, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 2389, a bill to require the withholding of United States contributions to the United Nations until the President certifies that the United Nations is cooperating in the investigation of the United Nations Oil-for-Food Program.

S. 2437

At the request of Mr. ENSIGN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2437, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S.J. RES. 36

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S.J. Res. 36, a joint resolution approving the renewal of import restrictions contained in Burmese Freedom and Democracy Act of 2003.

S. RES. 221

At the request of Mr. SARBANES, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. Res. 221, a resolution recognizing National Historically Black Colleges and Universities and the importance and accomplishments of historically Black colleges and universities.

S. RES. 313

At the request of Mr. FEINGOLD, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Res. 313, a resolution expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to coordinate with implementing partners in creating an online database of international exchange programs and related opportunities.

S. RES. 362

At the request of Mr. GRAHAM of Florida, the names of the Senator from Kansas (Mr. ROBERTS) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. Res. 362, a resolution expressing the sense of the Senate on the dedication of the National World War II Memorial on May 29, 2004, in recognition of the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served in World War II.

AMENDMENT NO. 3151

At the request of Mr. LAUTENBERG, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from New York (Mrs. CLINTON) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 3151 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3154

At the request of Mr. FEINGOLD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 3154 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction , and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3169

At the request of Mr. DOMENICI, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 3169 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction , and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mr. LEVIN, Mr. CHAFEE, Mr. LIEBERMAN, Mr. AKAKA, Mr. SARBANES, and Ms. MIKULSKI):

S. 2438. A bill to amend title 31, United States Code, to provide Federal Government employees with bid protest rights in actions under Office of Management and Budget Circular A–76, and for other purposes; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President, competitive sourcing is the process by which the Federal Government conducts a competition to compare the

cost of obtaining a needed commercial service from a private sector contractor rather than from Federal employees. Properly conducted, competitive sourcing can be an effective tool to achieve cost savings. Poorly utilized, however, it can increase costs and hurt the morale of the Federal workforce.

The current guidelines under which agencies conduct these competitions are contained in the Office of Management and Budget's (OMB) Circular A–76 (A–76). To ensure that we maximize the benefit and minimize the cost of competitive sourcing, A–76 competition must be conducted in a carefully crafted manner. The rules under which they take place must be fair, objective, transparent, and efficient. In one particular regard, I believe the current rules fail to meet these criteria.

Specifically, they do not allow Federal employees to protest the agency's decisions in an A–76 competition beyond the agency's own internal review processes to the General Accounting Office (GAO). Congress has vested in the GAO the jurisdiction to hear and render opinions in protests of agency acquisition decisions generally. Private sector contractors, in contrast to federal employees, have standing to protest agency procurement decisions, including those in A–76 competitions, before GAO. Today, along with my distinguished colleague, Senator LEVIN, I am introducing legislation to correct this imbalance by providing Federal employees with standing to protest A–76 decisions to GAO.

The current situation does not arise from any conscious policy decision of Congress, GAO or OMB. Rather, it occurs because the Federal statute that confers protest jurisdiction upon GAO, the Competition in Contracting Act of 1984 or ''CICA,'' was not drafted to address the unique nature of A–76 competitions, in particular, the role of Federal employees in the ''Most Efficient Organization'' or ''MEO,'' which is the in-house side of these competitions. This was not deliberate—this particular circumstance for protest was simply not contemplated by Congress when drafting CICA.

Recent revisions to A–76 created the potential for GAO to review past decisions by Federal courts and revisit its own opinions to see whether the revisions would merit a determination that Federal employees had gained standing to protest adverse A–76 competition decisions. However, a recent GAO protest decision indicates that GAO has concluded it lacks the authority under CICA to hear protests from Federal employees in the MEO in these competitions. As a result, corrective legislative action has become necessary in our view.

Our bill would extend GAO protest rights on behalf of the MEO in A–76 competitions to two individuals. The first is the Agency Tender Official or ''ATO.'' The ATO is the agency official who is responsible for developing and representing the Federal employees' MEO. The second is a representative chosen directly by the Federal employees in the MEO for the purposes of filing a protest with GAO where the ATO does not, in the view of a majority of the MEO, fulfill his or her duties in regards to a GAO protest.

As I mentioned, the rules under which these competitions are run must be fair. In addition to being objectively fair, however, I think they must also be perceived as fair by all parties. If the private sector perceives the rules to be unfair, they will decline to participate in competitive sourcing competitions, and the Federal Government will enjoy less competition in its acquisitions. If Federal employees perceive the rules to be unfair, there will be less interest in Federal employment at a time when we are all concerned about the Federal Government's human capital challenges. As the congressionally established Commercial Activities Panel noted in its report on competitive sourcing, the lack of GAO protest rights for Federal employees was one of the most often-heard complaints about the A–76 rules. Providing them with protest rights that are similar to those enjoyed by the private sector is, I think, vital to assuring Federal employees that the rules of the game are fair to them.

The rules must also be efficient. There are three interests that are served by A–76 rules that ensure a speedy process with finality. The Federal Government benefits by enjoying the benefits and efficiencies of competitive sourcing sooner rather than later. Federal workers benefit in that they spend less time having to worry about the outcome of these competitions, which can be stressful as they create uncertainty about employees' employment situations. Finally, because time is money in the private sector, private contractors will benefit by spending less time on competitions as well. In my view, having Federal employees vote to choose a representative to protest when they are dissatisfied with the ATO should achieve the maximum efficiency possible while respecting Federal employees' interests.

In the end, our intent is to bolster the A–76 process by providing a mechanism for Federal employees to seek redress from GAO, an entity that is well known for its fair, effective and expert handling of acquisition protests.

By Mrs. HUTCHISON (for herself, Mr. FRIST, and Mr. CORNYN):

S. 2439. A bill to award a congressional gold medal to Michael Ellis DeBakey, M.D.; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. HUTCHISON. Mr. President, I rise today to acknowledge the lifetime achievements of Dr. Michael Ellis DeBakey, a public servant and world-renowned cardiologist, by offering legislation to award him the Congressional Gold Medal.

When he was only 23 years of age and still attending medical school, Dr. DeBakey accomplished what would be the first of many life saving accomplishments. He successfully developed a roller pump for blood transfusions—the precursor and major component of the heart-lung machine used in the first open-heart operation. This device later led to national recognition for his expertise in vascular disease.

Like many Americans of his generation, Dr. DeBakey put his practice on hold and volunteered for military service during World War II with the Surgeon General's staff. During this time, he received the rank of Colonel and chief of Surgical Consultants Division.

As a result of his military and medical experience, Dr. DeBakey made numerous recommendations to improve the military's medical procedures. His efforts led to the development of mobile army surgical hospitals, better known as MASH units, which earned him the Legion of Merit in 1945.

Following WWII, Dr. DeBakey continued his hard work by proposing national and specialized medical centers for those soldiers who were wounded or needed follow-up treatment. This recommendation evolved into the Veterans Affairs Medical Center System and the establishment of the commission on Veterans Medical Problems of the National Research Council.

In 1948, Dr. DeBakey joined the Baylor University College of Medicine, where it started its first surgical residency program and was later elected the first President of Baylor College of Medicine.

Adding to his list of accomplishments Dr. DeBakey performed the first successful procedure to treat patients with anyeurysms. In 1964, Dr. DeBakey performed the first successful coronary bypass surgery, opening the doors for surgeons to perform preventative procedures to save the lives of many people with heart disease. He was also the first to successfully use a partial artificial heart. Later that same year, President Lyndon B. Johnson appointed Dr. DeBakey as Chairman of the President's Commission on Heart Disease, Cancer and Stroke, which led to the creation of Regional Medical Programs. These programs coordinate medical schools, research institutions and hospitals to enhance research and training.

Dr. DeBakey continued to amaze the medical world when he pioneered the field of telemedicine by performing the first open-heart surgery transmitted over satellite and then supervised the first successful multi-organ transplant, where a heart, both kidneys and a lung were transplanted from a single donor into four separate recipients.

These accomplishments had led to national recognition. Dr. DeBakey has received both the Presidential Medal of Freedom with Distinction from President Johnson and the National Medal of Science from President Ronald Reagan.

Recently, Dr. DeBakey worked with NASA engineers to develop the

DeBakey Ventricular Assist Device, which may eliminate the need for some patients to receive heart transplants.

I stand here today to acknowledge Dr. DeBakey's invaluable work and significant contribution to medicine by offering a bill to award him the Congressional Gold Medal. His efforts and innovative surgical techniques have since saved the lives of thousands, if not millions, of people. I ask my Senate colleagues to join me in recognizing the profound impact this man has had on medical advances, the delivery of medicine and how we care for our Veterans. Although, Dr. DeBakey is not a native of Texas, he has made Texas proud. He has guided the Baylor College of Medicine and the city of Houston into becoming a world leader in medical advancement. On behalf of all Texans, I thank Dr. DeBakey for his lifetime of commitment and service not only to the medical community but to the world. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2439

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress makes the following findings:

(1) Michael Ellis DeBakey, M.D., was born on September 7, 1908 in Lake Charles, Louisiana, to Shaker and Raheeja DeBakey.

(2) Dr. DeBakey, at the age of 23 and still a medical student, reported a major invention, a roller pump for blood transfusions, which later became a major component of the heart-lung machine used in the first successful open-heart operation.

(3) Even though Dr. DeBakey had already achieved a national reputation as an authority on vascular disease and had a promising career as a surgeon and teacher, he volunteered for military service during World War II, joining the Surgeon General's staff and rising to the rank of Colonel and Chief of the Surgical Consultants Division.

(4) As a result of this first-hand knowledge of military service, Dr. DeBakey made numerous recommendations for the proper staged management of war wounds, which led to the development of mobile army surgical hospitals or MASH units, and earned Dr. DeBakey the Legion of Merit in 1945.

(5) After the war, Dr. DeBakey proposed the systematic medical follow-up of veterans and recommended the creation of specialized medical centers in different areas of the United States to treat wounded military personnel returning from war, and from this recommendation evolved the Veterans Affairs Medical Center System and the establishment of the Commission on Veterans Medical Problems of the National Research Council.

(6) In 1948, Dr. DeBakey joined the Baylor University College of Medicine, where he developed the first surgical residency program in the City of Houston, and today, guided by Dr. DeBakey's vision, the College is one of the most respected health science centers in the Nation.

(7) In 1953, Dr. DeBakey performed the first successful procedures to treat patients who suffered aneurysms leading to severe strokes, and he later developed a series of innovative surgical techniques for the treatment of aneurysms enabling thousands of lives to be saved in the years ahead.

(8) In 1964, Dr. DeBakey triggered the most explosive era in modern cardiac surgery, when he performed the first successful coronary bypass, once again paving the way for surgeons world-wide to offer hope to thousands of patients who might otherwise succumb to heart disease.

(9) Two years later, Dr. DeBakey made medical history again, when he was the first to successfully use a partial artificial heart to solve the problems of a patient who could not be weaned from a heart-lung machine following open-heart surgery.

(10) In 1968, Dr. DeBakey supervised the first successful multi-organ transplant, in which a heart, both kidneys, and lung were transplanted from a single donor into 4 separate recipients.

(11) In 1964, President Lyndon B. Johnson appointed Dr. DeBakey to the position of Chairman of the President's Commission on Heart Disease, Cancer and Stroke, leading to the creation of Regional Medical Programs established ''to encourage and assist in the establishment of regional cooperative arrangements among medical schools, research institutions, and hospitals, for research and training''.

(12) In the mid-1960's, Dr. DeBakey pioneered the field of telemedicine with the first demonstration of open-heart surgery to be transmitted overseas by satellite.

(13) In 1969, Dr. DeBakey was elected the first President of Baylor College of Medicine.

(14) In 1969, President Lyndon B. Johnson bestowed on Dr. DeBakey the Presidential Medal of Freedom with Distinction, and in 1985, President Ronald Reagan conferred on him the National Medal of Science.

(15) Working with NASA engineers, he refined existing technology to create the DeBakey Ventricular Assist Device, one-tenth the size of current versions, which may eliminate the need for heart transplantation in some patients.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design, to Michael Ellis DeBakey, M.D., in recognition of his many outstanding contributions to the Nation.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (referred to in this Act as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 2 under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 4. STATUS OF MEDALS.

(a) NATIONAL MEDALS.—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

SEC. 5. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund such amounts as may be necessary to pay for the costs of the medals struck pursuant to this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals authorized under section 3 shall be deposited into the United States Mint Public Enterprise Fund.

By Mr. MCCAIN:

S. 2440. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study of certain land adjacent to the Walnut Canyon National Monument in the State of Arizona; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, today I am introducing legislation to authorize a special land resource study for the Walnut Canyon National Monument in Arizona. The study is intended to evaluate whether Federal and State lands adjacent to the monument should be managed as part of the monument, and to provide recommendations for management options.

For several years, local communities adjacent to the Walnut Canyon National Monument have debated whether the land surrounding the monument would be best served by protection from future development and managed by the U.S. Forest Service or the National Park Service. The Coconino County Board and the Flagstaff City Council have passed resolutions concluding that the preferred method to determine what is best for the land surrounding the Walnut Canyon National Monument is by having a Federal study conducted. The recommendations from such a study would resolve the question of future management and whether the monument should be expanded.

The legislation also directs the Secretary of the Interior and the Secretary of Agriculture to provide recommendations for management options for maintenance of the public uses and protection of resources of the study area.

This legislation would provide a mechanism for determining the management options for one of Arizona's high uses scenic areas and protect the natural resources of this incredibly beautiful monument. Therefore, I urge my colleagues to support this legislation.

By Mr. HATCH (for himself, Mr. KYL, Mr. CORNYN, Mr. SESSIONS, and Mr. CHAMBLISS):

S. 2443. A bill to reform the judicial review process of orders of removal for purposes of the Immigration and Nationality Act; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce the Fairness in Immigration Litigation Act. The purpose of the Fairness in Immigration Litigation Act is to reform the statutory scheme governing judicial review of immigration removal orders. Currently, we have an absurd situation in which criminal aliens are entitled to

more review and have more opportunities to file frivolous dilatory appeals than non-criminal aliens. The legislation which I am introducing will streamline the process of reviewing final administrative immigration orders, thereby eliminating such unfair results under the current statutory scheme.

In 1961, Congress amended Section 106 of the Immigration and Nationality Act, or INA, to specify the circumstances under which final orders of deportation and exclusion could be reviewed in the federal courts. The statute provided that petitions for review in the circuit courts of appeal were the ''sole and exclusive'' procedure for reviewing deportation orders, and that habeas corpus was available only to challenge exclusion orders of the custodial aspects of immigration detention. The jurisprudence was settled that there were no alternative or additional avenues of judicial review of immigration orders beyond those provided in Section 106.

In 1996, seeking to provide for the more efficient and expeditious removal of aliens who commit serious crimes in the United States, Congress attempted to streamline the judicial review of immigration orders against such aliens. Passed by wide, bipartisan margins, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) eliminated judicial review of immigration orders for most criminals. IIRIRA recognized that criminal aliens had already received a full measure of due process in their criminal cases, as well as in their immigration proceedings, and that additional review typically only served to delay their inevitable removal.

However, because the 1996 reforms lacked express language precluding habeas corpus review, the Supreme Court decided in *INS v. St. Cyr* that habeas review remained available to criminal aliens other than or in addition to the review specified in the INA. Consequently, under current law, criminal aliens may seek habeas review of their deportation orders in district courts and then appeal adverse decisions to the courts of appeals. By contrast, non-criminal aliens are governed by INA §242, and must appeal directly to the court of appeals without the additional layer of review in the district courts. The result is that criminal aliens who have no claim to relief from deportation file frivolous petitions, causing serious delay in securing final judgment against them. This is a complete perversion of the reforms intended by Congress in 1996, and it must be corrected.

Let me illustrate the extent of the problem. In 1995, just before IIRIRA's enactment, there were 403 immigration habeas petitions filed. In 2003, that number rose to 2,374. Over the same period, the total number of immigration-related cases in federal courts rose from 1,939 to 11,906. This is after Congress passed a law to limit the review for criminal aliens. Clearly, the intent of Congress has been frustrated.

Consistent with the settled principled that petitions for review should be the ''sole and exclusive'' means of judicial review for aliens challenging their removal (as reaffirmed in 8 U.S.C. §1252(b)(9) requiring that all issues pertaining to removal orders be brought to the circuit courts of appeal), the Fairness in Immigration Litigation Act streamlines immigration review and protects an alien's right to review by an independent judiciary. It also ensures that even criminal aliens may receive review of pure questions of law and Constitutional claims, as dictated by the Supreme Court in S. Cyr.

With the expanded subject matter jurisdiction in the courts of appeals, the proposed legislation will eliminate the confusing, and indeed inequitable practice of allowing criminal aliens to obtain an additional layer of review through habeas corpus petitions. This legislation is fully consistent with both the Supreme Court's decision in S. Cyr and settled jurisprudence regarding the availability of habeas corpus. These reforms will ensure that aliens will have their day in court, and ensures that the law does not place criminals in a position that is superior to non-criminals. In sum, the Act restores order to the judicial review process in the courts as well as fairness for alien petitioners.

Moreover, the deportation proceedings too often are frustrated by activist judges who place unreasonable burdens on the government to show why a lawfully issued deportation order should be enforced, and who stop the lawful execution of deportation orders even though the aliens have advanced no legal basis to challenge the deportation order. Such activism combined with murkiness in the law have slowed and in some cases halted the government's ability to deport criminal aliens and others who have no right to stay. It is time we clarify the law so that the government can effectively deport those who should be deported.

Often, we hear complaints that the government is not doing enough to protect our borders against illegal entry, and that we need to do more to catch and deport the illegal aliens who have made their way into our country. Without question, sealing our borders and arresting every illegal alien is a monumental undertaking. But with this legislation, we can easily address the immediate problem of removing the illegal aliens that we already have in the system, and sometimes even in our custody.

I want to emphasize that the Fairness in Immigration Litigation Act does not abridge an immigration detainee's right to challenge actual, physical custody through a habeas corpus petition. It is not my intention at all to take away the habeas petition as a legitimate way to challenge physical custody. Instead, this legislation narrowly applies to judicial review of final agency orders of removal, which involve legal issues that should be reviewed through a petition for review by the court of appeals.

I further want to emphasize that nothing in this legislation deprives deportable aliens of all the procedural and substantive due process that the Supreme Court said was required. It simply bars unnecessary delays through collateral attacks. In fact, the only ones who are affected by this bill are criminals who have had their review, but who want to avoid enforcement of their deportation orders by initiating dilatory, collateral attacks, and perhaps their lawyers who charge thousands of dollars to file petitions that they know to be without merit.

In sum, the legislation which I am introducing today will expand the subject matter jurisdiction of the court of appeals so that criminal aliens will receive the judicial review to which they are entitled according to St. Cyr. At the same time, the legislation will streamline the process so that we no longer have the absurd result of criminals getting more protection than non-criminals. The legislation also will reduce the possibility that criminals who are without any statutory relief from deportation can abuse the system by filing frivolous petitions solely to delay their eventual removal from the United States. Furthermore, the legislation will properly place the burden of showing eligibility for relief from deportation upon the applicants for relief, and will clarify our statute so that the government can more effectively execute deportation orders without encountering the obstacles that ambiguous statutes have created.

I ask for the support of my colleagues in passing the Fairness in Immigration Litigation Act, which will restore procedural fairness for all immigrants, but will significantly reduce the backlog in our judicial system created by frivolous and dilatory appeals.

By Mr. LIEBERMAN (for himself, Mr. BROWNBACK, Mrs. CLINTON, Mr. SANTORUM, and Ms. LANDRIEU):

S. 2447. A bill to amend the Public Health Service Act to authorize funding for the establishment of a program on children and the media within the National Institute of Child Health and Human Development to study the role and impact of electronic media in the development of children; to the Committee on Health, Education, Labor, and Pensions.

Mr. LIEBERMAN. Mr. President, I rise to introduce, along with Senators BROWNBACK, CLINTON, SANTORUM and LANDRIEU, the Children and Media Research Advancement Act, or CAMRA Act. Mr. President, we believe there is an urgent need to establish a Federal role for targeting research on the impact of media on children. Almost 5 years ago, the American Academy of Pediatrics recommended no television viewing for children under the age of 2. They subsequently recommended limiting all screen time exposure, including television, videos, computer and video games, to 1–2 hours per day for

older children. The Academy based these decisions on their best sense of how to facilitate the healthy development of children. However, not enough research had been conducted in this area to know if these particular recommendations were good advice or not. Five years later, we still have very limited information about the role of media, particularly the role of digital media, in very early development. Why not? None of our Federal agencies are charged with ensuring an ongoing funding base for a coherent research agenda about the role of media in children's lives.

From the cradle to the grave, we now live and develop in a world of media—a world that is increasingly digital, and a world where access is at our fingertips. This emerging digital world is well known to our children, but its effects on their development are not well understood. From ages 2–18, children are spending an average of 5 and a half hours with media each day. For those who are under age 6, 2 hours of exposure to screen media each day is common, even for those who are under age 2. That is about as much time as children under age 6 spend playing outdoors, and it is much more time than they spend reading or being read to by their parents. How does this investment of time affect their development? We have all wondered about the answer to this question.

Take the Columbine incident. After two adolescent boys shot and killed some of their teachers, classmates, and then turned their guns on themselves at Columbine High School, we asked ourselves if media played some role in this tragedy. Did these boys learn to kill in part from playing first-person shooter video games like Doom where they acted as a killer? Were they rehearsing criminal activities when playing this game? We looked to the research community for an answer. In the violence and media area, we had invested in research more so than in any other area, and as a result, we knew more. Therefore, some answers were forthcoming about how this tragedy could have taken place as well as steps that could be taken, such as media education programs, which could prevent similar events from happening in the future. Even so, there is still a considerable amount of speculation about the more complex questions. Why did these particular boys, for example, pull the trigger in real life while others who played Doom confine their aggressive acts to the gaming context?

Consider the national health problem of childhood obesity. Does time spent viewing screens and its accompanying sedentary life styles contribute to childhood obesity? Or is the constant bombardment of advertisements for sugar-coated cereals, snack foods, and candy that pervade children's television advertisements the culprit? What will happen when pop-up advertisements begin to appear on children's cell phones that specifically target them for the junk food that they like best? The answer to the obesity and media question is also complex. We need more answers.

A recent report linked very early television viewing with later symptoms that are common in children who have attention deficit disorders. Does television viewing cause attention deficits, or do children who have attention deficits find television viewing experiences more engaging than kids who don't have attention problems? Or do parents whose children have difficulty sustaining attention let them watch more television to encourage more sitting and less hyperactive behavior? How will Internet experiences, particularly those where children move rapidly across different windows, influence attention patterns and attention problems? Once again, we don't know the answer.

Many of us find that our children are becoming increasingly materialistic. Does exposure to commercial advertising and even the ''good life'' experienced by media characters partly explain materialistic attitudes? We're not sure. What will happen when our children will be able to click on their television screen and go directly to sites that advertise the products that they see in those favorite programs?

Many of us believe that time spent with computers is good for our children, teaching them the skills that they will need for success in the 21st century. Are we right?

How is time spent with computers different from time spent with television? Is the time spent with media the key to success, or is the content?

The questions about how media affect the development of our children are clearly important, abundant, and complex. Unfortunately, the answers to these questions are in short supply. Such gaps in our knowledge base limit our ability to make informed decisions about media policy.

We know that media are important. Over the years, we have held numerous hearings in these chambers about how exposure to media violence affects childhood aggression. We have passed legislation to maximize the documented benefits of exposure to educational media, such as the Children's Television Act which requires broadcasters to provide educational and informational television programs for children. We acted to protect our children from harm by passing the Children's Online Privacy Protection Act which provides safeguards from commercial exploitation for our youth as they explore the Internet, a popular pastime for them. But there are many areas where our understanding is preliminary at best, particularly those that involve the effect of our newer digital media. For example, we have passed numerous laws about sexually explicit content, such as the Communications Decency Act, the Child Online Protection Act, and the Children's Internet Protection Act to shield children from exposure to online content that is deemed harmful to minors. However, we know very little about how this kind of exposure affects children's development or about how to prevent children from falling prey to adult strangers who approach them online.

In order to ensure that we are doing our very best for our children, the behavioral and health recommendations and public policy decisions we make should be based on objective behavioral, social, and scientific research. Yet no Federal research agency has responsibility for overseeing and setting a coherent media research agenda that can guide these policy decisions. Instead, Federal agencies fund media research in a piece meal fashion, resulting in a patch work quilt of findings. We can do better than that.

The bill we are introducing today would remedy this problem. The CAMRA Act will provide an overarching view of media effects by establishing a program on Children and Media within the National Institute of Child Health and Human Development. This program of research, to be vetted by the National Academy of Sciences, will fund and energize a coherent program of research that illuminates the role of media in children's cognitive, social, emotional, physical, and behavioral development. The research will cover all forms of electronic media, including television, movies, DVDs, interactive video games, and the Internet and will encourage research with children of all ages—even babies and toddlers. The bill also calls for a report to Congress about the effectiveness of this research program in filling this void in our knowledge base. In order to accomplish these goals, we are authorizing $90 million dollars to be phased in gradually across the next five years. The cost to our budget is minimal. The benefits to our youth and our nation's families are immeasurable.

Our children live in the information age. Our nation has one of the most powerful and sophisticated information technology systems in the world. While this system entertains us, it is not harmless entertainment. Media have the potential to facilitate the healthy growth of our children. They also have the potential to harm. We have a stake in finding out exactly what that role is. Access to that knowledge requires us to make an investment: an investment in research, an investment in and for our children, an investment in our collective future.

By passing the Children and Media Research Advancement Act, we can advance knowledge and enhance the constructive effects of media while minimizing the negative ones. We can make future media policies that are grounded in a solid knowledge base. We can be proactive, rather than reactive. In so doing, we build a better nation for our youth, and we create a better foundation to guide future media policies about the digital experiences that pervade our children's daily lives.

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. 2447

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 ''Children and Media Research Advancement Act'' or the ''CAMRA Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Congress has recognized the important role of electronic media in children's lives when it passed the Children's Television Act of 1990 (Public Law 101-437) and the Telecommunications Act of 1996 (Public Law 104-104), both of which documented public concerns about how electronic media products influence children's development.

(2) Congress has held hearings over the past several decades to examine the impact of specific types of media products such as violent television, movies, and video games on children's health and development. These hearings and other public discussions about the role of media in children's development require behavioral and social science research to inform the policy deliberations.

(3) There are important gaps in our knowledge about the role of electronic media and in particular, the newer interactive digital media, in children's healthy development. The consequences of very early screen usage by babies and toddlers on children's cognitive growth are not yet understood, nor has a research base been established on the psychological consequences of high definition interactive media and other format differences for child viewers.

(4) Studies have shown that children who primarily watch educational shows on television during their preschool years are significantly more successful in school 10 years later even when critical contributors to the child's environment are factored in, including their household income, parents education, and intelligence.

(5) The early stages of child development are a critical formative period. Virtually every aspect of human development is affected by the environments and experiences that one encounters during his or her early childhood years, and media exposure is an increasing part of every child's social and physical environment.

(6) As of the late 1990's, just before the National Institute of Child Health and Human Development funded 5 studies on the role of sexual messages in the media on children and adolescents sexual attitudes and sexual practices, a review of research in this area found only 15 studies ever conducted in the United States on this topic, even during a time of growing concerns about HIV infection.

(7) In 2001, a National Academy of Sciences study group charged with finding solutions to Internet pornography exposure on youth found virtually no literature about how much children and adolescents were exposed to Internet pornography or how such content impacts youth.

(8) In order to develop strategies that maximize the positive and minimize the negative effects of each medium on children's physical, cognitive, social, and emotional development, it would be beneficial to develop a research program that can track the media habits of young children and their families over time using valid and reliable research methods.

(9) Research about the impact of the media on children is not presently supported through one primary programmatic effort. The responsibility for directing the research is distributed across disparate agencies in an uncoordinated fashion, or is overlooked entirely. The lack of any centralized organization for research minimizes the value of the knowledge produced by individual studies. A more productive approach for generating valuable findings about the impact of the media on children would be to establish a single, well-coordinated research effort with primary responsibility for directing the research agenda.

(10) Due to the paucity of research about electronic media, educators and others interested in implementing electronic media literacy initiatives do not have the evidence needed to design, implement, or assess the value of these efforts.

(b) PURPOSE.—It is the purpose of this Act to enable the National Institute of Child Health and Human Development to—

(1) examine the role and impact of electronic media in children's cognitive, social, emotional, physical, and behavioral development; and

(2) provide for a report to Congress containing the empirical evidence and other results produced by the research funded through grants under this Act.

SEC. 3. RESEARCH ON THE ROLE AND IMPACT OF ELECTRONIC MEDIA IN THE DEVELOPMENT OF CHILDREN.

Subpart 7 of part C of title IV of the Public Health Service Act (42 U.S.C. 285g et seq.) is amended by adding at the end the following:

''SEC. 452H. RESEARCH ON THE ROLE AND IMPACT OF ELECTRONIC MEDIA IN THE DEVELOPMENT OF CHILDREN.

''(a) IN GENERAL.—The Director of the Institute shall enter into appropriate arrangements with the National Academy of Science in collaboration with the Institute of Medicine to establish an independent panel of experts to review, synthesize and report on research, theory, and applications in the social, behavioral, and biological sciences and to establish research priorities regarding the positive and negative roles and impact of electronic media use, including television, motion pictures, DVD's, interactive video games, and the Internet, and exposure to that content and medium on youth in the following core areas of child development:

''(1) COGNITIVE.—The role and impact of media use and exposure in the development of children within such cognitive areas as language development, attention span, problem solving skills (such as the ability to conduct multiple tasks or 'multitask'), visual and spatial skills, reading, and other learning abilities.

''(2) PHYSICAL.—The role and impact of media use and exposure on children's physical coordination, diet, exercise, sleeping and eating routines, and other areas of physical development.

''(3) SOCIO-BEHAVIORAL.—The influence of interactive media on childhood and family activities and peer relationships, including indoor and outdoor play time, interaction with parents, consumption habits, social relationships, aggression, prosocial behavior, and other patterns of development.

''(b) PILOT PROJECTS.—During the first year in which the National Academy of Sciences panel is summarizing the data and creating a comprehensive research agenda in the children and media area under subsection (a), the Secretary shall provide for the conduct of initial pilot projects to supplement and inform the panel in its work. Such pilot projects shall consider the role of media exposure on—

''(1) cognitive and social development during infancy and early childhood; and

''(2) the development of childhood obesity, particularly as a function of media advertising and sedentary lifestyles that may co-occur with heavy media diets.

''(c) RESEARCH PROGRAM.—Upon completion of the review under subsection (a), the Director of the National Institute of Child Health and Human Development shall develop and implement a program that funds additional research determined to be necessary by the panel under subsection (a) concerning the role and impact of electronic media in the cognitive, physical, and socio-behavioral development of children and adolescents with a particular focus on the impact of factors such as media content, format, length of exposure, age of child, and nature of parental involvement. Such program shall include extramural and intramural research and shall support collaborative efforts to link such research to other National Institutes of Health research investigations on early child health and development.

''(d) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall—

''(1) prepare and submit to the Director of the Institute an application at such time, in such manner, and containing such information as the Director may require; and

''(2) agree to use amounts received under the grant to carry out activities that establish or implement a research program relating to the effects of media on children pursuant to guidelines developed by the Director relating to consultations with experts in the area of study.

''(e) USE OF FUNDS RELATING TO THE MEDIA'S ROLE IN THE LIFE OF A CHILD.—An entity shall use amounts received under a grant under this section to conduct research concerning the social, cognitive, emotional, physical, and behavioral development of children as related to electronic mass media, including the areas of—

''(1) television;

''(2) motion pictures;

''(3) DVD's;

''(4) interactive video games; and

''(5) the Internet.

''(f) REPORTS.—

''(1) REPORT TO DIRECTOR.—Not later than 12 months after the date of enactment of this section, the panel under subsection (a) shall submit the report required under such subsection to the Director of the Institute.

''(2) REPORT TO CONGRESS.—Not later than December 31, 2010, the Director of the Institute shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate, and Committee on Education and the Workforce of the House of Representatives a report that—

''(A) summarizes the empirical evidence and other results produced by the research under this section in a manner that can be understood by the general public;

''(B) places the evidence in context with other evidence and knowledge generated by the scientific community that address the same or related topics; and

''(C) discusses the implications of the collective body of scientific evidence and knowledge regarding the role and impact of the media on children, and makes recommendations on how scientific evidence and knowledge may be used to improve the healthy developmental and learning capacities of children.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $10,000,000 for fiscal year 2005;

''(2) $15,000,000 for fiscal year 2006;

''(3) $15,000,000 for fiscal year 2007;

''(4) $25,000,000 for fiscal year 2008; and

''(5) $25,000,000 for fiscal year 2009.''.

Mr. BROWNBACK. Mr. President, I am pleased to rise today to join my colleagues and support the Children and Media Research Advancement Act or CAMRA. The development of our Nation's children is vital and the way in which media impacts their ability to grow and develop is imperative. For many years, I have been concerned about the impact media has on our children.

The Kaiser Family Foundation recently released their report on electronic media in the lives of infants, toddlers, and preschoolers—ages 0 to 6 years old. Not surprisingly, the study found that children today are reared in a media saturated environment.

According to the study, 99 percent of all children live in a home with a TV set and 50 percent of these children live in a home with three or more TVs of which 36 percent have a TV in their bedroom.

Perhaps even more startling, 30 percent of children ages zero to three years and 43 percent of four to six year olds have a TV in their bedroom. Additionally, 27 percent of children have their own VCR or DVD player in their rooms and 10 percent have their own video game console in their room as well.

Further, 73 percent of children ages 0 to 6 have a computer at home, and 49 percent of these young people have a video game player.

Even more concerning is that the American Academy of Pediatrics recommends that children under two do not watch any television. The Academy further states that all children over two should be limited to one or two hours of educational screen media a day.

However, despite this recommendation, the Kaiser study found that in a typical day, 68 percent of all children under two use screen media—59 percent watch TV, 42 percent watch a video or DVD, five percent use computers and three percent play video games. The study also found that 74 percent of all infants and toddlers have watched TV before the age of two.

Unfortunately, there is a lack of comprehensive research that provides detailed data on the relationship between media and brain development in children. That is why I am pleased to support the Children and Media Research Advancement Act. This will not only encourage much needed research in this area, but will also serve to coordinate such research.

Providing parents and guardians with the most accurate information regarding the impact media has on their children is essential—to do anything less would be reprehensible.

Already many studies—including ones that followed children from age 8 until mid-adulthood (age 30 plus years)—have demonstrated a link between early exposure to entertainment violence and aggressive attitudes, values and behaviors, including increased levels of violent crime against others.

There are three main effects on children of viewing entertainment violence: aggression more likely to think and behave aggressively, and hold attitudes and values favorable to the use of aggression to resolve conflicts; desensitization decreased sensitivity to violence and a greater willingness to tolerate increasing levels of violence in society; fear viewers may develop the ''mean world syndrome'' in which they overestimate their risk of becoming victims of violence.

Even in the Kaiser study I referenced earlier, among all parents whose zero to six year olds watched TV, 81 percent said that they saw their children imitate behaviors from television—36 percent of parents reported that their children mimicked aggressive behavior, 78 percent mimicked positive behavior. When focusing on the four to six year age group, mimicking aggressive behaviors increase to nearly half or 47 percent, with aggressive behavior being imitated more frequently with boys, 59 percent than with girls at 35 percent.

Clearly, we must continue to encourage and fund studies that will show the effects media has on the development of the adolescent brain. I am pleased that CAMRA will encourage this much-needed research in such a crucial area.

Protecting our nation's children and ensuring that parents have the most accurate and complete information on the effects of media on their children should remain our top priority. I look forward to working with Senators LIEBERMAN and CLINTON on an issue that is vital to our society.

Mrs. CLINTON. Mr. President, I rise to join with my colleagues Senators LIEBERMAN and BROWNBACK in introducing the Children and Media Research Advancement Act (CAMRA).

Children today are living in an environment that is saturated with electronic media. Even in the last few years, we've seen a dramatic increase in media targeted directly at children. There's now a booming market of DVDs and videos for infants and the first TV show specifically for children as young as 12 months was launched a few years back. Kids today even have their own cable TV network.

Researchers estimate that children spend an average of five-and-a-half hours a day using these media—this works out to more than they spend doing anything besides sleeping. Even kids under six spend as much time watching TV and videos, playing video games, and using computers as they do playing outside. Unfortunately, we don't really know how this trend affects our children. But we do know that a child's early years affect every aspect of his or her development—physical, emotional, and cognitive. And therefore, we know that ignorance is not bliss.

The longer we wait to understand the full impact of media on our children, the bigger risk we take. And we are gambling with our children's future. Parents need to know how television, movies, advertisements, video games, and the Internet affect their children so that they can make informed decisions about how much and what kind of media their children should be exposed to.

As parents, we know intuitively that our young children shouldn't be watching television shows with extreme violence or age-inappropriate content. But there are other issues we aren't so sure about. How much video game playing is too much? Do advertisements for cereals and junk foods contribute to childhood obesity? How are our very young children and infants impacted by media? Right now we have little idea of what it means for infant development to put babies in front of TVs for hours at a time, but we know that sometimes popping in a video is the best and only way to calm our children down.

Our bill, The Children and Media Research Advancement Act, will help answer these questions by establishing a single, coordinated research program at the National Institute of Child Health and Human Development. This program will study the impact of electronic media on children's—particularly very young children and infant's—cognitive, social and physical development.

One of the first things the program will do will be to work with the National Academy of Sciences and the Institute of Medicine to establish an independent panel of experts to review and synthesize existing research and to establish research priorities on the impact of the media on child development. They'll then award grants for research that addresses the panel's priorities.

If we are truly going to make children a priority, we have to pay attention to and take seriously the activities they're engaged in on a daily basis. Watching television, playing video games, and surfing the Internet are the things that children are doing more than anything else. We need to invest in research that will help us understand how this is affecting our children so that parents can make informed decisions about the positive effects and negative effects of these media on children.

By Mr. GREGG.

S. 2448. A bill to coordinate rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with other Federal laws; read the first time.

Mr. GREGG. Mr. President, military action in Afghanistan and Iraq has brought to light yet another example of how outdated and burdensome government policies often punish generous employers in America. Apparently, when it comes to companies showing respect for employees who are called to active duty in the military, there is special meaning to the old cliché that ''no good deed goes unpunished.''

An arcane IRS interpretation of tax law actually penalizes employers that

voluntarily pay their National Guard and reservist employees the difference between these patriots' military stipends and their previous civilian salaries—which appropriately is called ''differential pay.'' The law also penalizes employers that continue making contributions to retirement plans for such employees.

According to the IRS, members of the Guard and reserves called up for active duty are required to be treated as if they are on a leave of absence by their employers under the Uniformed Services Employment and Reemployment Rights Act of 1994—USERRA. Therefore, the act does not require employers to pay workers who are on active duty. However, many employers—out of a sense of civic duty—continue to pay active duty Guard members and reservists the difference between their military stipends and their regular salaries with some employers providing such ''differential pay'' for up to three years. In additions, many of these remarkable companies go even further and allow their active duty employees to continue making contributions to their 401(k) retirement plans via deductions from the ''differential payments.''

However, rather than applauding and encouraging such selfless behavior by companies, the IRS's 1969 Revenue Ruling requires that the active duty workers be treated as if they were ''terminated.'' As a result, this law then puts at risk the retirement plan for an employers' entire workforce and could make all amounts in the plan immediately taxable to the plan's participants and the employer. Adding to the absurdity of the situation, preventing an employer from treating ''differential pay'' as wages under the law means employers are prohibited from withholding income taxes, which in turn causes their active duty former employees to face large and unexpected tax bills at the end of the year.

The Uniformed Services Differential Pay Protection Act simply amends USERRA to clarify that differential payments are to be treated as ''wages'' to current employees and that retirement plan contributions from such ''wages'' are permissible. The bill upholds the principle that these patriotic and truly remarkable employers should not be penalized for the selfless generosity they provide to our Nation's reservists and members of the National Guard.

By Mr. BAUCUS (for himself, Mr. ROBERTS, and Mr. ENZI):

S. 2449. A bill to require congressional renewal of trade and travel restrictions with respect to Cuba; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today in disbelief. Yesterday, I learned that a NAFTA panel reviewing the International Trade Commission's (ITC) analysis of material inquiry in Softwood Lumber from Canada has rejected an ITC request for more time to respond to a panel remand. This latest rejection of a reasonable request is simply one more circumstance in which this NAFTA panel has demonstrated its clear disregard of the limits of its own jurisdiction. And it provides further indication to me that the NAFTA Chapter 19 system is seriously off-track and is in need of fundamental reform.

After reviewing the ITC's first remand determination, a 114 page long document that answered all of the Panel's remand issues, the Panel yesterday again remanded, and gave the ITC, in effect, seven business days to craft a new remand determination. The ITC filed a motion to extend, requesting a reasonable period of time to respond fully to the remand determination. The ITC further noted that it would consider reopening the record for new evidence and argument. In fact, the Federal Circuit just several months ago said that the Commission had the exclusive authority to open its record when it believed it should do so.

Outrageously, the NAFTA panel refused to grant the ITC's request, again limiting the ITC to seven business days. Moreover, this runaway panel forbade the ITC from reopening the record, concluding that binding Federal Circuit precedent did not apply in the Panel.

On top of all of this, I understand that U.S.T.R. suggested to the Canadians that there is the appearance of a conflict of interest for one of the panelists.

The NAFTA rules could not be more clear: Chapter 19 Panels must act as would a U.S. court and must follow U.S. law. Panelists with a conflict of interest must step down. And the Federal Circuit has ruled, without reservation or qualification, that the question of whether compliance with a remand order requires the reopening of the record ''is of course solely for the Commission itself to determine.'' *Nippon Steel Corp. v. Int'l Trade Comm'n*, 345 F.3d 1379, 1382 (Fed. Cir. 2003). It is outrageous that a NAFTA panel would seek to avoid binding U.S. law.

All I can say to this very sorry state of affairs is that I don't think Congress will long allow a dispute settlement panel to rewrite perfectly valid trade laws or preempt the powers delegated to the ITC, much less tolerate a dispute settlement system in which panels willfully and routinely breach the clear mandate of their authority that is itself the product of careful negotiation. This NAFTA panel has shown us that they cannot be trusted to respect the integrity of the NAFTA trading system. They have also shown us that the NAFTA panel system is broken and that it must be fixed.

By Mr. CAMPBELL:

S. 2450. A bill to amend title 10, United States Code, to revise the requirements for award of the Combat Infantryman Badge and the Combat Medical Badge with respect to service in Korea after July 28, 1953; to the Committee on Armed Services.

Mr. CAMPBELL. Mr. President, today I am introducing the Korean Defense Service Combat Recognition Act of 2004 which would amend Title 10, United States Code, to revise the requirements for award of the Combat Infantryman Badge and the Combat Medical Badge with respect to service in Korea after July 28, 1953.

The Army awards the Combat Infantry Badge (CIB) to recognize members of infantry units who have been engaged in ground combat. The Combat Medical Badge (CMB) recognizes field medics who accompany infantry troops into battle. A 1968 Army regulation makes it much more difficult for U.S. troops serving in South Korea to be awarded the CIB or CMB than for troops serving almost anywhere else in the world. Specifically, infantrymen stationed in South Korea must be in five firefights in order to qualify for the awards. In other combat zones, the requirement is one firefight.

In addition, to be awarded the medals, troops in South Korea must also have served in theater for sixty days in a hostile fire area, be authorized hostile fire pay, and be recommended by each superior up the chain-of-command to the division level.

My bill normalizes the rules so that all troops, no matter where they serve, are subject to the same eligibility requirements for these two prestigious medals.

Unfortunately, the Army regulation has had the unintended consequence of making it extra difficult for infantry and medical units serving along the DMZ in South Korea to earn combat recognition medals. A spokesman for the Korean Defense Veterans of America (KDVA) has described these requirements as making it nearly impossible to be awarded the CIB for infantrymen serving in Korea, short of getting killed in combat. The KDVA is a group of veterans and active soldiers who are serving, or who have served, in South Korea since 1953.

This language is supported by the KDVA and the Combat Infantryman's Association. The Combat Infantryman's Association is a group of Army infantrymen who have been awarded the Combat Infantry Badge.

It is unfair and wrong to require five firefights in South Korea, but only one firefight in Grenada, Panama, the Dominican Republic, Laos, Vietnam, and almost every other location in the world. The Korean Defense Service Combat Recognition Act of 2004 normalizes the rules so that all troops, no matter where they serve, are subject to the same eligibility requirements for these two prestigious medals.

I urge my colleagues to support its passage and ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2450

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 ''Korea Defense Service Combat Recognition Act''.

SEC. 2. REQUIREMENTS FOR AWARD OF COMBAT INFANTRYMAN BADGE AND COMBAT MEDICAL BADGE WITH RESPECT TO SERVICE IN KOREA AFTER JULY 28, 1953.

(a) STANDARDIZATION OF REQUIREMENTS WITH OTHER GEOGRAPHIC AREAS.—(1) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 3757. Korea defense service: Combat Infantryman Badge; Combat Medical Badge

''The Secretary of the Army shall provide that, with respect to service in the Republic of Korea after July 28, 1953, eligibility of a member of the Army for the Combat Infantryman Badge or the Combat Medical Badge shall be met under criteria and eligibility requirements that, as nearly as practicable, are identical to those applicable, at the time of such service in the Republic of Korea, to service elsewhere without regard to specific location or special circumstances. In particular, such eligibility shall be established—

''(1) without any requirement for service by the member in an area designated as a 'hostile fire area' (or by any similar designation) or that the member have been authorized hostile fire pay;

''(2) without any requirement for a minimum number of instances (in excess of one) in which the member was engaged with the enemy in active ground combat involving an exchange of small arms fire; and

''(3) without any requirement for personal recommendation or approval by commanders in the member's chain of command other than is generally applicable for service at locations outside the Republic of Korea.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''3757. Korea defense service: Combat Infantryman Badge; Combat Medical Badge.''.

(b) APPLICABILITY TO SERVICE BEFORE DATE OF ENACTMENT.—The Secretary of the Army shall establish procedures to provide for the implementation of section 3757 of title 10, United States Code, as added by subsection (a), with respect to service in the Republic of Korea during the period between July 28, 1953, and the date of the enactment of this Act. Such procedures shall include a requirement for submission of an application for award of a badge under that section with respect to service before the date of the enactment of this Act and the furnishing of such information as the Secretary may specify.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 365—EXPRESSING THE SENSE OF THE SENATE REGARDING THE DETENTION OF TIBETAN POLITICAL PRISONERS BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

Mr. BROWNBACK (for himself and Mr. BINGAMAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 365

Whereas, for more than 1,000 years, Tibet has maintained a sovereign national identity that is distinct from the national identity of China;

Whereas armed forces of the People's Republic of China invaded Tibet in 1949 and 1950, and have occupied it ever since;

Whereas, according to the Department of State and international human rights organizations, the Government of the People's Republic of China continues to commit widespread and well-documented human rights abuses in Tibet;

Whereas the People's Republic of China has yet to demonstrate its willingness to abide by internationally accepted standards of freedom of belief, expression, and association by repealing or amending laws and decrees that restrict those freedoms;

Whereas the Government of the People's Republic of China has detained hundreds of Tibetan nuns, monks, and lay persons as political prisoners for speaking out against China's occupation of Tibet and for their efforts to preserve Tibet's distinct national identity;

Whereas Phuntsog Nyidron was arrested on October 14, 1989, together with 5 other nuns, for participating in a peaceful protest against China's occupation of Tibet;

Whereas, on February 26, 2004, following a sustained international campaign on her behalf, the Government of the People's Republic of China released Phuntsog Nyidron from detention after she served more than 14 years of her 16-year sentence;

Whereas Tenzin Delek, a prominent Tibetan religious leader, and 3 other monks were arrested on April 7, 2002, during a nighttime raid on Jamyang Choekhorling monastery in Nyagchu County, Tibetan Autonomous Prefecture;

Whereas, following a closed trial and more than 8 months of incommunicado detention, Tenzin Delek and another Tibetan, Lobsang Dhondup, were convicted of inciting separatism and for their alleged involvement in a series of bombings on December 2, 2002;

Whereas Lobsang Dhondup was sentenced to death and Tenzin Delek was sentenced to death with a 2-year suspension;

Whereas the Government of the People's Republic of China promised senior officials of the United States and other governments that the cases of Lobsang Dhondup and Tenzin Delek would be subjected to a ''lengthy review'' by the Supreme People's Court prior to the death sentences being carried out;

Whereas the Supreme People's Court never carried out the promised review, and Lobsang Dhondup was executed on January 26, 2003;

Whereas the Government of the People's Republic of China has failed to produce any evidence that either Lobsang Dhondup or Tenzin Delek were involved in the crimes for which they were convicted, despite repeated requests from officials of the United States and other governments;

Whereas the Government of the People's Republic of China continues to imprison Tibetans for engaging in peaceful efforts to protest China's occupation of Tibet and preserve the Tibetan identity;

Whereas Tibetan political prisoners are routinely subjected to beatings, electric shock, solitary confinement, and other forms of torture and inhumane treatment while in Chinese custody;

Whereas the Government of the People's Republic of China continues to exert control over religious and cultural institutions in Tibet, abusing human rights through the torture, arbitrary arrest, and detention without fair or public trial of Tibetans who peacefully express their political or religious views or attempt to preserve the unique Tibetan identity; and

Whereas the Government of the People's Republic of China has paroled individual political prisoners for good behavior or for medical reasons in the face of strong international pressure, but has failed to make the systemic changes necessary to provide minimum standards of due process or protections for basic civil and political rights: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Government of the People's Republic of China is in violation of international human rights standards by detaining and mistreating Tibetans who engage in peaceful activities to protest China's occupation of Tibet or promote the preservation of a distinct Tibetan identity;

(2) sustained international pressure on the Government of the People's Republic of China is essential to improve the human rights situation in Tibet and secure the release of Tibetan political prisoners;

(3) the Government of the United States should—

(A) raise the cases of Tenzin Delek and other Tibetan political prisoners in every meeting with officials from the People's Republic of China; and

(B) work with other governments concerned about human rights in Tibet and China to encourage the release of Tibetan political prisoners and promote systemic improvement of human rights in Tibet and China; and

(4) the Government of the People's Republic of China should, as a gesture of goodwill and in order to promote human rights, immediately release all Tibetan political prisoners, including Tenzin Delek.

Mr. BROWNBACK. Mr. President, today I am introducing a resolution with my colleague, Senator BINGAMAN, calling on the Chinese Government to release all Tibetan political prisoners. One individual of concern is the prominent religious leader Tenzen Delek.

On April 7, 2002 Tenzen Delek and 3 other monks were arrested at their monastery. Subsequently, Tenzen was held incommunicado for 8 months and sentenced to death with a two years suspension after a closed door trial. Tenzen Delek and Lobsang Dhondup were both convicted of inciting separatism. Lobsang Dhondup was sentenced to death and executed on January 26, 2003, only one month after the sentence was handed down. Given the arbitrary and political nature of China's judiciary, Tenzen Delek could be put to death at any time. It has been 2 years since his April 7, 2002 arrest, and December 2004 will mark two years since he was sentenced to death.

Tenzen Delek moved to a monastery at the young age of 7, and by early adulthood he was active on issues of culture and religion and a dedicated supporter of the Dalai Lama and his teachings. More than likely, his community work and societal influence left him subject to the suspicion of the Chinese government. It is this sort of peaceful protest of China's occupation of Tibet that has landed so many other Tibetans in jail.

Mr. President, this resolution recognizes China's violation of internationally recognized human rights standards, and calls on the Chinese government to release Tenzen Delek and the

other Tibetans who remain in jail. Phuntsog Nyidron is a prominent Tibetan nun who was arrested in 1989 for her peaceful protest of the political situation and remained in jail for 14 years. Just this February she was freed after the House passed a similar resolution calling for her release. The International Campaign for Tibet estimates that there are 150 political prisoners in Tibet, and 75 percent of them are monks and nuns. Those unfortunate enough to find themselves in a Chinese prison are often subjected to physical and mental torture, and isolation. Many of them do not make it out of custody alive.

Mr. President, I hope my colleagues will join me in cosponsoring this resolution. For more than 50 years the Tibetan people have struggled to preserve their 1,000 year old sovereign national identity. The Chinese occupation that began in 1949 brought with it the subjugation of the Tibetan people at the hand of the People's Liberation Army, destruction of thousands of monasteries and shrines, a prohibition against practicing the Buddhist faith and Chinese migration—all aimed at destroying Tibetan culture, language and religion. The United States must confront continued Chinese repression of the practice of all faiths in China, and this resolution does exactly that.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3176. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table.

SA 3177. Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3178. Mr. GREGG (for himself and Mr. KENNEDY) proposed an amendment to the bill S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.

SA 3179. Mr. LOTT (for himself and Mr. COCHRAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table.

SA 3180. Mr. GREGG (for himself and Mr. KENNEDY) proposed an amendment to the bill S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.

SA 3181. Ms. CANTWELL (for herself, Mr. HOLLINGS, Mrs . MURRAY, Mrs. CLINTON, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table.

SA 3182. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3170 submitted by Mr. GRAHAM of South Carolina and intended to be proposed to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3183. Mr. SMITH (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3184. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3185. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3186. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3187. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3188. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3189. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3190. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3191. Mr. KYL (for himself and Mr. CORNYN) proposed an amendment to the bill S. 2400, supra.

SA 3192. Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. LUGAR, Mr. BIDEN, Mr. ALEXANDER, Mr. BINGAMAN, Mr. REED, Mr. AKAKA, Mr. WARNER, Mr. LEVIN, and Mr. FEINGOLD) proposed an amendment to the bill S. 2400, supra.

SA 3193. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3194. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3195. Mrs. MURRAY (for herself and Mr. EDWARDS) submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3196. Mr. DURBIN (for himself, Ms. MIKULSKI, Ms. LANDRIEU, Mrs. MURRAY, Mr. DAYTON, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3197. Mr. DAYTON (for himself and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3198. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3199. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3200. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3201. Mr. KENNEDY (for himself, Mrs. MURRAY, and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3202. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3203. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3204. Mrs. CLINTON (for herself, Mr. LEAHY, and Mr. KENNEDY) submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3205. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, supra.

SA 3206. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3207. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3208. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3209. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, supra.

SA 3210. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, supra.

SA 3211. Mr. WARNER (for Mr. ALLARD) proposed an amendment to the bill S. 2400, supra.

SA 3212. Mr. LEVIN (for Mr. BYRD) proposed an amendment to the bill S. 2400, supra.

SA 3213. Mr. LEVIN (for Mr. REED) proposed an amendment to the bill S. 2400, supra.

SA 3214. Mr. WARNER (for Mr. SESSIONS) proposed an amendment to the bill S. 2400, supra.

SA 3215. Mr. LEVIN (for Mr. SARBANES (for himself and Ms. MIKULSKI)) proposed an amendment to the bill S. 2400, supra.

SA 3216. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill S. 1848, to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon.

SA 3217. Mr. FRIST (for Mr. LEAHY) proposed an amendment to the bill H.R. 417, to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.

SA 3218. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill S. 882, to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes.

SA 3219. Mr. FRIST (for Mr. INHOFE) proposed an amendment to the bill S. 1072, to

authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

SA 3220. Mr. LOTT (for himself, Mr. COCHRAN, Mr. CHAMBLISS, Ms. SNOWE, and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table.

SA 3221. Mr. LOTT (for himself, Ms. SNOWE, Mr. COCHRAN, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3222. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3223. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3224. Ms. COLLINS (for herself and Mr. LEVIN) submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3176. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, between lines 9 and 10, insert the following:

SEC. 642. FULL SBP SURVIVOR BENEFITS FOR SURVIVING SPOUSES OVER AGE 62.

(a) PHASED INCREASE IN BASIC ANNUITY TO 55 PERCENT.—(1) Subsection (a)(1)(B)(i) of section 1451 of title 10, United States Code, is amended by striking ''35 percent of the base amount.'' and inserting ''the product of the base amount and the percent applicable for the month. The percent applicable for a month is 35 percent for months beginning before October 2005, 40 percent for months beginning after September 2005 and before April 2006, 45 percent for months beginning after March 2006 and before April 2007, 50 percent for months beginning after March 2007 and before April 2008, and 55 percent for months beginning after March 2008.''.

(2) Subsection (a)(2)(B)(i)(I) of such section is amended by striking ''35 percent'' and inserting ''the percent specified under paragraph (1)(B)(i) as being applicable for the month''.

(3) Subsection (c)(1)(B)(i) of such section is amended—

(A) by striking ''35 percent'' and inserting ''the applicable percent''; and

(B) by adding at the end the following: ''The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for the month.''.

(4) The heading for subsection (d)(2)(A) of such section is amended to read as follows: ''COMPUTATION OF ANNUITY.—''.

(b) PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.—(1) Section 1457(b) of title 10, United States Code, is amended—

(A) by striking ''5, 10, 15, or 20 percent'' and inserting ''the applicable percent''; and

(B) by inserting after the first sentence the following: ''The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months beginning before October 2005, 15 percent for months beginning after September 2005 and before April 2006, 10 percent for months beginning after March 2006 and before April 2007, and 5 percent for months beginning after March 2007.''.

(2) Effective on April 1, 2008, chapter 73 of such title is amended—

(A) by striking subchapter III; and

(B) by striking the item relating to subchapter III in the table of subchapters at the beginning of that chapter.

(c) RECOMPUTATION OF ANNUITIES.—(1) Effective on the first day of each month referred to in paragraph (2)—

(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

(B) each supplemental survivor annuity under section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

(2) The requirements for recomputation of annuities under paragraph (1) apply with respect to the following months:

(A) October 2005.

(B) April 2006.

(C) April 2007.

(D) April 2008.

(d) RECOMPUTATION OF RETIRED PAY REDUCTIONS FOR SUPPLEMENTAL SURVIVOR ANNUITIES.—The Secretary of Defense shall take such actions as are necessitated by the amendments made by subsection (b) and the requirements of subsection (c)(1)(B) to ensure that the reductions in retired pay under section 1460 of title 10, United States Code, are adjusted to achieve the objectives set forth in subsection (b) of that section.

(e) OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.—(1)(A) An eligible retired or former member may elect to participate in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, during the open enrollment period specified in paragraph (5).

(B) An eligible retired or former member who elects under subparagraph (A) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(C) For purposes of subparagraphs (A) and (B), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(i) is entitled to retired pay; or

(ii) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

(D) A person making an election under subparagraph (A) by reason of eligibility under subparagraph (C)(i) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(E) A person making an election under subparagraph (A) by reason of eligibility under subparagraph (C)(ii) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(2) A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

(A) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

(B) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

(3)(A) A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(B) Except as provided in subparagraph (C), a person is eligible to make an election under subparagraph (A) if on the day before the first day of the open enrollment period the person—

(i) is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under paragraph (2) of this subsection; and

(ii) under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(C) A person is not eligible to make an election under subparagraph (A) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under subparagraph (A) as in the case of any other participant in the Survivor Benefit Plan.

(4) An election under this subsection shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under paragraph (1) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code. Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(5) The open enrollment period under this section shall be the one-year period beginning on October 1, 2005.

(6) If a person making an election under this subsection dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if

the deceased person had died after the end of such two-year period.

(7) The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this subsection in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(8) The Secretary of Defense may require that the premium for a person making an election under paragraph (1)(A) or (2) include, in addition to the amount required under section 1452(a) of title 10, United States Code, an amount determined under regulations prescribed by the Secretary of Defense for the purposes of this subsection. Any such amount shall be stated as a percentage of the base amount of the person making the election and shall reflect the number of years that have elapsed since the person retired, but may not exceed 4.5 percent of that person's base amount.

(f) REPORT CONCERNING OPEN SEASON.—Not later than July 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the open season authorized by subsection (e) for the Survivor Benefit Plan. The report shall include the following:

(1) A description of the Secretary's plans for implementation of the open season.

(2) The Secretary's estimates of the costs associated with the open season, including any anticipated effect of the open season on the actuarial status of the Department of Defense Military Retirement Fund.

(3) Any recommendation by the Secretary for further legislative action.

SA 3177. Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 176, after line 21, insert the following:

SEC. 844. APPLICABILITY OF BERRY AMENDMENT TO PROCUREMENTS OF ARMED FORCES UNIFORMS AND UNIFORM ITEMS WITH NONAPPROPRIATED FUNDS.

(a) APPLICABILITY.—Section 2533a of title 10, United States Code, is amended—

(1) in subsection (b)(1), by striking subparagraph (B) and inserting the following:

''(B) clothing, including—

''(i) uniforms (including uniform headware) of the armed forces; and

''(ii) insignia, medals, other award appurtenances and decorations, other devices and accessories, belts, and belt buckles for armed forces uniforms;''; and

(2) in subsection (g), by inserting '', other than uniforms and uniform items described in clauses (i) and (ii) of subsection (b)(1)(B),'' after ''items''.

(b) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act and shall apply with respect to expenditures made on or after such effective date.

SA 3178. Mr. GREGG (for himself and Mr. KENNEDY) proposed an amendment to the bill S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Project BioShield Act of 2004''.

SEC. 2. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT—AUTHORITIES.

(a) IN GENERAL.—Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 319F the following section:

''SEC. 319F–1. AUTHORITY FOR USE OF CERTAIN PROCEDURES REGARDING QUALIFIED COUNTERMEASURE RESEARCH AND DEVELOPMENT ACTIVITIES.

''(a) IN GENERAL.—

''(1) AUTHORITY.—In conducting and supporting research and development activities regarding countermeasures under section 319F(h), the Secretary may conduct and support such activities in accordance with this section and, in consultation with the Director of the National Institutes of Health, as part of the program under section 446, if the activities concern qualified countermeasures.

''(2) QUALIFIED COUNTERMEASURE.—For purposes of this section, the term 'qualified countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to—

''(A) treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

''(B) treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in subparagraph (A).

''(3) INTERAGENCY COOPERATION.—

''(A) IN GENERAL.—In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

''(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section.

''(4) AVAILABILITY OF FACILITIES TO THE SECRETARY.—In any grant, contract, or cooperative agreement entered into under the authority provided in this section with respect to a biocontainment laboratory or other related or ancillary specialized research facility that the Secretary determines necessary for the purpose of performing, administering, or supporting qualified countermeasure research and development, the Secretary may provide that the facility that is the object of such grant, contract, or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

''(5) TRANSFERS OF QUALIFIED COUNTERMEASURES.—Each agreement for an award of a grant, contract, or cooperative agreement under section 319F(h) for the development of a qualified countermeasure shall provide that the recipient of the award will comply with all applicable export-related controls with respect to such countermeasure.

''(b) EXPEDITED PROCUREMENT AUTHORITY.—

''(1) INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR QUALIFIED COUNTERMEASURE PROCUREMENTS.—

''(A) IN GENERAL.—For any procurement by the Secretary of property or services for use (as determined by the Secretary) in performing, administering, or supporting qualified countermeasure research or development activities under this section that the Secretary determines necessary to respond to pressing research and development needs under this section, the amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as applicable pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), shall be deemed to be $25,000,000 in the administration, with respect to such procurement, of—

''(i) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

''(ii) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

''(B) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding subparagraph (A) and the provision of law and regulations referred to in such subparagraph, each of the following provisions shall apply to procurements described in this paragraph to the same extent that such provisions would apply to such procurements in the absence of subparagraph (A):

''(i) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

''(ii) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57(a) and (b)).

''(iii) Section 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d) (relating to the examination of contractor records).

''(iv) Section 3131 of title 40, United States Code (relating to bonds of contractors of public buildings or works).

''(v) Subsection (a) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) (relating to contingent fees to middlemen).

''(vi) Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

''(vii) Section 1354 of title 31, United States Code (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

''(C) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements that are under this paragraph, including requirements with regard to documenting the justification for use of the authority in this paragraph with respect to the procurement involved.

''(D) AUTHORITY TO LIMIT COMPETITION.—In conducting a procurement under this paragraph, the Secretary may not use the authority provided for under subparagraph (A) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

''(2) PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.—

''(A) IN GENERAL.—In using the authority provided in section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)) to use procedures other than competitive procedures in the case of a procurement described in paragraph (1) of this subsection, the phrase 'available from only one responsible source' in such section 303(c)(1) shall be deemed to mean 'available from only one responsible source or only from a limited number of responsible sources'.

''(B) RELATION TO OTHER AUTHORITIES.—The authority under subparagraph (A) is in addition to any other authority to use procedures other than competitive procedures.

''(C) APPLICABLE GOVERNMENT-WIDE REGULATIONS.—The Secretary shall implement this paragraph in accordance with government-wide regulations implementing such section 303(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

''(3) INCREASED MICROPURCHASE THRESHOLD.—

''(A) IN GENERAL.—For a procurement described by paragraph (1), the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be deemed to be $15,000 in the administration of that section with respect to such procurement.

''(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for purchases that are under this paragraph and that are greater than $2,500.

''(C) EXCEPTION TO PREFERENCE FOR PURCHASE CARD MECHANISM.—No provision of law establishing a preference for using a Government purchase card method for purchases shall apply to purchases that are under this paragraph and that are greater than $2,500.

''(4) REVIEW.—

''(A) REVIEW ALLOWED.—Notwithstanding subsection (f), section 1491 of title 28, United States Code, and section 3556 of title 31 of such Code, review of a contracting agency decision relating to a procurement described in paragraph (1) may be had only by filing a protest—

''(i) with a contracting agency; or

''(ii) with the Comptroller General under subchapter V of chapter 35 of title 31, United States Code.

''(B) OVERRIDE OF STAY OF CONTRACT AWARD OR PERFORMANCE COMMITTED TO AGENCY DISCRETION.—Notwithstanding section 1491 of title 28, United States Code, and section 3553 of title 31 of such Code, the following authorizations by the head of a procuring activity are committed to agency discretion:

''(i) An authorization under section 3553(c)(2) of title 31, United States Code, to award a contract for a procurement described in paragraph (1) of this subsection.

''(ii) An authorization under section 3553(d)(3)(C) of such title to perform a contract for a procurement described in paragraph (1) of this subsection.

''(c) AUTHORITY TO EXPEDITE PEER REVIEW.—

''(1) IN GENERAL.—The Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, deems appropriate to obtain assessment of scientific and technical merit and likely contribution to the field of qualified countermeasure research, in place of the peer review and advisory council review procedures that would be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494, as applicable to a grant, contract, or cooperative agreement—

''(A) that is for performing, administering, or supporting qualified countermeasure research and development activities; and

''(B) the amount of which is not greater than $1,500,000.

''(2) SUBSEQUENT PHASES OF RESEARCH.—The Secretary's determination of whether to employ expedited peer review with respect to any subsequent phases of a research grant, contract, or cooperative agreement under this section shall be determined without regard to the peer review procedures used for any prior peer review of that same grant, contract, or cooperative agreement. Nothing in the preceding sentence may be construed to impose any requirement with respect to peer review not otherwise required under any other law or regulation.

''(d) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—

''(1) IN GENERAL.—For the purpose of performing, administering, or supporting qualified countermeasure research and development activities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, United States Code, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications, except that in no case shall the compensation provided to any such expert or consultant exceed the daily equivalent of the annual rate of compensation for the President.

''(2) FEDERAL TORT CLAIMS ACT COVERAGE.—

''(A) IN GENERAL.—A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall, subject to a determination by the Secretary, be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28, United States Code, for money damages for personal injury, including death, resulting from performance of functions under such contract.

''(B) EXCLUSIVITY OF REMEDY.—The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the entity involved (person, officer, employee, or governing board member) for any act or omission within the scope of the Federal Tort Claims Act.

''(C) RECOURSE IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(i) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this paragraph, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover against any entity identified in subparagraph (B) for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any such entity to carry out any obligation or responsibility assumed by such entity under a contract with the United States or from any grossly negligent or reckless conduct or intentional or willful misconduct on the part of such entity.

''(ii) VENUE.—The United States may maintain an action under this subparagraph against such entity in the district court of the United States in which such entity resides or has its principal place of business.

''(3) INTERNAL CONTROLS TO BE INSTITUTED.—

''(A) IN GENERAL.—The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

''(B) DETERMINATION OF EMPLOYEE STATUS TO BE FINAL.—A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding on the Secretary and the Attorney General and other parties to any civil action or proceeding.

''(4) NUMBER OF PERSONAL SERVICES CONTRACTS LIMITED.—The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

''(e) STREAMLINED PERSONNEL AUTHORITY.—

''(1) IN GENERAL.—In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, without regard to those provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support qualified countermeasure research and development activities in carrying out this section.

''(2) LIMITATIONS.—The authority provided for under paragraph (1) shall be exercised in a manner that—

''(A) recruits and appoints individuals based solely on their abilities, knowledge, and skills;

''(B) does not discriminate for or against any applicant for employment on any basis described in section 2302(b)(1) of title 5, United States Code;

''(C) does not allow an official to appoint an individual who is a relative (as defined in section 3110(a)(3) of such title) of such official;

''(D) does not discriminate for or against an individual because of the exercise of any activity described in paragraph (9) or (10) of section 2302(b) of such title; and

''(E) accords a preference, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of such title).

''(3) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for appointments under this subsection.

''(f) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions by the Secretary under the authority of this section are committed to agency discretion.''.

(b) TECHNICAL AMENDMENT.—Section 481A of the Public Health Service Act (42 U.S.C. 287a–2) is amended—

(1) in subsection (a)(1), by inserting ''or the Director of the National Institute of Allergy

and Infectious Diseases'' after ''Director of the Center'';

(2) in subsection (c)—

(A) in paragraph (1), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''; and

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking ''subsection (i)'' and inserting ''subsection (i)(1)'';

(3) in subsection (d), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(4) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(ii) in subparagraph (A), by inserting ''(or, in the case of the Institute, 75 percent)'' after ''50 percent''; and

(iii) in subparagraph (B), by inserting ''(or, in the case of the Institute, 75 percent)'' after ''40 percent'';

(B) in paragraph (2), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''; and

(C) in paragraph (4), by inserting ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director'';

(5) in subsection (f)—

(A) in paragraph (1), by inserting ''in the case of an award by the Director of the Center,'' before ''the applicant''; and

(B) in paragraph (2), by inserting ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''; and

(6) in subsection (i)—

(A) by striking ''APPROPRIATIONS.—For the purpose of carrying out this section,'' and inserting the following: ''APPROPRIATIONS.—

''(1) CENTER.—For the purpose of carrying out this section with respect to the Center,''; and

(B) by adding at the end the following:

''(2) NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES.—For the purpose of carrying out this section with respect to the National Institute of Allergy and Infectious Diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.''.

(c) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS.—Section 2106 of the Public Health Service Act (42 U.S.C. 300aa–6) is amended—

(1) in subsection (a), by striking ''authorized to be appropriated'' and all that follows and inserting the following: ''authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.''; and

(2) in subsection (b), by striking ''authorized to be appropriated'' and all that follows and inserting the following: ''authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.''.

(d) TECHNICAL AMENDMENTS.—Section 319F of the Public Health Service Act (42 U.S.C. 247d–6) is amended—

(1) in subsection (a), by inserting ''the Secretary of Homeland Security,'' after ''Management Agency,''; and

(2) in subsection (h)(4)(B), by striking ''to diagnose conditions'' and inserting ''to treat, identify, or prevent conditions''.

(e) RULE OF CONSTRUCTION.—Nothing in this section has any legal effect on sections 302(2), 302(4), 304(a), or 304(b) of the Homeland Security Act of 2002.

SEC. 3. BIOMEDICAL COUNTERMEASURES PROCUREMENT.

(a) ADDITIONAL AUTHORITY REGARDING STRATEGIC NATIONAL STOCKPILE.—

(1) TRANSFER OF PROGRAM.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (116 Stat. 611; 42 U.S.C. 300hh–12) is transferred from such Act to the Public Health Service Act, is redesignated as section 319F–2, and is inserted after section 319F–1 of the Public Health Service Act (as added by section 2 of this Act).

(2) ADDITIONAL AUTHORITY.—Section 319F–2 of the Public Health Service Act, as added by paragraph (1), is amended to read as follows:

''SEC. 319F–2. STRATEGIC NATIONAL STOCKPILE.

''(a) STRATEGIC NATIONAL STOCKPILE.—

''(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Homeland Security (referred to in this section as the 'Homeland Security Secretary'), shall maintain a stockpile or stockpiles of drugs, vaccines and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the Secretary to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency.

''(2) PROCEDURES.—The Secretary, in managing the stockpile under paragraph (1), shall—

''(A) consult with the working group under section 319F(a);

''(B) ensure that adequate procedures are followed with respect to such stockpile for inventory management and accounting, and for the physical security of the stockpile;

''(C) in consultation with Federal, State, and local officials, take into consideration the timing and location of special events;

''(D) review and revise, as appropriate, the contents of the stockpile on a regular basis to ensure that emerging threats, advanced technologies, and new countermeasures are adequately considered;

''(E) devise plans for the effective and timely supply-chain management of the stockpile, in consultation with appropriate Federal, State and local agencies, and the public and private health care infrastructure;

''(F) deploy the stockpile as required by the Secretary of Homeland Security to respond to an actual or potential emergency;

''(G) deploy the stockpile at the discretion of the Secretary to respond to an actual or potential public health emergency or other situation in which deployment is necessary to protect the public health or safety; and

''(H) ensure the adequate physical security of the stockpile.

''(b) SMALLPOX VACCINE DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile under subsection (a) includes an amount of vaccine against smallpox as determined by such Secretary to be sufficient to meet the health security needs of the United States.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccines from sources other than the stockpile described in subsection (a).

''(c) ADDITIONAL AUTHORITY REGARDING PROCUREMENT OF CERTAIN BIOMEDICAL COUNTERMEASURES; AVAILABILITY OF SPECIAL RESERVE FUND.—

''(1) IN GENERAL.—

''(A) USE OF FUND.—A security countermeasure may, in accordance with this subsection, be procured with amounts in the special reserve fund under paragraph (10).

''(B) SECURITY COUNTERMEASURE.—For purposes of this subsection, the term 'security countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that—

''(i)(I) the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent identified as a material threat under paragraph (2)(A)(ii), or to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent;

''(II) the Secretary determines under paragraph (2)(B)(ii) to be a necessary countermeasure; and

''(III)(aa) is approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act or licensed under section 351 of this Act; or

''(bb) is a countermeasure for which the Secretary determines that sufficient and satisfactory clinical experience or research data (including data, if available, from pre-clinical and clinical trials) support a reasonable conclusion that the countermeasure will qualify for approval or licensing within eight years after the date of a determination under paragraph (5); or

''(ii) is authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act.

''(2) DETERMINATION OF MATERIAL THREATS.—

''(A) MATERIAL THREAT.—The Homeland Security Secretary, in consultation with the Secretary and the heads of other agencies as appropriate, shall on an ongoing basis—

''(i) assess current and emerging threats of chemical, biological, radiological, and nuclear agents; and

''(ii) determine which of such agents present a material threat against the United States population sufficient to affect national security.

''(B) PUBLIC HEALTH IMPACT; NECESSARY COUNTERMEASURES.—The Secretary shall on an ongoing basis—

''(i) assess the potential public health consequences for the United States population of exposure to agents identified under subparagraph (A)(ii); and

''(ii) determine, on the basis of such assessment, the agents identified under subparagraph (A)(ii) for which countermeasures are necessary to protect the public health.

''(C) NOTICE TO CONGRESS.—The Secretary and the Homeland Security Secretary shall promptly notify the designated congressional committees (as defined in paragraph (10)) that a determination has been made pursuant to subparagraph (A) or (B).

''(D) ASSURING ACCESS TO THREAT INFORMATION.—In making the assessment and determination required under subparagraph (A), the Homeland Security Secretary shall use all relevant information to which such Secretary is entitled under section 202 of the Homeland Security Act of 2002, including but not limited to information, regardless of its level of classification, relating to current and emerging threats of chemical, biological, radiological, and nuclear agents.

''(3) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The

Secretary, in consultation with the Homeland Security Secretary, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under paragraph (2).

''(4) CALL FOR DEVELOPMENT OF COUNTERMEASURES; COMMITMENT FOR RECOMMENDATION FOR PROCUREMENT.—

''(A) PROPOSAL TO THE PRESIDENT.—If, pursuant to an assessment under paragraph (3), the Homeland Security Secretary and the Secretary make a determination that a countermeasure would be appropriate but is either currently unavailable for procurement as a security countermeasure or is approved, licensed, or cleared only for alternative uses, such Secretaries may jointly submit to the President a proposal to—

''(i) issue a call for the development of such countermeasure; and

''(ii) make a commitment that, upon the first development of such countermeasure that meets the conditions for procurement under paragraph (5), the Secretaries will, based in part on information obtained pursuant to such call, make a recommendation under paragraph (6) that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

''(B) COUNTERMEASURE SPECIFICATIONS.—The Homeland Security Secretary and the Secretary shall, to the extent practicable, include in the proposal under subparagraph (A)—

''(i) estimated quantity of purchase (in the form of number of doses or number of effective courses of treatments regardless of dosage form);

''(ii) necessary measures of minimum safety and effectiveness;

''(iii) estimated price for each dose or effective course of treatment regardless of dosage form; and

''(iv) other information that may be necessary to encourage and facilitate research, development, and manufacture of the countermeasure or to provide specifications for the countermeasure.

''(C) PRESIDENTIAL APPROVAL.—If the President approves a proposal under subparagraph (A), the Homeland Security Secretary and the Secretary shall make known to persons who may respond to a call for the countermeasure involved—

''(i) the call for the countermeasure;

''(ii) specifications for the countermeasure under subparagraph (B); and

''(iii) the commitment described in subparagraph (A)(ii).

''(5) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR FUNDING FROM SPECIAL RESERVE FUND.—

''(A) IN GENERAL.—The Secretary, in accordance with the provisions of this paragraph, shall identify specific security countermeasures that the Secretary determines, in consultation with the Homeland Security Secretary, to be appropriate for inclusion in the stockpile under subsection (a) pursuant to procurements made with amounts in the special reserve fund under paragraph (10) (referred to in this subsection individually as a 'procurement under this subsection').

''(B) REQUIREMENTS.—In making a determination under subparagraph (A) with respect to a security countermeasure, the Secretary shall determine and consider the following:

''(i) The quantities of the product that will be needed to meet the needs of the stockpile.

''(ii) The feasibility of production and delivery within eight years of sufficient quantities of the product.

''(iii) Whether there is a lack of a significant commercial market for the product at the time of procurement, other than as a security countermeasure.

''(6) RECOMMENDATION FOR PRESIDENT'S APPROVAL.—

''(A) RECOMMENDATION FOR PROCUREMENT.—In the case of a security countermeasure that the Secretary has, in accordance with paragraphs (3) and (5), determined to be appropriate for procurement under this subsection, the Homeland Security Secretary and the Secretary shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

''(B) PRESIDENTIAL APPROVAL.—The special reserve fund under paragraph (10) is available for a procurement of a security countermeasure only if the President has approved a recommendation under subparagraph (A) regarding the countermeasure.

''(C) NOTICE TO DESIGNATED CONGRESSIONAL COMMITTEES.—The Secretary and the Homeland Security Secretary shall notify the designated congressional committees of each decision of the President to approve a recommendation under subparagraph (A). Such notice shall include an explanation of the decision to make available the special reserve fund under paragraph (10) for procurement of such a countermeasure, including, where available, the number of, nature of, and other information concerning potential suppliers of such countermeasure, and whether other potential suppliers of the same or similar countermeasures were considered and rejected for procurement under this section and the reasons therefor.

''(D) SUBSEQUENT SPECIFIC COUNTERMEASURES.—Procurement under this subsection of a security countermeasure for a particular purpose does not preclude the subsequent procurement under this subsection of any other security countermeasure for such purpose if the Secretary has determined under paragraph (5)(A) that such countermeasure is appropriate for inclusion in the stockpile and if, as determined by the Secretary, such countermeasure provides improved safety or effectiveness, or for other reasons enhances preparedness to respond to threats of use of a biological, chemical, radiological, or nuclear agent. Such a determination by the Secretary is committed to agency discretion.

''(E) RULE OF CONSTRUCTION.—Recommendations and approvals under this paragraph apply solely to determinations that the special reserve fund under paragraph (10) will be made available for a procurement of a security countermeasure, and not to the substance of contracts for such procurement or other matters relating to awards of such contracts.

''(7) PROCUREMENT.—

''(A) IN GENERAL.—For purposes of a procurement under this subsection that is approved by the President under paragraph (6), the Homeland Security Secretary and the Secretary shall have responsibilities in accordance with subparagraphs (B) and (C).

''(B) INTERAGENCY AGREEMENT; COSTS.—

''(i) INTERAGENCY AGREEMENT.—The Homeland Security Secretary shall enter into an agreement with the Secretary for procurement of a security countermeasure in accordance with the provisions of this paragraph. The special reserve fund under paragraph (10) shall be available for payments made by the Secretary to a vendor for such procurement.

''(ii) OTHER COSTS.—The actual costs to the Secretary under this section, other than the costs described in clause (i), shall be paid from the appropriation provided for under subsection (f)(1).

''(C) PROCUREMENT.—

''(i) IN GENERAL.—The Secretary shall be responsible for—

''(I) arranging for procurement of a security countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this subparagraph; and

''(II) promulgating such regulations as the Secretary determines necessary to implement the provisions of this subsection.

''(ii) CONTRACT TERMS.—A contract for procurements under this subsection shall (or, as specified below, may) include the following terms:

''(I) PAYMENT CONDITIONED ON DELIVERY.—The contract shall provide that no payment may be made until delivery has been made of a portion, acceptable to the Secretary, of the total number of units contracted for, except that, notwithstanding any other provision of law, the contract may provide that, if the Secretary determines (in the Secretary's discretion) that an advance payment is necessary to ensure success of a project, the Secretary may pay an amount, not to exceed 10 percent of the contract amount, in advance of delivery. The contract shall provide that such advance payment is required to be repaid if there is a failure to perform by the vendor under the contract. Nothing in this subclause may be construed as affecting rights of vendors under provisions of law or regulation (including the Federal Acquisition Regulation) relating to termination of contracts for the convenience of the Government.

''(II) DISCOUNTED PAYMENT.—The contract may provide for a discounted price per unit of a product that is not licensed, cleared, or approved as described in paragraph (1)(B)(i)(III)(aa) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed, cleared, or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing, clearance, or approval).

''(III) CONTRACT DURATION.—The contract shall be for a period not to exceed five years, except that, in first awarding the contract, the Secretary may provide for a longer duration, not exceeding eight years, if the Secretary determines that complexities or other difficulties in performance under the contract justify such a period. The contract shall be renewable for additional periods, none of which shall exceed five years.

''(IV) STORAGE BY VENDOR.—The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Federal Government under the contract, for such period and under such terms and conditions as the Secretary may specify, and in such case amounts from the special reserve fund under paragraph (10) shall be available for costs of shipping, handling, storage, and related costs for such product.

''(V) PRODUCT APPROVAL.—The contract shall provide that the vendor seek approval, clearance, or licensing of the product from the Secretary; for a timetable for the development of data and other information to support such approval, clearance, or licensing; and that the Secretary may waive part or all of this contract term on request of the vendor or on the initiative of the Secretary.

''(VI) NON-STOCKPILE TRANSFERS OF SECURITY COUNTERMEASURES.—The contract shall provide that the vendor will comply with all applicable export-related controls with respect to such countermeasure.

''(iii) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES.—

''(I) IN GENERAL.—If the Secretary determines that there is a pressing need for a procurement of a specific countermeasure, the amount of the procurement under this subsection shall be deemed to be below the threshold amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), for purposes of application to such procurement, pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), of—

''(aa) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

''(bb) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

''(II) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding subclause (I) and the provision of law and regulations referred to in such clause, each of the following provisions shall apply to procurements described in this clause to the same extent that such provisions would apply to such procurements in the absence of subclause (I):

''(aa) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

''(bb) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57(a) and (b)).

''(cc) Section 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d) (relating to the examination of contractor records).

''(dd) Section 3131 of title 40, United States Code (relating to bonds of contractors of public buildings or works).

''(ee) Subsection (a) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) (relating to contingent fees to middlemen).

''(ff) Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

''(gg) Section 1354 of title 31, United States Code (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

''(III) INTERNAL CONTROLS TO BE ESTABLISHED.—The Secretary shall establish appropriate internal controls for procurements made under this clause, including requirements with respect to documentation of the justification for the use of the authority provided under this paragraph with respect to the procurement involved.

''(IV) AUTHORITY TO LIMIT COMPETITION.—In conducting a procurement under this subparagraph, the Secretary may not use the authority provided for under subclause (I) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

''(iv) PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.—

''(I) IN GENERAL.—In using the authority provided in section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)) to use procedures other than competitive procedures in the case of a procurement under this subsection, the phrase 'available from only one responsible source' in such section 303(c)(1) shall be deemed to mean 'available from only one responsible source or only from a limited number of responsible sources'.

''(II) RELATION TO OTHER AUTHORITIES.—The authority under subclause (I) is in addition to any other authority to use procedures other than competitive procedures.

''(III) APPLICABLE GOVERNMENT-WIDE REGULATIONS.—The Secretary shall implement this clause in accordance with government-wide regulations implementing such section 303(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

''(v) PREMIUM PROVISION IN MULTIPLE AWARD CONTRACTS.—

''(I) IN GENERAL.—If, under this subsection, the Secretary enters into contracts with more than one vendor to procure a security countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

''(aa) identifies an increment of the total quantity of security countermeasure required, whether by percentage or by numbers of units; and

''(bb) promises to pay one or more specified premiums based on the priority of such vendors' production and delivery of the increment identified under item (aa), in accordance with the terms and conditions of the contract.

''(II) DETERMINATION OF GOVERNMENT'S REQUIREMENT NOT REVIEWABLE.—If the Secretary includes in each of a set of contracts a provision as described in subclause (I), such Secretary's determination of the total quantity of security countermeasure required, and any amendment of such determination, is committed to agency discretion.

''(vi) EXTENSION OF CLOSING DATE FOR RECEIPT OF PROPOSALS NOT REVIEWABLE.—A decision by the Secretary to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

''(vii) LIMITING COMPETITION TO SOURCES RESPONDING TO REQUEST FOR INFORMATION.—In conducting a procurement under this subsection, the Secretary may exclude a source that has not responded to a request for information under section 303A(a)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(a)(1)(B)) if such request has given notice that the Secretary may so exclude such a source.

''(8) INTERAGENCY COOPERATION.—

''(A) IN GENERAL.—In carrying out activities under this section, the Homeland Security Secretary and the Secretary are authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

''(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section to the Homeland Security Secretary or to the Secretary.

''(9) RESTRICTIONS ON USE OF FUNDS.—Amounts in the special reserve fund under paragraph (10) shall not be used to pay—

''(A) costs for the purchase of vaccines under procurement contracts entered into before the date of the enactment of the Project BioShield Act of 2004; or

''(B) costs other than payments made by the Secretary to a vendor for a procurement of a security countermeasure under paragraph (7).

''(10) DEFINITIONS.—

''(A) SPECIAL RESERVE FUND.—For purposes of this subsection, the term 'special reserve fund' has the meaning given such term in section 510 of the Homeland Security Act of 2002.

''(B) DESIGNATED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term 'designated congressional committees' means the following committees of the Congress:

''(i) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

''(ii) In the Senate: the appropriate committees.

''(d) DISCLOSURES.—No Federal agency shall disclose under section 552 of title 5, United States Code, any information identifying the location at which materials in the stockpile under subsection (a) are stored.

''(e) DEFINITION.—For purposes of subsection (a), the term 'stockpile' includes—

''(1) a physical accumulation (at one or more locations) of the supplies described in subsection (a); or

''(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to such Secretary supplies described in subsection (a).

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) STRATEGIC NATIONAL STOCKPILE.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $640,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006. Such authorization is in addition to amounts in the special reserve fund referred to in subsection (c)(10)(A).

''(2) SMALLPOX VACCINE DEVELOPMENT.—For the purpose of carrying out subsection (b), there are authorized to be appropriated $509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.''.

(b) AMENDMENTS TO HOMELAND SECURITY ACT OF 2002.—Title V of the Homeland Security Act of 2002 (116 Stat. 2212; 6 U.S.C. 311 et seq.) is amended—

(1) in section 502(3) (6 U.S.C. 312(3))—

(A) in subparagraph (B), by striking ''the Strategic National Stockpile,''; and

(B) in subparagraph (D), by inserting '', including requiring deployment of the Strategic National Stockpile,'' after ''resources''; and

(2) by adding at the end the following:

''SEC. 510. PROCUREMENT OF SECURITY COUNTERMEASURES FOR STRATEGIC NATIONAL STOCKPILE.

''(a) AUTHORIZATION OF APPROPRIATIONS.—For the procurement of security countermeasures under section 319F–2(c) of the Public Health Service Act (referred to in this section as the 'security countermeasures program'), there is authorized to be appropriated up to $5,593,000,000 for the fiscal years 2004 through 2013. Of the amounts appropriated under the preceding sentence, not to exceed $3,418,000,000 may be obligated during the fiscal years 2004 through 2008, of which not to exceed $890,000,000 may be obligated during fiscal year 2004.

''(b) SPECIAL RESERVE FUND.—For purposes of the security countermeasures program, the term 'special reserve fund' means the 'Biodefense Countermeasures' appropriations account or any other appropriation made under subsection (a).

''(c) AVAILABILITY.—Amounts appropriated under subsection (a) become available for a procurement under the security countermeasures program only upon the approval by the President of such availability for the procurement in accordance with paragraph (6)(B) of such program.

''(d) RELATED AUTHORIZATIONS OF APPROPRIATIONS.—

''(1) THREAT ASSESSMENT CAPABILITIES.—For the purpose of carrying out the responsibilities of the Secretary for terror threat assessment under the security countermeasures program, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006, for the hiring of professional personnel within the Directorate for Information Analysis and Infrastructure Protection, who shall be analysts responsible for chemical, biological, radiological, and nuclear threat assessment (including but not limited to analysis of chemical, biological, radiological, and nuclear agents, the means by which such agents could be weaponized or used in a terrorist attack, and the capabilities, plans, and intentions of terrorists and other non-state actors who may have or acquire such agents). All such analysts shall meet the applicable standards and qualifications for the performance of intelligence activities promulgated by the Director of Central Intelligence pursuant to section 104 of the National Security Act of 1947.

''(2) INTELLIGENCE SHARING INFRASTRUCTURE.—For the purpose of carrying out the acquisition and deployment of secure facilities (including information technology and physical infrastructure, whether mobile and temporary, or permanent) sufficient to permit the Secretary to receive, not later than 180 days after the date of enactment of the Project BioShield Act of 2004, all classified information and products to which the Under Secretary for Information Analysis and Infrastructure Protection is entitled under subtitle A of title II, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.''.

(c) STOCKPILE FUNCTIONS TRANSFERRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), there shall be transferred to the Secretary of Health and Human Services the functions, personnel, assets, unexpended balances, and liabilities of the Strategic National Stockpile, including the functions of the Secretary of Homeland Security relating thereto.

(2) EXCEPTIONS.—

(A) FUNCTIONS.—The transfer of functions pursuant to paragraph (1) shall not include such functions as are explicitly assigned to the Secretary of Homeland Security by this Act (including the amendments made by this Act).

(B) ASSETS AND UNEXPENDED BALANCES.—The transfer of assets and unexpended balances pursuant to paragraph (1) shall not include the funds appropriated under the heading ''BIODEFENSE COUNTERMEASURES'' in the Department of Homeland Security Appropriations Act, 2004 (Public law 108-90).

(3) CONFORMING AMENDMENT.—Section 503 of the Homeland Security Act of 2002 (6 U.S.C. 313) is amended by striking paragraph (6).

SEC. 4. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

(a) IN GENERAL.—Section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3) is amended to read as follows:

''SEC. 564. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

''(a) IN GENERAL.—

''(1) EMERGENCY USES.—Notwithstanding sections 505, 510(k), and 515 of this Act and section 351 of the Public Health Service Act, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an 'emergency use').

''(2) APPROVAL STATUS OF PRODUCT.—An authorization under paragraph (1) may authorize an emergency use of a product that—

''(A) is not approved, licensed, or cleared for commercial distribution under a provision of law referred to in such paragraph (referred to in this section as an 'unapproved product'); or

''(B) is approved, licensed, or cleared under such a provision, but which use is not under such provision an approved, licensed, or cleared use of the product (referred to in this section as an 'unapproved use of an approved product').

''(3) RELATION TO OTHER USES.—An emergency use authorized under paragraph (1) for a product is in addition to any other use that is authorized for the product under a provision of law referred to in such paragraph.

''(4) DEFINITIONS.—For purposes of this section:

''(A) The term 'biological product' has the meaning given such term in section 351 of the Public Health Service Act.

''(B) The term 'emergency use' has the meaning indicated for such term in paragraph (1).

''(C) The term 'product' means a drug, device, or biological product.

''(D) The term 'unapproved product' has the meaning indicated for such term in paragraph (2)(A).

''(E) The term 'unapproved use of an approved product' has the meaning indicated for such term in paragraph (2)(B).

''(b) DECLARATION OF EMERGENCY.—

''(1) IN GENERAL.—The Secretary may declare an emergency justifying the authorization under this subsection for a product on the basis of—

''(A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

''(B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or

''(C) a determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.

''(2) TERMINATION OF DECLARATION.—

''(A) IN GENERAL.—A declaration under this subsection shall terminate upon the earlier of—

''(i) a determination by the Secretary, in consultation as appropriate with the Secretary of Homeland Security or the Secretary of Defense, that the circumstances described in paragraph (1) have ceased to exist; or

''(ii) the expiration of the one-year period beginning on the date on which the declaration is made.

''(B) RENEWAL.—Notwithstanding subparagraph (A), the Secretary may renew a declaration under this subsection, and this paragraph shall apply to any such renewal.

''(C) DISPOSITION OF PRODUCT.—If an authorization under this section with respect to an unapproved product ceases to be effective as a result of a termination under subparagraph (A) of this paragraph, the Secretary shall consult with the manufacturer of such product with respect to the appropriate disposition of the product.

''(3) ADVANCE NOTICE OF TERMINATION.—The Secretary shall provide advance notice that a declaration under this subsection will be terminated. The period of advance notice shall be a period reasonably determined to provide—

''(A) in the case of an unapproved product, a sufficient period for disposition of the product, including the return of such product (except such quantities of product as are necessary to provide for continued use consistent with subsection (f)(2)) to the manufacturer (in the case of a manufacturer that chooses to have such product returned); and

''(B) in the case of an unapproved use of an approved product, a sufficient period for the disposition of any labeling, or any information under subsection (e)(2)(B)(ii), as the case may be, that was provided with respect to the emergency use involved.

''(4) PUBLICATION.—The Secretary shall promptly publish in the Federal Register each declaration, determination, advance notice of termination, and renewal under this subsection.

''(c) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—The Secretary may issue an authorization under this section with respect to the emergency use of a product only if, after consultation with the Director of the National Institutes of Health and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the circumstances of the emergency involved), the Secretary concludes—

''(1) that an agent specified in a declaration under subsection (b) can cause a serious or life-threatening disease or condition;

''(2) that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that—

''(A) the product may be effective in diagnosing, treating, or preventing—

''(i) such disease or condition; or

''(ii) a serious or life-threatening disease or condition caused by a product authorized under this section, approved or cleared under this Act, or licensed under section 351 of the Public Health Service Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and

''(B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product;

''(3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and

''(4) that such other criteria as the Secretary may by regulation prescribe are satisfied.

''(d) SCOPE OF AUTHORIZATION.—An authorization of a product under this section shall state—

''(1) each disease or condition that the product may be used to diagnose, prevent, or treat within the scope of the authorization;

''(2) the Secretary's conclusions, made under subsection (c)(2)(B), that the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product; and

''(3) the Secretary's conclusions, made under subsection (c), concerning the safety and potential effectiveness of the product in diagnosing, preventing, or treating such diseases or conditions, including an assessment of the available scientific evidence.

''(e) CONDITIONS OF AUTHORIZATION.—

''(1) UNAPPROVED PRODUCT.—

''(A) REQUIRED CONDITIONS.—With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable

given the circumstances of the emergency, shall, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

''(i) Appropriate conditions designed to ensure that health care professionals administering the product are informed—

''(I) that the Secretary has authorized the emergency use of the product;

''(II) of the significant known and potential benefits and risks of the emergency use of the product, and of the extent to which such benefits and risks are unknown; and

''(III) of the alternatives to the product that are available, and of their benefits and risks.

''(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

''(I) that the Secretary has authorized the emergency use of the product;

''(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

''(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

''(iii) Appropriate conditions for the monitoring and reporting of adverse events associated with the emergency use of the product.

''(iv) For manufacturers of the product, appropriate conditions concerning recordkeeping and reporting, including records access by the Secretary, with respect to the emergency use of the product.

''(B) AUTHORITY FOR ADDITIONAL CONDITIONS.—With respect to the emergency use of an unapproved product, the Secretary may, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

''(i) Appropriate conditions on which entities may distribute the product with respect to the emergency use of the product (including limitation to distribution by government entities), and on how distribution is to be performed.

''(ii) Appropriate conditions on who may administer the product with respect to the emergency use of the product, and on the categories of individuals to whom, and the circumstances under which, the product may be administered with respect to such use.

''(iii) Appropriate conditions with respect to the collection and analysis of information, during the period when the authorization is in effect, concerning the safety and effectiveness of the product with respect to the emergency use of such product.

''(iv) For persons other than manufacturers of the product, appropriate conditions concerning recordkeeping and reporting, including records access by the Secretary, with respect to the emergency use of the product.

''(2) UNAPPROVED USE.—With respect to the emergency use of a product that is an unapproved use of an approved product:

''(A) For a manufacturer of the product who carries out any activity for which the authorization is issued, the Secretary shall, to the extent practicable given the circumstances of the emergency, establish conditions described in clauses (i) and (ii) of paragraph (1)(A), and may establish conditions described in clauses (iii) and (iv) of such paragraph.

''(B)(i) If the authorization under this section regarding the emergency use authorizes a change in the labeling of the product, but the manufacturer of the product chooses not to make such change, such authorization may not authorize distributors of the product or any other person to alter or obscure the labeling provided by the manufacturer.

''(ii) In the circumstances described in clause (i), for a person who does not manufacture the product and who chooses to act under this clause, an authorization under this section regarding the emergency use shall, to the extent practicable given the circumstances of the emergency, authorize such person to provide appropriate information with respect to such product in addition to the labeling provided by the manufacturer, subject to compliance with clause (i). While the authorization under this section is effective, such additional information shall not be considered labeling for purposes of section 502.

''(C) The Secretary may establish with respect to the distribution and administration of the product for the unapproved use conditions no more restrictive than those established by the Secretary with respect to the distribution and administration of the product for the approved use.

''(3) GOOD MANUFACTURING PRACTICE.—With respect to the emergency use of a product for which an authorization under this section is issued (whether an unapproved product or an unapproved use of an approved product), the Secretary may waive or limit, to the extent appropriate given the circumstances of the emergency, requirements regarding current good manufacturing practice otherwise applicable to the manufacture, processing, packing, or holding of products subject to regulation under this Act, including such requirements established under section 501.

''(4) ADVERTISING.—The Secretary may establish conditions on advertisements and other promotional descriptive printed matter that relate to the emergency use of a product for which an authorization under this section is issued (whether an unapproved product or an unapproved use of an approved product), including, as appropriate—

''(A) with respect to drugs and biological products, requirements applicable to prescription drugs pursuant to section 502(n); or

''(B) with respect to devices, requirements applicable to restricted devices pursuant to section 502(r).

''(f) DURATION OF AUTHORIZATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an authorization under this section shall be effective until the earlier of the termination of the declaration under subsection (b) or a revocation under subsection (g).

''(2) CONTINUED USE AFTER END OF EFFECTIVE PERIOD.—Notwithstanding the termination of the declaration under subsection (b) or a revocation under subsection (g), an authorization shall continue to be effective to provide for continued use of an unapproved product with respect to a patient to whom it was administered during the period described by paragraph (1), to the extent found necessary by such patient's attending physician.

''(g) REVOCATION OF AUTHORIZATION.—

''(1) REVIEW.—The Secretary shall periodically review the circumstances and the appropriateness of an authorization under this section.

''(2) REVOCATION.—The Secretary may revoke an authorization under this section if the criteria under subsection (c) for issuance of such authorization are no longer met or other circumstances make such revocation appropriate to protect the public health or safety.

''(h) PUBLICATION; CONFIDENTIAL INFORMATION.—

''(1) PUBLICATION.—The Secretary shall promptly publish in the Federal Register a notice of each authorization, and each termination or revocation of an authorization under this section, and an explanation of the reasons therefor (which may include a summary of data or information that has been submitted to the Secretary in an application under section 505(i) or section 520(g), even if such summary may indirectly reveal the existence of such application).

''(2) CONFIDENTIAL INFORMATION.—Nothing in this section alters or amends section 1905 of title 18, United States Code, or section 552(b)(4) of title 5 of such Code.

''(i) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions under the authority of this section by the Secretary, by the Secretary of Defense, or by the Secretary of Homeland Security are committed to agency discretion.

''(j) RULES OF CONSTRUCTION.—The following applies with respect to this section:

''(1) Nothing in this section impairs the authority of the President as Commander in Chief of the Armed Forces of the United States under article II, section 2 of the United States Constitution.

''(2) Nothing in this section impairs the authority of the Secretary of Defense with respect to the Department of Defense, including the armed forces, under other provisions of Federal law.

''(3) Nothing in this section (including any exercise of authority by a manufacturer under subsection (e)(2)) impairs the authority of the United States to use or manage quantities of a product that are owned or controlled by the United States (including quantities in the stockpile maintained under section 319F–2 of the Public Health Service Act).

''(k) RELATION TO OTHER PROVISIONS.—If a product is the subject of an authorization under this section, the use of such product within the scope of the authorization shall not be considered to constitute a clinical investigation for purposes of section 505(i), section 520(g), or any other provision of this Act or section 351 of the Public Health Service Act.

''(l) OPTION TO CARRY OUT AUTHORIZED ACTIVITIES.—Nothing in this section provides the Secretary any authority to require any person to carry out any activity that becomes lawful pursuant to an authorization under this section, and no person is required to inform the Secretary that the person will not be carrying out such activity, except that a manufacturer of a sole-source unapproved product authorized for emergency use shall report to the Secretary within a reasonable period of time after the issuance by the Secretary of such authorization if such manufacturer does not intend to carry out any activity under the authorization. This section only has legal effect on a person who carries out an activity for which an authorization under this section is issued. This section does not modify or affect activities carried out pursuant to other provisions of this Act or section 351 of the Public Health Service Act. Nothing in this subsection may be construed as restricting the Secretary from imposing conditions on persons who carry out any activity pursuant to an authorization under this section.''.

(b) REPEAL OF TERMINATION PROVISION.—Subsection (d) of section 1603 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 1107a note) is repealed.

SEC. 5. REPORTS REGARDING AUTHORITIES UNDER THIS ACT.

(a) SECRETARY OF HEALTH AND HUMAN SERVICES.—

(1) ANNUAL REPORTS ON PARTICULAR EXERCISES OF AUTHORITY.—

(A) RELEVANT AUTHORITIES.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall submit reports in accordance with subparagraph (B) regarding the exercise of authority under the following provisions of law:

(i) With respect to section 319F–1 of the Public Health Service Act (as added by section 2 of this Act):

(I) Subsection (b)(1) (relating to increased simplified acquisition threshold).

(II) Subsection (b)(2) (relating to procedures other than full and open competition).

(III) Subsection (c) (relating to expedited peer review procedures).

(ii) With respect to section 319F–2 of the Public Health Service Act (as added by section 3 of this Act):

(I) Subsection (c)(7)(C)(iii) (relating to simplified acquisition procedures).

(II) Subsection (c)(7)(C)(iv) (relating to procedures other than full and open competition).

(III) Subsection (c)(7)(C)(v) (relating to premium provision in multiple-award contracts).

(iii) With respect to section 564 of the Federal Food, Drug, and Cosmetic Act (as added by section 4 of this Act):

(I) Subsection (a)(1) (relating to emergency uses of certain drugs and devices).

(II) Subsection (b)(1) (relating to a declaration of an emergency).

(III) Subsection (e) (relating to conditions on authorization).

(B) CONTENTS OF REPORTS.—The Secretary shall annually submit to the designated congressional committees a report that summarizes—

(i) the particular actions that were taken under the authorities specified in subparagraph (A), including, as applicable, the identification of the threat agent, emergency, or the biomedical countermeasure with respect to which the authority was used;

(ii) the reasons underlying the decision to use such authorities, including, as applicable, the options that were considered and rejected with respect to the use of such authorities;

(iii) the number of, nature of, and other information concerning the persons and entities that received a grant, cooperative agreement, or contract pursuant to the use of such authorities, and the persons and entities that were considered and rejected for such a grant, cooperative agreement, or contract, except that the report need not disclose the identity of any such person or entity; and

(iv) whether, with respect to each procurement that is approved by the President under section 319F–2(c)(6) of the Public Health Service Act (as added by section 3 of this Act), a contract was entered into within one year after such approval by the President.

(2) ANNUAL SUMMARIES REGARDING CERTAIN ACTIVITY.—The Secretary shall annually submit to the designated congressional committees a report that summarizes the activity undertaken pursuant to the following authorities under section 319F–1 of the Public Health Service Act (as added by section 2 of this Act):

(A) Subsection (b)(3) (relating to increased micropurchase threshold).

(B) Subsection (d) (relating to authority for personal services contracts).

(C) Subsection (e) (relating to streamlined personnel authority).

With respect to subparagraph (B), the report shall include a provision specifying, for the one-year period for which the report is submitted, the number of persons who were paid amounts greater than $100,000 and the number of persons who were paid amounts between $50,000 and $100,000.

(3) REPORT ON ADDITIONAL BARRIERS TO PROCUREMENT OF SECURITY COUNTERMEASURES.—Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security, shall report to the designated congressional committees any potential barriers to the procurement of security countermeasures that have not been addressed by this Act.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—

(1) IN GENERAL.—Four years after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a study—

(A)(i) to review the Secretary of Health and Human Services' utilization of the authorities granted under this Act with respect to simplified acquisition procedures, procedures other than full and open competition, increased micropurchase thresholds, personal services contracts, streamlined personnel authority, and the purchase of security countermeasures under the special reserve fund; and

(ii) to make recommendations to improve the utilization or effectiveness of such authorities in the future;

(B)(i) to review and assess the adequacy of the internal controls instituted by such Secretary with respect to such authorities, where required by this Act; and

(ii) to make recommendations to improve the effectiveness of such controls;

(C)(i) to review such Secretary's utilization of the authority granted under this Act to authorize an emergency use of a biomedical countermeasure, including the means by which the Secretary determines whether and under what conditions any such authorizations should be granted and the benefits and adverse impacts, if any, resulting from the use of such authority; and

(ii) to make recommendations to improve the utilization or effectiveness of such authority and to enhance protection of the public health;

(D) to identify any purchases or procurements that would not have been made or would have been significantly delayed except for the authorities described in subparagraph (A)(i); and

(E)(i) to determine whether and to what extent activities undertaken pursuant to the biomedical countermeasure research and development authorities established in this Act have enhanced the development of biomedical countermeasures affecting national security; and

(ii) to make recommendations to improve the ability of the Secretary to carry out these activities in the future.

(2) ADDITIONAL PROVISIONS REGARDING DETERMINATION ON DEVELOPMENT OF BIOMEDICAL COUNTERMEASURES AFFECTING NATIONAL SECURITY.—In the report under paragraph (1), the determination under subparagraph (E) of such paragraph shall include—

(A) the Comptroller General's assessment of the current availability of countermeasures to address threats identified by the Secretary of Homeland Security;

(B) the Comptroller General's assessment of the extent to which programs and activities under this Act will reduce any gap between the threat and the availability of countermeasures to an acceptable level of risk; and

(C)(i) the Comptroller General's assessment of threats to national security that are posed by technology that will enable, during the 10-year period beginning on the date of the enactment of this Act, the development of antibiotic resistant, mutated, or bioengineered strains of biological agents; and

(ii) recommendations on short-term and long-term governmental strategies for addressing such threats, including recommendations for Federal policies regarding research priorities, the development of countermeasures, and investments in technology.

(3) REPORT.—A report providing the results of the study under paragraph (1) shall be submitted to the designated congressional committees not later than five years after the date of the enactment of this Act.

(c) REPORT REGARDING BIOCONTAINMENT FACILITIES.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Health and Human Services shall jointly report to the designated congressional committees whether there is a lack of adequate large-scale biocontainment facilities necessary for the testing of security countermeasures in accordance with Food and Drug Administration requirements.

(d) DESIGNATED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term ''designated congressional committees'' means the following committees of the Congress:

(1) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(2) In the Senate: the appropriate committees.

SEC. 6. OUTREACH.

The Secretary of Health and Human Services shall develop outreach measures to ensure to the extent practicable that diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Black or African Americans, American Indians, Appalachian Americans, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, Hispanics or Latinos, or other underrepresented populations, are meaningfully aware of available research and development grants, contracts, cooperative agreements, and procurements conducted under sections 2 and 3 of this Act.

SEC. 7. RECOMMENDATION FOR EXPORT CONTROLS ON CERTAIN BIOMEDICAL COUNTERMEASURES.

Upon the award of any grant, contract, or cooperative agreement under section 2 or 3 of this Act for the research, development, or procurement of a qualified countermeasure or a security countermeasure (as those terms are defined in this Act), the Secretary of Health and Human Services shall, in consultation with the heads of other appropriate Federal agencies, determine whether the countermeasure involved in such grant, contract, or cooperative agreement is subject to existing export-related controls and, if not, may make a recommendation to the appropriate Federal agency or agencies that such countermeasure should be included on the list of controlled items subject to such controls.

SEC. 8. ENSURING COORDINATION, COOPERATION AND THE ELIMINATION OF UNNECESSARY DUPLICATION IN PROGRAMS DESIGNED TO PROTECT THE HOMELAND FROM BIOLOGICAL, CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS.

(a) ENSURING COORDINATION OF PROGRAMS.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall ensure that the activities of their respective Departments coordinate, complement, and do not unnecessarily duplicate programs to identify potential domestic threats from biological, chemical, radiological or nuclear agents, detect domestic incidents involving such agents, analyze such incidents, and develop necessary countermeasures. The aforementioned Secretaries shall further ensure that information and technology possessed

by the Departments relevant to these activities are shared with the other Departments.

(b) DESIGNATION OF AGENCY COORDINATION OFFICER.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall each designate an officer or employee of their respective Departments who shall coordinate, through regular meetings and communications, with the other aforementioned Departments such programs and activities carried out by their Departments.

SEC. 9. AUTHORITY OF THE SECRETARY OF HEALTH AND HUMAN SERVICES DURING NATIONAL EMERGENCIES.

Section 1135(b) of the Social Security Act (42 U.S.C. 1320b–5(b)) is amended—

(1) by striking paragraph (3) and inserting the following:

''(3) actions under section 1867 (relating to examination and treatment for emergency medical conditions and women in labor) for—

''(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

''(B) the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period and inserting ''; and'';

(4) by inserting after paragraph (6), the following:

''(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)—

''(A) section 164.510 of title 45, Code of Federal Regulations, relating to—

''(i) requirements to obtain a patient's agreement to speak with family members or friends; and

''(ii) the requirement to honor a request to opt out of the facility directory;

''(B) section 164.520 of such title, relating to the requirement to distribute a notice; or

''(C) section 164.522 of such title, relating to—

''(i) the patient's right to request privacy restrictions; and

''(ii) the patient's right to request confidential communications.''; and

(5) by adding at the end the following: ''A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.''.

SA 3179. Mr. LOTT (for himself and Mr. COCHRAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, between lines 14 and 15, insert the following:

SEC. 217. ADVANCED FERRITE ANTENNA.

(a) AMOUNT FOR DEVELOPMENT AND TESTING.—Of the amount authorized to be appropriated under section 201(2), $3,000,000 shall be available for development and testing of the Advanced Ferrite Antenna.

(b) ADJUSTMENTS TO AUTHORIZATIONS OF APPROPRIATIONS.—(1) The amount authorized to be appropriated under section 201(2) is hereby increased by $3,000,000.

(2) The amount authorized to be appropriated under section 102(a)(3) is hereby reduced by $3,000,000, to be derived from the amounts for the LCU(X) program.

SA 3180. Mr. GREGG (for himself and Mr. KENNEDY) proposed an amendment to the bill S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures; as follows:

Amend the title so as to read: To amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.''.

SA 3181. Ms. CANTWELL (for herself, Mr. HOLLINGS, Mrs. MURRAY, Mrs. CLINTON, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 384, strike line 3 and all that follows through page 391, line 7, and insert the following:

SEC. 3117. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

(a) ANNUAL REPORT REQUIRED.—Subtitle C of title XLVII of the Atomic Energy Defense Act (50 U.S.C. 2771 et seq.) is amended by adding at the end the following new section:

''SEC. 4732. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

''The Secretary of Energy shall submit to Congress each year, in the budget justification materials submitted to Congress in support of the budget of the President for the fiscal year beginning in such year (as submitted under section 1105(a) of title 31, United States Code), the following:

''(1) A detailed description and accounting of the proposed obligations and expenditures by the Department of Energy for safeguards and security in carrying out programs necessary for the national security for the fiscal year covered by such budget, including any technologies on safeguards and security proposed to be deployed or implemented during such fiscal year.

''(2) With respect to the fiscal year ending in the year before the year in which such budget is submitted, a detailed description and accounting of—

''(A) the policy on safeguards and security, including any modifications in such policy adopted or implemented during such fiscal year;

''(B) any initiatives on safeguards and security in effect or implemented during such fiscal year;

''(C) the amount obligated and expended for safeguards and security during such fiscal year, set forth by total amount, by amount per program, and by amount per facility; and

''(D) the technologies on safeguards and security deployed or implemented during such fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by inserting after the item relating to section 4731 the following new item:

''Sec. 4732. Annual report on expenditures for safeguards and security.''.

SEC. 3118. AUTHORITY TO CONSOLIDATE COUNTERINTELLIGENCE OFFICES OF DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION WITHIN NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORITY.—The Secretary of Energy may consolidate the counterintelligence programs and functions referred to in subsection (b) within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and provide for their discharge by that Office.

(b) COVERED PROGRAMS AND FUNCTIONS.—The programs and functions referred to in this subsection are as follows:

(1) The functions and programs of the Office of Counterintelligence of the Department of Energy under section 215 of the Department of Energy Organization Act (42 U.S.C. 7144b).

(2) The functions and programs of the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration under section 3232 of the National Nuclear Security Administration Act (50 U.S.C. 2422), including the counterintelligence programs under section 3233 of that Act (50 U.S.C. 2423).

(c) ESTABLISHMENT OF POLICY.—The Secretary shall have the responsibility to establish policy for the discharge of the counterintelligence programs and functions consolidated within the National Nuclear Security Administration under subsection (a) as provided for under section 213 of the Department of Energy Organization Act (42 U.S.C. 7144).

(d) PRESERVATION OF COUNTERINTELLIGENCE CAPABILITY.—In consolidating counterintelligence programs and functions within the National Nuclear Security Administration under subsection (a), the Secretary shall ensure that the counterintelligence capabilities of the Department of Energy and the National Nuclear Security Administration are in no way degraded or compromised.

(e) REPORT ON EXERCISE OF AUTHORITY.—In the event the Secretary exercises the authority in subsection (a), the Secretary shall submit to the congressional defense committees a report on the exercise of the authority. The report shall include—

(1) a description of the manner in which the counterintelligence programs and functions referred to in subsection (b) shall be consolidated within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and discharged by that Office;

(2) a notice of the date on which that Office shall commence the discharge of such programs and functions, as so consolidated; and

(3) a proposal for such legislative action as the Secretary considers appropriate to effectuate the discharge of such programs and functions, as so consolidated, by that Office.

(f) DEADLINE FOR EXERCISE OF AUTHORITY.—The authority in subsection (a) may be exercised, if at all, not later than one year after the date of the enactment of this Act.

SEC. 3119. ON-SITE TREATMENT AND STORAGE OF WASTES FROM REPROCESSING ACTIVITIES AND RELATED WASTE.

(a) AUTHORITY.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

SA 3182. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3170 submitted by Mr. GRAHAM of South Carolina and intended to be proposed to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike line 11.

SA 3183. Mr. SMITH (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill insert the following:

TITLE ____—LOCAL LAW ENFORCEMENT ENHANCEMENT ACT.

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Local Law Enforcement Enhancement Act of 2004''.

SEC. ___02. FINDINGS.

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) The prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including—

(A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and

(B) by preventing members of targeted groups from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(7) Perpetrators cross State lines to commit such violence.

(8) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(9) Such violence is committed using articles that have traveled in interstate commerce.

(10) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(11) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct ''races''. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(12) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(13) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States and local jurisdictions.

SEC. ___03. DEFINITION OF HATE CRIME.

In this title, the term ''hate crime'' has the same meaning as in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note).

SEC. ___04. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.

(a) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—At the request of a law enforcement official of a State or Indian tribe, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that—

(A) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(B) constitutes a felony under the laws of the State or Indian tribe; and

(C) is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim, or is a violation of the hate crime laws of the State or Indian tribe.

(2) PRIORITY.—In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than 1 State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) GRANTS.—

(1) IN GENERAL.—The Attorney General may award grants to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS.—In implementing the grant program, the Office of Justice Programs shall work closely with the funded jurisdictions to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION.—

(A) IN GENERAL.—Each State that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION.—Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS.—A State or political subdivision of a State or tribal official applying for assistance under this subsection shall—

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, political subdivision, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, political subdivision, or tribal official has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single jurisdiction within a 1 year period.

(6) REPORT.—Not later than December 31, 2005, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to

carry out this subsection $5,000,000 for each of fiscal years 2005 and 2006.

SEC. ___05. GRANT PROGRAM.

(a) AUTHORITY TO MAKE GRANTS.—The Office of Justice Programs of the Department of Justice shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. ___06. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE AND LOCAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Community Relations Service, for fiscal years 2005, 2006, and 2007 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section ___07.

SEC. ___07. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

"§ 249. Hate crime acts

''(a) IN GENERAL.—

''(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

''(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(i) death results from the offense; or

''(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(I) death results from the offense; or

''(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

''(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

''(I) across a State line or national border; or

''(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

''(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

''(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

''(iv) the conduct described in subparagraph (A)—

''(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

''(II) otherwise affects interstate or foreign commerce.

''(b) CERTIFICATION REQUIREMENT.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

''(1) he or she has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

''(2) he or his designee or she or her designee has consulted with State or local law enforcement officials regarding the prosecution and determined that—

''(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

''(B) the State has requested that the Federal Government assume jurisdiction;

''(C) the State does not object to the Federal Government assuming jurisdiction; or

''(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

''(c) DEFINITIONS.—In this section—

''(1) the term 'explosive or incendiary device' has the meaning given the term in section 232 of this title; and

''(2) the term 'firearm' has the meaning given the term in section 921(a) of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

''249. Hate crime acts.''.

SEC. ___08. DUTIES OF FEDERAL SENTENCING COMMISSION.

(a) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—Pursuant to the authority provided under section 994 of title 28, United States Code, the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements (in addition to the sentencing enhancement provided for the use of a minor during the commission of an offense) for adult defendants who recruit juveniles to assist in the commission of hate crimes.

(b) CONSISTENCY WITH OTHER GUIDELINES.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishments for substantially the same offense.

SEC. ___09. STATISTICS.

Subsection (b)(1) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting ''gender,'' after ''race,''.

SEC. ___10. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SA 3184. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At end of subtitle B of title I, add the following:

SEC. 113. INTEGRATION OF JAVELIN ANTI-ARMOR MISSILE SYSTEM INTO ENGAGEMENT SKILLS TRAINER 2000.

The amount authorized to be appropriated by section 101(5) for other procurement for the Army is hereby increased by $3,000,000, with the amount of the increase to be allocated to the integration of the JAVELIN anti-armor missile system into the Engagement Skills Trainer 2000 in order to allow soldiers in infantry rifle platoons to train will all their organic weapons.

SA 3185. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. NAVAL PROFESSIONAL MILITARY EDUCATION.

The amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy is hereby increased by $4,000,000, with the amount of the increase to be allocated to Naval Professional Military Education (NPME).

SA 3186. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. ADVANCED DIGITAL RADAR SYSTEM.

The amount authorized to be appropriated by section 201(1) for research, development,

test, and evaluation, Army, is hereby increased by $3,000,000, with the amount of the increase to be made available for initial development of the Advanced Digital Radar System (ADRS) (PE 0605602A).

SA 3187. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. DEPLOYMENT AND EXPANSION OF CIVIL SUPPORT TEAM TRAINER PROGRAM.

The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby increased by $5,000,000, with the amount of the increase to be allocated to deploy and expand the scenarios in the Civil Support Team Trainer (CSTT) program, a simulations based training program for the National Guard Weapons of Mass Destruction Civil Support Teams (WMD–CSTs).

SA 3188. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. ROTARY WING NIGHT VISION GOGGLE TRAINING.

The amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy is hereby increased by $4,000,000, with the amount of the increase to be allocated to the development of rotary wing night vision goggle (NVG) training.

SA 3189. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. RAPID RESPONSE NETWORKING FOR MULTIPLE APPLICATIONS.

The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $1,500,000, with the amount of the increase to be allocated to the Defense Threat Reducation Agency and made available to the University of North Florida for the purpose of permitting the University to continue its ongoing research on Rapid Response networking for Multiple Applications.

SA 3190. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 131, between lines 17 and 18, insert the following:

SEC. 653. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–2009dd–7) is amended by inserting after section 331F the following:

"SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

''(a) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is hereby rescinded.

''(b) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is hereby deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

''(c) MOBILIZED MILITARY RESERVIST.—In this section, the term 'mobilized military reservist' means an individual who—

''(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

''(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.''.

SA 3191. Mr. KYL (for himself and Mr. CORNYN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of the amendment, insert the following:

SEC. 858. SENSE OF THE SENATE REGARDING EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

It is the sense of the Senate that Congress should, as soon as practicable, enact the following legislation:

SEC. ___. EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

"SEC. 4959. TAXES ON EXCESS FEE TRANSACTIONS.

''(a) INITIAL TAXES.—

''(1) IN GENERAL.—There is hereby imposed on the collecting attorney in each excess fee transaction a tax equal to 5 percent of the excess fee.

''(2) PAYMENT.—The tax imposed by paragraph (1) shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(b) ADDITIONAL TAX ON THE COLLECTING ATTORNEY.—

''(1) IN GENERAL.—In any case in which a tax is imposed by subsection (a) on an excess fee transaction and the excess fee involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess fee involved.

''(2) PAYMENT.—The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(c) EXCESS FEE TRANSACTION; EXCESS FEE.—For purposes of this section—

''(1) EXCESS FEE TRANSACTION.—

''(A) IN GENERAL.—The term 'excess fee transaction' means any transaction in which a fee is provided by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff if the amount of the fee provided exceeds the value of the services received in exchange therefor or subsection (g)(1) applies.

''(B) DETERMINATION OF VALUE.—For purposes of subparagraph (A), in determining whether the amount of the fee provided exceeds the value of the services received in exchange therefor, the value of the services shall be the sum of—

''(i) the reasonable expenses incurred by the collecting attorney in the course of the representation of the applicable plaintiff, and

''(ii) a reasonable fee based on—

''(I) the number of hours of non-duplicative, professional quality legal work provided by the collecting attorney of material value to the outcome of the representation of the applicable plaintiff, taking into account the factors described in subparagraphs (B) and (D) of subsection (h)(2),

''(II) reasonable hourly rates for the individuals performing such work based on hourly rates charged by other attorneys for the rendition of comparable services, including rates charged by adversary defense counsel in the representation, taking into account the factors described in subparagraphs (A), (C), (E), and (G) of subsection (h)(2), and

''(III) to the extent such items are not taken into account in establishing the reasonable hourly rates under subclause (II), an appropriate adjustment rate determined in accordance with subparagraph (C) to compensate the collecting attorney for periods of

substantial risk of non-payment of fees and for skillful or innovative services which increase the amount of the applicable plaintiff's recovery.

''(iii) FEES IN CERTAIN SETTLEMENTS.—For purposes of this subparagraph, the value of services for any collecting attorney receiving fees under the Master Settlement Agreement shall be deemed to include a reasonable fee that is based on a reasonable hourly rate (including appropriate adjustment rates) of not less than $20,000 per hour

''(C) ADJUSTMENT RATE.—

''(i) IN GENERAL.—For purposes of this paragraph, an appropriate adjustment rate is a percentage of the reasonable hourly rate under subparagraph (B)(ii)(II) which is added to the amount of such rate and which is not more than the sum of one risk percentage and one skill percentage described in clauses (ii) and (iii), respectively.

''(ii) RISK PERCENTAGE.—For purposes of this subparagraph, the term 'risk percentage' means a percentage rate that is proportional to the collecting attorney's risk of nonrecovery of fees and which is—

''(I) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees, not more than 100 percent,

''(II) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 8,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 2 years to the case before resolution of all claims, not more than 200 percent, or

''(III) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 15,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 4 years to the case before resolution of all claims, not more than 300 percent.

''(iii) SKILL PERCENTAGE.—For purposes of this subparagraph, the term 'skill percentage' means, in the case of a collecting attorney who has demonstrated exceptionally skillful or innovative legal service which generated a recovery for the applicable plaintiff substantially greater than the typical recovery in similar cases, a percentage rate that is proportional to the increase in the applicable plaintiff's recovery and that is not more than 100 percent.

''(iv) LIMITATION.—An appropriate adjustment rate shall not increase the collecting attorney's fee above an amount that is proportional to the applicable plaintiff's recovery.

''(D) COURT APPROVAL OF FEES.—Fee payments approved by any court shall be presumed to not be in excess of the value of the services received in exchange therefor if the court approving the fee—

''(i) did not approve an adjustment rate greater than that determined to be appropriate under subparagraph (C) in a case where such fee included an adjustment rate, and

''(ii) obtained and relied upon a report of a legal auditing firm with respect to such fee in accordance with the procedures in paragraph (12).

''(2) EXCESS FEE.—The term 'excess fee' means the excess referred to in paragraph (1)(A).

''(d) JOINT AND SEVERAL LIABILITY.—For purposes of this section, if more than 1 person is liable for any tax imposed by subsection (a), all such persons shall be jointly and severally liable for such tax.

''(e) APPLICABLE PLAINTIFF.—For purposes of this section, the term 'applicable plaintiff' means any person represented by a collecting attorney with respect to a claim described in subsection (f)(1).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) COLLECTING ATTORNEY.—The term 'collecting attorney' means any person engaged in the practice of law who represents—

''(A) any governmental entity, including any State, municipality, or political subdivision of a State, or any person acting on such entity's behalf, including pursuant to Federal or State Qui Tam statutes, in a claim for recoupment of payments made or to be made by such entity to or on behalf of any natural person by reason, directly or indirectly, of a breach of duty that causes damage to such natural person,

''(B) any organization described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), in a claim for damages based on a breach of duty, whether civil or criminal, causing damage to such organization,

''(C) any natural person seeking to recover damages in a claim based on breaches of duty, whether civil or criminal, causing damage to such natural person, or

''(D) any assignee or other holder of claims described in subparagraph (A), (B), or (C),

when 1 or more of such claims, whether or not joined in 1 action, involve the same or a coordinated group of plaintiff's attorneys or similarly situated defendants, arise out of the same transaction or set of facts or involve substantially similar liability issues, and result in settlements or judgments aggregating at least $100,000,000.

''(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess fee transaction, the period beginning with the date on which the transaction occurs and ending 90 days after the earliest of—

''(A) the date of the mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), or

''(B) the date on which the tax imposed by subsection (a) is assessed.

''(3) MASTER SETTLEMENT AGREEMENT.—The term 'Master Settlement Agreement' means that certain Master Settlement Agreement of November 23, 1998, and other, concluded Settlement Agreements based on State health care expenditures pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including lawsuits involving the States of Florida, Minnesota, Mississippi, and Texas.

''(4) CORRECTION.—

''(A) GENERAL RULE.—Any excess fee transaction is corrected by undoing the excess fee to the extent possible and taking any additional measures necessary to place the applicable plaintiff in a financial position not worse than that in which such plaintiff would be if the collecting attorney were dealing under the highest fiduciary standards.

''(B) PAYMENT OF EXCESS FEES.—

''(i) IN GENERAL.—Except as provided in clause (ii), a collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the applicable plaintiff.

''(ii) CERTAIN SETTLEMENTS.—In the case of excess fees arising from or related to the Master Settlement Agreement, the collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the Secretary of the Treasury.

''(C) NO WAIVER OF FEE.—No collecting attorney may avoid imposition of any tax imposed by this section by transferring any portion of the excess fee or refusing to accept any portion of the excess fee.

''(5) LIMITED REASONABLE CAUSE.—For purposes of section 4962(a), an excess fee transaction shall not be treated as an event which was due to reasonable cause if the amount of the fee provided would exceed the value of the services received in exchange therefor determined with the maximum adjustment rate allowed under subsection (c)(1)(C).

''(g) DISCLOSURE REQUIREMENTS.—

''(1) TREATMENT AS EXCESS FEE.—Any fee provided after the date of the enactment of this subsection by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff shall be deemed to be an excess fee provided in an excess fee transaction unless the disclosure requirements described in paragraph (2) are met.

''(2) CONTENTS OF STATEMENT.—The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney receives any fees with respect to a claim described in subsection (f)(1), if such collecting attorney—

''(A) includes in the return of tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

''(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff prior to the deadline (including extensions) for filing such return.

''(h) LEGAL AUDITING FIRM.—

''(1) IN GENERAL.—In any case before a Federal district court or a State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing attorney billings and select 1 such legal auditing firm to review the billing records submitted by the collecting attorney, under the same standards the firm would use if it were hired by a private party to review legal bills submitted to the party, for the reasonableness of such attorney's billing patterns and practices. The court shall require the collecting attorney to submit billing records, cost records, and any other information sought by such firm in its review.

''(2) REVIEW BY LEGAL AUDITING FIRM.—In reviewing the billing records and work performed by the collecting attorney, the legal auditing firm shall address all relevant matters, including—

''(A) the hourly rates of the collecting attorney compared with the prevailing market rates for the services rendered by the collecting attorney,

''(B) the number of hours worked by the collecting attorney on the case compared with other cases that the collecting attorney worked on during the same period,

''(C) whether the collecting attorney performed tasks that could have been performed by attorneys with lower billing rates,

''(D) whether the collecting attorney used appropriate billing methodology, including keeping contemporaneous time records and using appropriate billing time increments,

''(E) whether particular tasks were staffed appropriately,

''(F) whether the costs and expenses submitted by the collecting attorney were reasonable,

''(G) whether the collecting attorney exercised billing judgment, and

''(H) any other matters normally addressed by the legal auditing firm when reviewing attorney billings for private clients.

''(3) FILING OF REPORT; RESPONSE; BURDEN OF PROOF.—The court shall set a date for the filing of the report of the legal auditing firm, and allow the collecting attorney or any applicable plaintiff to respond to the report within a reasonable time period. The report shall be presumed correct unless rebutted by the collecting attorney or any applicable plaintiff by clear and convincing evidence.

''(4) FEE FOR LEGAL AUDITING FIRM.—The fee for the report of the legal auditing firm shall be paid from the collecting attorney's

fee award, the applicable plaintiff's recovery, or both in a manner determined by the court.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations to prevent avoidance of the purposes of this section and regulations requiring recordkeeping and information reporting.''.

(2) CONFORMING AND CLERICAL AMENDMENTS.—

(A) Subsections (a), (b), and (c) of section 4963 of the Internal Revenue Code of 1986 are each amended by inserting ''4959,'' after ''4958,''.

(B) Subsection (e) of section 6213 of such Code is amended by inserting ''4959 (relating to excess fee transactions),'' before ''4971''.

(C) Paragraphs (2) and (3) of section 7422(g) of such Code are each amended by inserting ''4959,'' after ''4958,''.

(D) The heading for subchapter D of chapter 42 of such Code is amended to read as follows:

''Subchapter D—Failure by Certain Charitable Organizations and Persons to Meet Certain Qualification Requirements and Fiduciary Standards.''.

(E) The table of subchapters for chapter 42 of such Code is amended by striking the item relating to subchapter D and inserting the following:

''SUBCHAPTER D. Failure by certain charitable organizations and persons to meet certain qualification requirements and fiduciary standards.''.

(F) The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

''Sec. 4959. Taxes on excess fee transactions.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to excess fees paid on or after the date of the enactment of this Act.

(b) DECLATORY JUDGMENTS RELATING TO EXCISE TAXES ON EXCISE FEE TRANSACTIONS OF CERTAIN ATTORNEYS.—

(1) IN GENERAL.—Subchapter B of chapter 76 of the Internal Revenue Code of 1986 (relating to judicial proceedings) is amended by redesignating section 7437 as section 7438 and by inserting after section 7436 the following new section:

''SEC. 7437. DECLARATORY JUDGMENTS RELATING TO TAX ON EXCESS FEE TRANSACTIONS.

''(a) IN GENERAL.—In a case of actual controversy involving—

''(1) a determination by the Secretary or the collecting attorney with respect to the imposition of the excise tax on excess fee transactions on such collecting attorney under section 4959, or

''(2) a failure by the Secretary or the collecting attorney to make such a determination,

upon the filing of an appropriate pleading by an applicable plaintiff, the Tax Court may make a declaration with respect to such determination or failure. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

''(b) DEFERENTIAL REVIEW.—If a collecting attorney's fee has been approved by a court in accordance with section 4959(c)(1)(D) or by the Secretary pursuant to section 4959, the Tax Court shall review the fee only for an abuse of discretion.

''(c) LEGAL AUDITING FIRM.—In any petition for a declaration referred to in subsection (a):

''(1) NO PREVIOUS REPORT.—If a report by a legal auditing firm that meets the requirements of section 4959(h) has not been previously produced and relied on by another court, the Tax Court shall hire such a legal auditing firm and rely on its report pursuant to the procedures in section 4959(h).

''(2) SECOND REPORT.—

''(A) IN GENERAL.—If a report by a legal auditing firm has been approved by a court in accordance with section 4959, the Tax Court shall hire a second legal auditing firm upon the request of the petitioner.

''(B) FEE FOR REPORT.—The Tax Court may direct the petitioner to pay the fee for any report of a legal auditing firm provided pursuant to subparagraph (A).

''(d) TIME FOR BRINGING ACTION.—No proceeding may be initiated under this section by any person until 90 days after such person first notifies the Secretary of the excess fee transaction with respect to which the proceeding relates.

''(e) DEFINITIONS.—For purposes of this section, any term used in this section and also in section 4959 shall have the meaning given such term by section 4959.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 7437 and by inserting the following new items:

''Sec. 7437. Declaratory judgments relating to tax on excess fee transactions.

''Sec. 7438. Cross references.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions filed on or after the date of the enactment of this Act.

(c) USE OF CERTAIN FEES.—Any fees collected by the Secretary of the Treasury pursuant to section 4959(f)(4)(B)(ii) of the Internal Revenue Code of 1986 (as added by subsection (a)), shall be made available to the Secretary of Defense, as provided by appropriation Acts, for making expenditures to address the readiness, force protection, and safety needs arising out of the ongoing global war on terrorism. Such expenditures shall include additional—

(1) up-armored High Mobility Multipurpose Wheeled Vehicles;

(2) add-on ballistic protection for medium and heavy wheeled vehicles;

(3) Interceptor Body Armor, including add-on protection for the shoulder and side body areas;

(4) unmanned aerial vehicles;

(5) ammunition and selected items of high priority (such as vehicles, night vision devices, sensors, and Javelin missiles); and

(6) replacement of equipment lost in combat.

SA 3192. Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. LUGAR, Mr. BIDEN, Mr. ALEXANDER, Mr. BINGAMAN, Mr. REED, Mr. AKAKA, Mr. WARNER, Mr. LEVIN, and Mr. FEINGOLD) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of subtitle C of title XXXI, add the following:

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) PROGRAM AUTHORIZED.—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) PROGRAM ELEMENTS.—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials and radiological materials and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, nongovernmental organizations, and other international entities as the Secretary considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''fissile materials'' means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term ''radiological materials'' includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226 and Strontium-90, Curium-244, Strontium-90, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term ''related equipment'' includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term ''highly-enriched uranium'' means uranium enriched to or above 20 percent in isotope 235.

(5) The term ''low-enriched uranium'' means uranium enriched below 20 percent in isotope 235.

(6) The term ''proliferation-attractive'', in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

SA 3193. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division A, add the following:

TITLE XIII—BENEFITS FOR RESERVES ON EXTENDED TOURS OF ACTIVE DUTY

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Guard and Reserve Enhanced Benefits Act of 2004''.

Subtitle A—Family Assistance Benefits

SEC. 1311. MILITARY FAMILY LEAVE.

(a) GENERAL REQUIREMENTS FOR LEAVE.—

(1) DEFINITIONS.—Section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611) is amended by adding at the end the following:

''(14) ACTIVE DUTY.—The term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(15) QUALIFIED MEMBER.—The term 'qualified member' means a member of the reserve components on active duty for a period of more than 30 days.''.

(2) ENTITLEMENT TO LEAVE.—Section 102(a)(1) of such Act (29 U.S.C. 2612(a)) is amended by adding at the end the following:

''(E) Because the spouse, son, daughter, or parent of the employee is a qualified member.''.

(3) SCHEDULE.—Section 102(b)(1) of such Act (29 U.S.C. 2612(b)(1)) is amended by inserting after the second sentence the following: ''Leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.''.

(4) SUBSTITUTION OF PAID LEAVE.—Section 102(d)(2)(A) of such Act (29 U.S.C. 2612(d)(2)(A)) is amended by striking ''(A), (B), or (C)'' and inserting ''(A), (B), (C), or (E)''.

(5) NOTICE.—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following:

''(3) NOTICE FOR MILITARY FAMILY LEAVE.—In any case in which an employee seeks leave under subsection (a)(1)(E), the employee shall provide such notice as is practicable.''.

(6) CERTIFICATION.—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following:

''(f) CERTIFICATION FOR MILITARY FAMILY LEAVE.—An employer may require that a request for leave under section 102(a)(1)(E) be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe.''.

(b) MILITARY FAMILY LEAVE FOR CIVIL SERVICE EMPLOYEES.—

(1) DEFINITIONS.—Section 6381 of title 5, United States Code, is amended—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code; and

''(8) the term 'qualified member' means a member of the reserve components on active duty for a period of more than 30 days.''.

(2) ENTITLEMENT TO LEAVE.—Section 6382(a) of such title is amended by adding at the end the following:

''(E) Because the spouse, son, daughter, or parent of the employee is a qualified member.''.

(3) SCHEDULE.—Section 6382(b)(1) of such title is amended by inserting after the second sentence the following: ''Leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.''.

(4) SUBSTITUTION OF PAID LEAVE.—Section 6382(d) of such title is amended by striking ''(A), (B), (C), or (D)'' and inserting ''(A), (B), (C), (D), or (E)''.

(5) NOTICE.—Section 6382(e) of such title is amended by adding at the end the following:

''(3) In any case in which an employee seeks leave under subsection (a)(1)(E), the employee shall provide such notice as is practicable.''.

(6) CERTIFICATION.—Section 6383 of such title is amended by adding at the end the following:

''(f) An employing agency may require that a request for leave under section 6382(a)(1)(E) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.''.

SEC. 1312. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''There is'' and inserting ''(a) IN GENERAL.—There is'';

(2) in subsection (a), as so designated, by inserting ''(except section 658T)'' after ''this subchapter''; and

(3) by adding at the end the following:

''(b) CHILD CARE FOR CERTAIN MILITARY DEPENDENTS.—There is authorized to be appropriated to carry out section 658T $200,000,000 for each of fiscal years 2005 through 2009.''.

(b) CHILD CARE ASSISTANCE.—The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by adding at the end the following:

''SEC. 658T. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible spouses to assist the spouses in paying for the cost of child care services provided to dependents by eligible child care providers. In making the grants, the Secretary shall give priority to eligible spouses of qualified members on active duty for a period of more than 6 months.

''(b) DEFINITIONS.—In this section:

''(1) ACTIVE DUTY.—The term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(2) ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.—The term 'active duty for a period of more than 30 days' has the meaning given the term in section 101(d)(2) of title 10, United States Code.

''(3) DEPENDENT.—The term 'dependent' means an individual who is—

''(A) a dependent, as defined in section 401 of title 37, United States Code, except that

such term does not include a person described in paragraph (1) or (3) of subsection (a) of such section; and

''(B) an individual described in subparagraphs (A) and (B) of section 658P(4).

''(4) ELIGIBLE SPOUSE.—The term 'eligible spouse' means a person who—

''(A) is a parent of one or more dependents of a qualified member; and

''(B) has the primary responsibility for the care of one or more such dependents.

''(5) QUALIFIED MEMBER.—The term 'qualified member' means a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days.

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a spouse shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a description of the eligible child care provider who provides the child care services assisted through the grant.

''(d) RULE.—The provisions of this subchapter, other than section 658P and provisions referenced in section 658P, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.''.

(c) CONFORMING AMENDMENTS.—Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''appropriated under this subchapter'' and inserting ''appropriated under section 658B(a)''; and

(B) in paragraph (2), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''; and

(2) in subsection (b)(1), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''.

Subtitle B—Education Benefits

PART I—MONTGOMERY GI BILL BENEFITS

SEC. 1321. BASIC EDUCATIONAL ASSISTANCE FOR MEMBERS OF SELECTED RESERVE SERVING EXTENDED OR RECURRING PERIODS ON ACTIVE DUTY.

(a) ENTITLEMENT.—(1) Subsection (a)(1) of section 3011 of title 38, United States Code, is amended—

(A) in subparagraph (B), by striking ''or'' at the end;

(B) in subparagraph (C), by adding ''or'' at the end; and

(C) by adding at the end the following new subparagraph:

''(D) after September 11, 2001, while a member of the Selected Reserve—

''(i) serves at least 12 months of continuous active duty in the Armed Forces; or

''(ii) during any 60-month period, serves an aggregate of 24 months of continuous active duty in the Armed Forces;''.

(2) Subsection (d)(3) of such section is amended by striking ''The period of service'' and inserting ''Except in the case of an individual described in subsection (a)(1)(D), the period of service''.

(b) EXCLUSION FROM CONTRIBUTIONS FOR INCREASED ASSISTANCE.—Subsection (e)(1) of such section is amended by inserting ''(other than an individual described in subsection (a)(1)(D)'' after ''Any individual''.

(c) AMOUNT OF ASSISTANCE.—Section 3015(a) of such title is amended by inserting after ''three years'' the following: ''or an individual whose service on active duty on which such entitlement is based is described in clause (i) or (ii) of section 3011(a)(1)(D) of this title''.

SEC. 1322. INCREASE IN AMOUNT OF EDUCATIONAL ASSISTANCE FOR MEMBERS OF SELECTED RESERVE.

(a) INCREASE IN AMOUNTS.—Section 16131(b)(1) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking ''$251'' and inserting ''$400'';

(2) in subparagraph (B), by striking ''$188'' and inserting ''$300''; and

(3) in subparagraph (C), by striking ''$125'' and inserting ''$200''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to monthly rates of educational assistance for months beginning on or after that date.

SEC. 1323. MODIFICATION OF TIME LIMITATION FOR USE OF ENTITLEMENT TO EDUCATIONAL ASSISTANCE OF MEMBERS OF SELECTED RESERVE.

Section 16133(a)(2) of title 10, United States Code, is amended—

(1) by inserting ''that is five years after the date'' after ''on the date''; and

(2) by striking ''first'' and inserting ''later''.

PART II—OTHER EDUCATION BENEFITS

SEC. 1326. STUDENT LOAN DEFERMENTS.

(a) FFEL AND DIRECT SUBSIDIZED LOANS.—Section 428(b)(1)(M) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) in clause (ii), by striking ''or'' after the semicolon;

(2) in clause (iii), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iii) the following:

''(iv) during which the borrower is a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and for 3 months following discharge or release from such active duty.''.

(b) CONSOLIDATION LOANS.—Section 428C(b)(4)(C)(ii) of the Higher Education Act of 1965 (20 U.S.C. 1078–3(b)(4)(C)(ii)) is amended—

(1) in subclause (II), by striking ''or'' after the semicolon;

(2) in subclause (III), by striking ''or (II)'' and inserting '', (II) or (III)'';

(3) by redesignating subclause (III) (as so amended) as subclause (IV); and

(4) by inserting after subclause (II) the following:

''(III) by the Secretary, in the case of a consolidation loan of a student who is on an active duty deferment under section 428(b)(1)(M)(iv); or''.

(c) FFEL AND DIRECT UNSUBSIDIZED LOANS.—Section 428H(e)(2) of the Higher Education Act of 1965 (20 U.S.C. 1078–8(e)(2)) is amended by adding at the end the following:

''(C) Notwithstanding subparagraph (A), interest on loans made under this section for which payments of principal are deferred because the student is on an active duty deferment under section 428(b)(1)(M)(iv) shall be paid by the Secretary.''.

(d) PERKINS LOANS.—Section 464(c)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) in clause (iii), by striking ''or'' after the semicolon;

(2) in clause (iv), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iv) the following:

''(v) during which the borrower is a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and for 3 months following discharge or release from such active duty.''.

SEC. 1327. PRESERVATION OF EDUCATIONAL STATUS AND TUITION.

(a) IN GENERAL.—Title VII of the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), as amended by section 1 of Public Law 108–189 (117 Stat. 2835), is further amended by adding at the end the following new section:

''SEC. 707. PRESERVATION OF EDUCATIONAL STATUS AND TUITION.

''(a) LEAVE OF ABSENCE.—A servicemember who is a member of the reserve components on active duty for a period of more than 30 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and who is enrolled as a student at an institution of higher education at the time of entry into the service on active duty, shall be granted a leave of absence from the institution during the period of the service on active duty and for one year after the conclusion of the service on active duty.

''(b) EDUCATIONAL STATUS.—

''(1) IN GENERAL.—A servicemember on a leave of absence from an institution of higher education under subsection (a) shall be entitled, upon completion of the leave of absence, to be restored to the educational status the servicemember had attained before entering into the service on active duty as described in that subsection without loss of academic credits earned, scholarships or grants awarded, or, subject to paragraph (2), tuition and other fees paid before the entry of the servicemember into the service on active duty.

''(2) TUITION.—

''(A) REFUND.—An institution of higher education shall refund tuition or fees paid or credit the tuition and fees to the next period of enrollment after a servicemember returns from the leave of absence, at the option of the servicemember. Notwithstanding the 180-day limitation referred to in subsection (a)(2)(B) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), a servicemember on a leave of absence under this section shall not be treated as having withdrawn for purposes of such section 484B unless the servicemember fails to return upon the completion of the leave of absence.

''(B) AMOUNT OF REFUND.—If a servicemember requests a refund for a period of enrollment, the percentage of the tuition and fees that shall be refunded shall be equal to 100 percent minus—

''(i) the percentage of the period of enrollment (for which the tuition and fees were paid) that was completed (as determined in accordance with subsection (d) of such section 484B) as of the day the servicemember withdrew, provided that such date occurs on or before the completion of 60 percent of the period of enrollment; or

''(ii) 100 percent, if the day the person withdrew occurs after the servicemember has completed 60 percent of the period of enrollment.''.

(b) CLERICAL AMENDMENT.—The table of contents of that Act is amended by adding at the end the following new item:

''Sec. 707. Preservation of educational status and tuition.''.

Subtitle C—Compensation and Retirement Benefits

SEC. 1331. NONREDUCTION IN PAY FOR FEDERAL EMPLOYEES WHO ARE RESERVES SERVING ON ACTIVE DUTY IN THE UNIFORMED SERVICES FOR EXTENDED PERIODS.

(a) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

"§ 5538. Nonreduction in pay of Reserves on active duty in the uniformed services for extended periods

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services for a period of more than 30 days pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of the service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) In this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay of Reserves on active duty in the uniformed services for extended periods.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as added by this section) beginning on or after the date of enactment of this Act.

SEC. 1332. CREDIT FOR INCOME DIFFERENTIAL FOR EMPLOYMENT OF ACTIVATED MILITARY RESERVIST AND REPLACEMENT PERSONNEL.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

"SEC. 30B. EMPLOYER WAGE CREDIT FOR ACTIVATED MILITARY RESERVISTS.

''(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) in the case of a small business employer, the employment credit with respect to all qualified employees and qualified replacement employees of the taxpayer, plus

''(2) the self-employment credit of a qualified self-employed taxpayer.

''(b) EMPLOYMENT CREDIT.—For purposes of this section—

''(1) QUALIFIED EMPLOYEES.—

''(A) IN GENERAL.—The employment credit with respect to a qualified employee of the taxpayer for any taxable year is equal to the lesser of—

''(i) the excess, if any, of—

''(I) the qualified employee's average daily qualified compensation for the taxable year, over

''(II) the average daily military pay and allowances received by the qualified employee during the taxable year,

while participating in qualified reserve component duty to the exclusion of the qualified employee's normal employment duties for the number of days the qualified employee participates in qualified reserve component duty during the taxable year, including time spent in a travel status, or

''(ii) $6,000.

The employment credit, with respect to all qualified employees, is equal to the sum of the employment credits for each qualified employee under this subsection.

''(B) AVERAGE DAILY QUALIFIED COMPENSATION AND AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—As used with respect to a qualified employee—

''(i) the term 'average daily qualified compensation' means the qualified compensation of the qualified employee for the taxable year divided by the difference between—

''(I) 365, and

''(II) the number of days the qualified employee participates in qualified reserve component duty during the taxable year, including time spent in a travel status, and

''(ii) the term 'average daily military pay and allowances' means—

''(I) the amount paid to the qualified employee during the taxable year as military pay and allowances on account of the qualified employee's participation in qualified reserve component duty, divided by

''(II) the total number of days the qualified employee participates in qualified reserve component duty, including time spent in travel status.

''(C) QUALIFIED COMPENSATION.—When used with respect to the compensation paid or that would have been paid to a qualified employee for any period during which the qualified employee participates in qualified reserve component duty, the term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified employee's presence for work and which would be deductible from the taxpayer's gross income under section 162(a)(1) if the qualified employee were present and receiving such compensation,

''(ii) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and with respect to which the number of days the qualified employee participates in qualified reserve component duty does not result in any reduction in the amount of vacation time, sick leave, or other nonspecific leave previously credited to or earned by the qualified employee, and

''(iii) group health plan costs (if any) with respect to the qualified employee.

''(D) QUALIFIED EMPLOYEE.—The term 'qualified employee' means a person who—

''(i) has been an employee of the taxpayer for the 91-day period immediately preceding the period during which the employee participates in qualified reserve component duty, and

''(ii) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as defined in sections 10142 and 10101 of title 10, United States Code.

''(2) QUALIFIED REPLACEMENT EMPLOYEES.—

''(A) IN GENERAL.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to the lesser of—

''(i) the individual's qualified compensation attributable to service rendered as a qualified replacement employee, or

''(ii) $6,000.

The employment credit, with respect to all qualified replacement employees, is equal to the sum of the employment credits for each qualified replacement employee under this subsection.

''(B) QUALIFIED COMPENSATION.—When used with respect to the compensation paid to a qualified replacement employee, the term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(ii) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(iii) group health plan costs (if any) with respect to the qualified replacement employee.

''(C) QUALIFIED REPLACEMENT EMPLOYEE.—The term 'qualified replacement employee' means an individual who is hired to replace a qualified employee or a qualified self-employed taxpayer, but only with respect to the period during which such employee or taxpayer participates in qualified reserve component duty, including time spent in travel status.

''(c) SELF-EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The self-employment credit of a qualified self-employed taxpayer for any taxable year is equal to the lesser of—

''(A) the excess, if any, of—

''(i) the self-employed taxpayer's average daily self-employment income for the taxable year over

''(ii) the average daily military pay and allowances received by the taxpayer during the taxable year, while participating in qualified reserve component duty to the exclusion of the taxpayer's normal self-employment duties for the number of days the taxpayer participates in qualified reserve component duty during the taxable year, including time spent in a travel status, or

''(B) $6,000.

''(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME AND AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—As used with respect to a self-employed taxpayer—

''(A) the term 'average daily self-employment income' means the self-employment income (as defined in section 1402(b)) of the taxpayer for the taxable year plus the amount paid for insurance which constitutes medical care for the taxpayer for such year (within the meaning of section 162(l)) divided by the difference between—

''(i) 365, and

''(ii) the number of days the taxpayer participates in qualified reserve component duty during the taxable year, including time spent in a travel status, and

''(B) the term 'average daily military pay and allowances' means—

''(i) the amount paid to the taxpayer during the taxable year as military pay and allowances on account of the taxpayer's participation in qualified reserve component duty, divided by

''(ii) the total number of days the taxpayer participates in qualified reserve component duty, including time spent in travel status.

''(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—The term 'qualified self-employed taxpayer' means a taxpayer who—

''(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

''(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States.

''(d) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by this section with respect to such employee.

''(e) LIMITATIONS.—

''(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(B) the tentative minimum tax for the taxable year.

''(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

''(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(B) the 2 succeeding taxable years.

''(3) DISALLOWANCE WITH RESPECT TO PERSONS ORDERED TO ACTIVE DUTY FOR TRAINING.—No credit shall be allowed under subsection (a) to a taxpayer with respect to any period by taking into account any person who is called or ordered to active duty for any of the following types of duty:

''(A) Active duty for training under any provision of title 10, United States Code.

''(B) Training at encampments, maneuvers, outdoor target practice, or other exercises under chapter 5 of title 32, United States Code.

''(C) Full-time National Guard duty, as defined in section 101(d)(5) of title 10, United States Code.

''(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(2) MILITARY PAY AND ALLOWANCES.—The term 'military pay' means pay as that term is defined in section 101(21) of title 37, United States Code, and the term 'allowances' means the allowances payable to a member of the Armed Forces of the United States under chapter 7 of that title.

''(3) QUALIFIED RESERVE COMPONENT DUTY.—The term 'qualified reserve component duty' means active duty performed for a period not less than 180 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(4) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e)(1) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.''.

(b) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended—

(1) by inserting ''or compensation'' after ''salaries'', and

(2) by inserting ''30B,'' before ''45A(a)''.

(c) CONFORMING AMENDMENT.—Section 55(c)(2) of the Internal Revenue Code of 1986 is amended by inserting ''30B(e)(1),'' after ''30(b)(3),''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end 30A the following new item:

''Sec. 30B. Employer wage credit for activated military reservists.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1333. REDUCED MINIMUM AGE FOR ELIGIBILITY FOR NON-REGULAR SERVICE RETIRED PAY.

Section 12731(a)(1) of title 10, United States Code, is amended by striking ''60 years of age'' and inserting ''55 years of age''.

Subtitle D—Health Care Benefits

SEC. 1341. EXPANDED ELIGIBILITY OF READY RESERVE MEMBERS UNDER TRICARE PROGRAM.

(a) UNCONDITIONAL ELIGIBILITY.—Subsection (a) of section 1076b of title 10, United States Code, is amended by striking ''and receive benefits'' and all that follows through ''an employer-sponsored health benefits plan''.

(b) PERMANENT AUTHORITY.—Subsection (l) of such section is repealed.

(c) CONFORMING AMENDMENTS.—Such section is further amended—

(1) by striking subsections (i) and (j); and

(2) by redesignating subsection (k) as subsection (i).

SEC. 1342. CONTINUATION OF NON-TRICARE HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DEPENDENTS.

(a) REQUIRED CONTINUATION.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

''§ 1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty

''(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for the members of the family of an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (g).

''(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a) while serving on active duty for a period of more than 30 days pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or a national emergency declared by the President or Congress.

''(2) For the purposes of this section, the members of the family of an eligible reserve component member include only the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

''(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for the members of the family of a reserve component member called or ordered to active duty is qualified health benefits plan coverage if—

''(1) the coverage was in force on the date on which the Secretary notified the reserve component member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order;

''(2) on such date, the coverage applied to the reserve component member and members of the family of the reserve component member; and

''(3) the coverage has not lapsed.

''(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage for the family members of a reserve component member is the amount of the premium payable by the member for the coverage of the family members.

''(e) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage for the family members of an eligible reserve component member called or ordered to active duty is the period that—

''(1) begins on the date of the call or order; and

''(2) ends at the end of the day on which the active duty terminates.

''(f) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

''(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for an eligible reserve component member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

''(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

''(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

''1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty.''.

(b) APPLICABILITY.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department before, on, or after the date of the enactment of this Act, but only with respect to qualified health benefits plan coverage (as described in subsection (c) of such section) that is in effect on or after the date of the enactment of this Act.

SA 3194. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 247, after line 21, insert the following:

SEC. 717. RESTORATION OF PREVIOUS POLICY REGARDING RESTRICTIONS ON USE OF DEPARTMENT OF DEFENSE MEDICAL FACILITIES OVERSEAS.

Section 1093(b) of title 10, United States Code, is amended—

(1) by inserting ''in the United States'' after ''treatment facility''; and

(2) by inserting ''in the United States'' after ''Department of Defense''.

SA 3195. Mrs. MURRAY (for herself and Mr. EDWARDS) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title X, add the following:

SEC. ___. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''There is'' and inserting ''(a) IN GENERAL.—There is'';

(2) in subsection (a), as so designated, by inserting ''(except section 658T)'' after ''this subchapter''; and

(3) by adding at the end the following:

''(b) CHILD CARE FOR CERTAIN MILITARY DEPENDENTS.—There is authorized to be appropriated to carry out section 658T $200,000,000 for each of fiscal years 2005 through 2009.''.

(b) CHILD CARE ASSISTANCE.—The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by adding at the end the following:

''SEC. 658T. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible spouses to assist the spouses in paying for the cost of child care services provided to dependents by eligible child care providers. In making the grants, the Secretary shall give priority to eligible spouses of qualified members on active duty for a period of more than 6 months.

''(b) DEFINITIONS.—In this section:

''(1) ACTIVE DUTY.—The term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(2) ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.—The term 'active duty for a period of more than 30 days' has the meaning given the term in section 101(d)(2) of title 10, United States Code.

''(3) DEPENDENT.—The term 'dependent' means an individual who is—

''(A) a dependent, as defined in section 401 of title 37, United States Code, except that such term does not include a person described in paragraph (1) or (3) of subsection (a) of such section; and

''(B) an individual described in subparagraphs (A) and (B) of section 658P(4).

''(4) ELIGIBLE SPOUSE.—The term 'eligible spouse' means a person who—

''(A) is a parent of one or more dependents of a qualified member; and

''(B) has the primary responsibility for the care of one or more such dependents.

''(5) QUALIFIED MEMBER.—The term 'qualified member' means a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days.

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a spouse shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a description of the eligible child care provider who provides the child care services assisted through the grant.

''(d) RULE.—The provisions of this subchapter, other than section 658P and provisions referenced in section 658P, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.''.

(c) CONFORMING AMENDMENTS.—Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''appropriated under this subchapter'' and inserting ''appropriated under section 658B(a)''; and

(B) in paragraph (2), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''; and

(2) in subsection (b)(1), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''.

SA 3196. Mr. DURBIN (for himself, Ms. MIKULSKI, Ms. LANDRIEU, Mrs. MURRAY, Mr. DAYTON, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.

(a) SHORT TITLE.—This section may be cited as the ''Reservists Pay Security Act of 2004''.

(b) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

''§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) For purposes of this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay while serving in the uniformed services or National Guard.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act.

(2) CONDITIONAL RETROACTIVE APPLICATION.—

(A) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after October 11, 2002 through the date of enactment of this Act, subject to the availability of appropriations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for purposes of subparagraph (A).

SA 3197. Mr. DAYTON (for himself and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 172, strike line 11 and all that follows through page 176, line 21.

SA 3198. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 269, line 20, strike ''$150,000,000'' and insert ''$500,000,000''.

SA 3199. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 195, between lines 10 and 11, insert the following:

SEC. 868. AVAILABILITY OF FEDERAL SUPPLY SCHEDULE SUPPLIES AND SERVICES TO UNITED SERVICE ORGANIZATIONS, INCORPORATED.

Section 220105(7) of title 36, United States Code, is amended by inserting before the semicolon at the end the following: '', including to acquire from the General Services Administration supplies and services on the Federal Supply Schedule of the General Services Administration as if the corporation were an executive agency of the United States''.

SA 3200. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title X, add the following:

SEC. 1055. ASSISTANCE TO FOREIGN MILITARY AND SECURITY FORCES FOR PEACEKEEPING AND PEACE ENFORCEMENT OPERATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, within the limitation established in subsection (c), the Secretary of Defense may—

(1) with the concurrence of the Secretary of State, provide assistance in fiscal year 2005 to military or security forces of a country to enhance their capability to participate in an international peacekeeping or peace enforcement operation; or

(2) transfer funds to the Secretary of State for the purpose of providing such assistance.

(b) TYPES OF ASSISTANCE.—Assistance provided under subsection (a) may include equipment, supplies, services, training, and funding.

(c) LIMITATION.—The cost of assistance provided under subsection (a) may not exceed $100,000,000 in fiscal year 2005.

(d) CONSTRUCTION OF AUTHORITY.—The authority to provide assistance under subsection (a) is in addition to any other authority to provide assistance to foreign nations or forces under any other provision of law.

SA 3201. Mr. KENNEDY (for himself, Mrs. MURRAY, and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title III, insert the following:

SEC. 353. EMERGENCY FUNDING FOR LOCAL EDUCATIONAL AGENCIES ENROLLING MILITARY DEPENDENT CHILDREN.

(a) SHORT TITLE.—This section may be cited as the ''Help for Military Children Affected by War Act of 2004''.

(b) GRANTS AUTHORIZED.—The Secretary of Defense is authorized to award grants, from distributions under subsection (e), to eligible local educational agencies for the additional education, counseling, and other needs of military dependent children who are affected by war or dramatic military decisions.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency that—

(A) had a number of military dependent children in average daily attendance in the schools served by the local educational agency during the school year preceding the school year for which the determination is made, that—

(i) equaled or exceeded 20 percent of the number of all children in average daily attendance in the schools served by such agency during the preceding school year; or

(ii) was 1,000 or more,

whichever is less; and

(B) is designated by the Secretary of Defense as impacted by—

(i) Operation Iraqi Freedom;

(ii) Operation Enduring Freedom;

(iii) high operations tempo;

(iv) military base realignment or closure; or

(v) privatization of military housing.

(2) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) MILITARY DEPENDENT CHILD.—The term ''military dependent child'' means a child described in subparagraph (B) or (D)(i) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)).

(d) USE OF FUNDS.—Grant funds provided under this section shall be used for—

(1) tutoring, after-school, and dropout prevention activities for military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B);

(2) professional development of teachers, principals, and counselors on the needs of military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B);

(3) counseling and other comprehensive support services for military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B), including the hiring of a military-school liaison; and

(4) other basic educational activities associated with an increase in military dependent children.

(e) DISTRIBUTIONS.—

(1) EMERGENCY ALLOCATION PETITION.—Notwithstanding any other provision of this subsection and from not more than 10 percent of funds appropriated under subsection (f)(1) for a fiscal year, the Secretary of Defense may allocate, on a pro rata basis, such funds to eligible local educational agencies that anticipate a rapid increase in military dependent children and petition the Secretary of Defense for an emergency allocation of such funds.

(2) PRO RATA DISTRIBUTION.—Each eligible local educational agency not receiving funds under paragraph (1) for a fiscal year shall receive a grant under this section for the fiscal year in an amount that bears the same relation to the funds appropriated under subsection (f)(1) and not allocated under paragraph (1) for the fiscal year that do not exceed $20,000,000 as the number of military dependent children who were in average daily attendance in the schools served by such agency (as determined by the Secretary of Education) for the preceding or current school year, whichever is greater, bears to the total number of military dependent children who were in average daily attendance in the schools served by all eligible local educational agencies in the preceding school year (as so determined).

(3) HOLD HARMLESS.—The Secretary of Defense shall distribute funds appropriated under subsection (f)(1) and not allocated under paragraph (1) for a fiscal year that are in excess of $20,000,000 on a pro rata basis to each eligible local educational agency not receiving funds under paragraph (1) for the fiscal year that experiences (A) a decrease of 20 percent or more in the number of military dependent children who were in average daily attendance in the schools served by such agency, (B) a decrease of 20 percent or more in the amount of funds received under section 8003(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)), or (C) a decrease of 1,000 or more military dependent children who were in average daily attendance in the schools served by such agency, from the school year preceding the school year for which the determination is made to the school year for which the determination is made.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Defense such sums as may be necessary to carry out this section for fiscal year 2005 and each of the 2 succeeding fiscal years.

(2) SPECIAL RULE.—Funds appropriated under paragraph (1) are in addition to any funds made available to local educational agencies under section 351 or 352 of this Act or section 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703).

SA 3202. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 131, between lines 17 and 18, insert the following:

SEC. 653. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

The Consolidated Farm and Rural Development Act is amended by inserting after section 331F (7 U.S.C. 1981f) the following:

"SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

"(a) DEFINITION OF MOBILIZED MILITARY RESERVIST.—In this section, the term 'mobilized military reservist' means an individual who—

"(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

"(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.

"(b) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is rescinded.

"(c) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

"(d) NONACCRUAL OF INTEREST.—Interest on a direct loan made to a borrower described in this section shall not accrue during the period the borrower is a mobilized military reservist.

"(e) BORROWER NOT CONSIDERED TO BE DELINQUENT OR RECEIVING DEBT FORGIVENESS.—Notwithstanding section 373 or any other provision of this title, a borrower who receives assistance under this section shall not, as a result of the assistance, be considered to be delinquent or receiving debt forgiveness for purposes of receiving a direct or guaranteed loan under this title.".

SA 3203. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. PERIODIC DETAILED ACCOUNTING FOR OPERATIONS OF THE GLOBAL WAR ON TERRORISM.

(a) MONTHLY ACCOUNTING.—Not later than 30 days after the end of each month, the Secretary of Defense shall submit to the chairmen and ranking members of the Committees on Armed Services of the Senate and the House of Representatives and to all the members of the Committees on Appropriations of the Senate and the House of Representatives, for such month for each operation described in subsection (b), a full accounting of all costs incurred for such operation during such month and all amounts expended during such month for such operation, and the purposes for which such costs were incurred and such amounts were expended.

(b) OPERATIONS COVERED.—The operations referred to in subsection (a) are as follows:

(1) Operation Iraqi Freedom.

(2) Operation Enduring Freedom.

(3) All other operations relating to the Global War on Terrorism.

(c) REQUIREMENT FOR COMPREHENSIVENESS.—For the purpose of providing a full and complete accounting of the costs and expenditures under subsection (a) for operations described in subsection (b), the Secretary shall account in the monthly submission under subsection (a) for all costs and expenditures that are reasonably attributable to such operations, including personnel costs.

SA 3204. Mrs. CLINTON (for herself, Mr. LEAHY, and Mr. KENNEDY) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 372, after line 17, insert the following:

SEC. 2844. PROHIBITION ON CLOSURE OF COMMISSARY STORES, MWR RETAIL FACILITIES, AND DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS WITHOUT AUTHORIZATION OF CONGRESS.

(a) PROHIBITION.—Notwithstanding any other provision of law, the Secretary of Defense may not close any commissary store, MWR retail facility, or Department of Defense dependent elementary or secondary school without the specific authorization of Congress for such action by law.

(b) COMPTROLLER GENERAL REPORT.—Not later than 90 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the policy of the Department of Defense, and the criteria utilized by the Department, with respect to the closure of commissary stores, MWR retail facilities, and Department of Defense dependent elementary and secondary schools, including an assessment whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces.

(c) DEFINITIONS.—In this section:

(1) The term "appropriate committees of Congress" means—

(A) the Committee on Armed Services of the Senate; and

(B) the Committee on Armed Services of the House of Representatives.

(2) The term "MWR retail facility" means an exchange store or other revenue-generating facility operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces.

SA 3205. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction,

and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 18, strike line 11, strike ''**AUTHORIZATION OF APPROPRIATIONS FOR**''.

On page 18, strike lines 15 through 24, and insert the following:

(a) AMOUNT.—Of the amount authorized to be appropriated for the Army for fiscal year 2005 for other procurement under section 101(5), $610,000,000 shall be available for both of the purposes described in subsection (b) and may be used for either or both of such purposes.

(b) PURPOSES.—The purposes referred to in subsection (a) are as follows:

On page 19, beginning on line 7, strike ''authorized to be appropriated in'' and insert ''available under''.

On page 19, line 17, strike ''authorized to be appropriated'' and insert ''available under''.

SA 3206. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 25, line 25, strike ''$9,698,958,000'' and insert ''$9,686,958,000''.

SA 3207. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 318, line 2, strike ''$980,557,000'' and insert ''$1,062,463,000''.

SA 3208. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. TECHNICAL CORRECTION TO REFERENCE TO CERTAIN ANNUAL REPORTS.

Section 2474(f)(2) of title 10, United States Code, is amended by striking ''section 2466(e)'' and inserting ''section 2466(d)''.

SA 3209. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of title VII, add the following:

SEC. . CONTINUATION OF SUB-ACUTE CARE FOR TRANSITION PERIOD.

Section 1074j(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.''.

SA 3210. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of subtitle B of title VII, insert the following:

SEC. 717. TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY DISABLED PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) AUTHORITY TO WAIVE DEBT.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, may waive (in whole or in part) the collection of payments otherwise due from a person described in subsection (b) for health benefits received by such person under section 1086 of title 10, United States Code, after the termination of that person's eligibility for such benefits.

(2) If the Secretary of Defense waives collection of payments from a person under paragraph (1), the Secretary may also authorize a continuation of benefits for such person under such section 1086 for a period ending not later than the end of the period specified in subsection (c) of this section.

(b) ELIGIBLE PERSONS.—A person is eligible for relief under subsection (a)(1) if—

(1) the person is described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) except for such paragraph, the person would have been eligible for the health benefits under such section; and

(3) at the time of the receipt of such benefits—

(A) the person satisfied the criteria specified in paragraph (2)(B) of such subsection (d); and

(B) the person was unaware of the loss of eligibility to receive the health benefits.

(c) PERIOD OF APPLICABILITY.—The authority provided under this section to waive collection of payments and to continue benefits shall apply, under terms and conditions prescribed by the Secretary of Defense, to health benefits provided under section 1086 of title 10, United States Code, during the period beginning on July 1, 1999, and ending at the end of December 31, 2004.

(d) CONSULTATION WITH OTHER ADMINISTERING SECRETARIES.—(1) The Secretary of Defense shall consult with the other administering Secretaries in exercising the authority provided in this section.

(2) In this subsection, the term ''administering Secretaries'' has the meaning given such term in section 1072(3) of title 10, United States Code.

SA 3211. Mr. WARNER (for himself and Mr. ALLARD) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike section 3120 and insert the following:

SEC. 3120. LOCAL STAKEHOLDER ORGANIZATIONS FOR DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITES.

(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish for each Department of Energy Environmental Management 2006 closure site a local stakeholder organization having the responsibilities set forth in subsection (c).

(2) The local stakeholder organization shall be established in consultation with interested elected officials of local governments in the vicinity of the closure site concerned.

(b) COMPOSITION.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall be composed of such elected officials of local governments in the vicinity of the closure site concerned as the Secretary considers appropriate to carry out the responsibilities set forth in subsection (c) who agree to serve on the organization, or the designees of such officials.

(c) RESPONSIBILITIES.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall—

(1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site;

(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and Tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site;

(3) transmit to appropriate officers and employees of the Department of Energy questions and concerns of governments, persons, and entities referred to paragraph (2) on the closure and post-closure operations of the site; and

(4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.

(d) DEADLINE FOR ESTABLISHMENT.—The local stakeholder organization for a Department of Energy Environmental Management 2006 closure site shall be established not later than six months before the closure of the site.

(e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to local stakeholder organizations under this section.

(f) DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITE DEFINED.—In this section, the term ''Department of Energy Environmental Management 2006 closure site'' means each clean up site of the Department of Energy scheduled by the Department as of January 1, 2004, for closure in 2006.

SA 3212. Mr. LEVIN (for Mr. BYRD) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy,

to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 177, strike lines 14 through 24, and insert the following:

(b) INCREASE AND REALIGNMENT OF WORKFORCE.—(1)(A) During fiscal years 2005, 2006, and 2007, the Secretary of Defense shall increase the number of persons employed in the defense acquisition and support workforce as follows:

(i) During fiscal year 2005, to 105 percent of the baseline number (as defined in subparagraph (B)).

(ii) During fiscal year 2006, to 110 percent of the baseline number.

(iii) During fiscal year 2007, to 115 percent of the baseline number.

(B) In this paragraph, the term ''baseline number'', with respect to persons employed in the defense acquisition and support workforce, means the number of persons employed in such workforce as of September 30, 2003 (determined on the basis of full-time employee equivalence).

(C) The Secretary of Defense may waive a requirement in subparagraph (A) and, subject to subsection (a), employ in the defense acquisition and support workforce a lesser number of employees if the Secretary determines and certifies to the congressional defense committees that the cost of increasing such workforce to the larger size as required under that subparagraph would exceed the savings to be derived from the additional oversight that would be achieved by having a defense acquisition and support workforce of such larger size.

(2) During fiscal years 2005, 2006, and 2007, the Secretary of Defense may realign any part of the defense acquisition and support workforce to support reinvestment in other, higher priority positions in such workforce.

SA 3213. Mr. LEVIN (for Mr. REED) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike section 1005, and insert the following:

SEC. 1005. UNIFORM FUNDING AND MANAGEMENT OF SERVICE ACADEMY ATHLETIC AND RECREATIONAL EXTRACURRICULAR PROGRAMS.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 4359. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''4359. Athletic and recreational extracurricular programs: uniform funding.''.

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 6978. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Naval Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''6978. Athletic and recreational extracurricular programs: uniform funding.''.

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 9358. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''9358. Athletic and recreational extracurricular programs: uniform funding.''.

(d) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect on October 1, 2004, and shall apply with respect to funds appropriated for fiscal years beginning on or after such date.

SA 3214. Mr. WARNER (for Mr. SESSIONS) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 365, between lines 18 and 19, insert the following:

SEC. 2830. LAND EXCHANGE, MAXWELL AIR FORCE BASE, ALABAMA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the City of Montgomery, Alabama (in this section referred to as the ''City''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 28 acres and including all of the Maxwell Heights Housing site and located at Maxwell Air Force Base, Alabama.

(b) CONSIDERATION.—(1) As consideration for the conveyance of property under subsection (a), the City shall convey to the United States all right, title, and interest of the City to a parcel of real property, including any improvements thereon, consisting of approximately 35 acres and designated as project AL 6–4, that is owned by the City and is contiguous to Maxwell Air Force Base, for the purpose of allowing the Secretary to incorporate such property into a project for the acquisition or improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code. The Secretary shall have administrative jurisdiction over the real property received under this subsection.

(2) If the fair market value of the real property received under paragraph (1) is less than the fair market value of the real property conveyed under subsection (a) (as determined pursuant to an appraisal acceptable to the Secretary), the Secretary may require the City to provide, pursuant to negotiations between the Secretary and the City, in-kind consideration the value of which when added to the fair market value of the property conveyed under subsection (b) equals the fair market value of the property conveyed under subsection (a).

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the City in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsections (a) and (b) shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under subsections (a) and (b) as the Secretary considers appropriate to protect the interests of the United States.

SA 3215. Mr. LEVIN (for Mr. SARBANES (for himself and Ms. MIKULSKI)) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of subtitle C of title XXVIII, add the following:

SEC. 2830. LAND EXCHANGE, NAVAL AIR STATION, PATUXENT RIVER, MARYLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Maryland (in this section referred to as ''State''), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately five acres at Naval

Air Station, Patuxent River, Maryland, and containing the Point Lookout Lighthouse, other structures related to the lighthouse, and an archaeological site pertaining to the military hospital that was located on the property during the Civil War. The conveyance shall include artifacts pertaining to the military hospital recovered by the Navy and held at the installation.

(b) PROPERTY RECEIVED IN EXCHANGE.—As consideration for the conveyance of the real property under subsection (a), the State shall convey to the United States a parcel of real property consisting of approximately five acres located in Point Lookout State Park, St. Mary's County, Maryland.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, relocation expenses incurred under subsection (b), and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SA 3216. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill S. 1848, to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon; as follows:

On page 4, line 22, strike ''1999'' and insert ''2004''.

SA 3217. Mr. FRIST (for Mr. LEAHY) proposed an amendment to the bill H.R. 417, to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California; as follows:

At the end, add the following:

SEC. ___. GREEN MOUNTAIN NATIONAL FOREST EXPANSION.

(a) IN GENERAL.—The boundaries of the Green Mountain National Forest are modified to include all parcels of land depicted on the forest maps entitled ''Green Mountain Expansion Area Map I'' and ''Green Mountain Expansion Area Map II'', each dated February 20, 2002, which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia.

(b) MANAGEMENT.—Federally owned land delineated on the maps acquired for National Forest purposes shall continue to be managed in accordance with the laws (including regulations) applicable to the National Forest System.

(c) LAND AND WATER CONSERVATION FUND.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9), the boundaries of the Green Mountain National Forest, as adjusted by this Act, shall be considered to be the boundaries of the national forest as of January 1, 1965.

SA 3218. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill S. 882, to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes; as follows:

On page 186, between lines 6 and 7, insert the following:

(e) DIRECTOR OF INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—Subsection (e) of section 7802, as amended by subsection (d), is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) DIRECTOR.—The Chairperson of the Oversight Board shall, without regard to the provisions of title 5, United Stated Code, governing appointments in the competitive service, appoint a Director for the Oversight Board. The Director shall be paid at the same rate as the highest-rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.''.

On page 186, line 7, strike ''(e)'' and insert ''(f)''.

On page 201, strike lines 17 through 21, and insert the following:

(1) by striking ''ANNUAL'' in the heading and inserting ''BIENNIAL'',

(2) by inserting ''every 2 years (beginning in 2004)'' after ''one of the semiannual reports'' in the matter preceding subparagraph (A),

On page 206, lines 6 and 7, strike ''**AND REFUND ANTICIPATION LOAN PROVIDERS**'' and insert ''**, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS**''.

On page 206, lines 12 and 13, strike ''**AND REFUND ANTICIPATION LOAN PROVIDERS**'' and insert ''**, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS**''.

On page 206, lines 18 and 19, strike ''and refund anticipation loan providers'' and insert '', refund anticipation loan providers, and payroll agents''.

On page 206, line 20, strike ''and''.

On page 207, line 2, strike the period and insert '', and''.

On page 207, between lines 2 and 3, insert the following:

''(C) to require the posting of a reasonable bond by each registered payroll agent.

On page 208, lines 14 and 15, strike ''or refund anticipation loan provider'' and insert '', refund anticipation loan provider, or payroll agent''.

On page 212, between lines 8 and 9, insert the following:

SEC. 142. JOINT TASK FORCE ON OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to review the Internal Revenue Service's determinations with respect to offers which raise equitable, public policy, or economic hardship grounds for compromise of a tax liability under section 7122 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability,

(3) to provide recommendations as to whether the Internal Revenue Service's evaluation of offers-in-compromise should include—

(A) the taxpayer's compliance history,

(B) errors by the Internal Revenue Service with respect to the underlying tax,

(C) wrongful acts by a third party which gave rise to the liability, and

(D) whether the taxpayer has made payments on the liability, and

(4) to annually report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (beginning in 2005) regarding such review and recommendations.

(b) MEMBERS OF JOINT TASK FORCE.—The membership of the joint task force under subsection (a) shall consist of 1 representative each from the Department of the Treasury, the Internal Revenue Service Oversight Board, the Office of the Chief Counsel for the Internal Revenue Service, the Office of the Taxpayer Advocate, the Office of Appeals, and the division of the Internal Revenue Service charged with operating the offer-in-compromise program.

(c) REPORT OF NATIONAL TAXPAYER ADVOCATE.—

(1) IN GENERAL.—Clause (i) of section 7803(c)(2)(B) (relating to annual reports), as amended by this Act, is amended by striking ''and'' at the end of subclause (X), by redesignating subclause (XI) as subclause (XII), and by inserting after subclause (X) the following new subclause:

''(XI) include a list of the factors taxpayers have raised to support their claims for offers-in compromise relief, the number of such offers submitted, accepted, and rejected, the number of such offers appealed, the period during which review of such offers have remained pending, and the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and evaluating such offers.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to reports in calendar year 2005 and thereafter.

On page 215, after line 22, add the following:

SEC. 153. PUBLIC SUPPORT BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871(a) (relating to Indian tribal governments treated as States for certain purposes) is amended by striking ''and'' at the end of subparagraph (C) of paragraph (6), by striking the period at the end of subparagraph (B) of paragraph (7) and inserting ''; and'', and by adding at the end the following new paragraph:

''(8) for purposes of—

''(A) determining support of an organization described in section 170(b)(1)(A)(vi), and

''(B) determining whether an organization is described in paragraph (1) or (2) of section 509(a) for purposes of section 509(a)(3).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) support received before, on, or after the date of the enactment of this Act, and

(2) the determination of the status of any organization with respect to any taxable year beginning after such date of enactment.

SEC. 154. PAYROLL AGENTS SUBJECT TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX.

(a) IN GENERAL.—Section 6672(a) is amended by inserting '', including any payroll agent,'' after ''Any person''.

(b) PENALTY NOT SUBJECT TO DISCHARGE IN BANKRUPTCY.—Section 6672(a) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision

of law, no penalty imposed under this section may be discharged in bankruptcy.''.

(c) CONSTRUCTION.—The amendment made by subsection (a) shall not be construed to create any inference with respect to the interpretation of section 6672 of the Internal Revenue Code of 1986 as such section was in effect on the day before the date of the enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring after the date of the enactment of this Act.

Beginning on page 224, line 14, strike all through page 225, line 8, and insert the following:

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking ''or'' at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

''(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or''.

(c) EXCEPTION FOR REPORTABLE AND LISTED TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking ''or'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

On page 232, line 15, insert ''which is 60 days after the date'' after ''date''.

On page 400, after line 16, add the following:

PART IV—OTHER REVENUE PROVISIONS

SEC. 641. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

''(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

''(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (defining information return) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

SEC. 642. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'''(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'''(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'''(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SA 3219. Mr. FRIST (for Mr. INHOFE) proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

On page 40, line 9, strike ''$50,000,000'' and insert ''$60,000,000''.

On page 83, line 10, strike ''$50,000,000'' and insert ''$60,000,000''.

On page 164, between lines 20 and 21, insert the following:

''(3) MITIGATION IN CLOSED BASINS.—

''(A) IN GENERAL.—A State may use amounts deposited in the State fund for projects to protect existing roadways from anticipated flooding of a closed basin lake, including—

''(i) construction—

''(I) necessary for the continuation of roadway services and the impoundment of water, as the State determines to be appropriate; or

''(II) for a grade raise to permanently restore a roadway the use of which is lost or reduced, or could be lost or reduced, as a result of an actual or predicted water level that is within 3 feet of causing inundation of the roadway in a closed lake basin;

''(ii) monitoring, studies, evaluations, design, or preliminary engineering relating to construction; and

''(iii) monitoring and evaluations relating to proposed construction.

''(B) REIMBURSEMENT.—The Secretary may permit a State that expends funds under subparagraph (A) to be reimbursed for the expenditures through the use of amounts made available under section 125(c)(1).

On page 407, strike lines 3 through 8 and insert the following:

Section 1214(d)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended by striking

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SA 3220. Mr. LOTT (for himself, Mr. COCHRAN, Mr. CHAMBLISS, Ms. SNOWE, and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the

Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XXVIII, add the following:

SEC. 2814. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS DURING 2005 OF DEFENSE BASE CLOSURE AND REALIGNMENT.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

SA 3221. Mr. LOTT (for himself, Ms. SNOWE, Mr. COCHRAN, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 280, after line 22, insert the following:

SEC. 1068. PRESERVATION OF SEARCH AND RESCUE CAPABILITIES OF THE FEDERAL GOVERNMENT.

The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by—

(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities.

SA 3222. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title X, insert the following:

SEC. 1055. MILITARY EDUCATIONAL EXCHANGES WITH SENIOR OFFICERS AND OFFICIALS OF TAIWAN.

(a) AUTHORITY FOR MILITARY EDUCATIONAL EXCHANGES WITH SENIOR OFFICERS AND OFFICIALS OF TAIWAN.—Chapter 41 of title 10, United States Code, is amended by inserting after section 712 the following new section:

"§ 712a. Military personnel exchanges: Taiwan

''(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall establish a program for exchange of senior defense personnel between the United States and the Republic of Taiwan.

''(b) PURPOSE.—The purpose of exchanges of personnel under the program is to improve the defenses of Taiwan against attack by the People's Liberation Army of the People's Republic of China.

''(c) SENIOR DEFENSE PERSONNEL.—The Department of Defense personnel authorized to participate in the exchange program under this section are as follows:

''(1) A general or flag officer of the armed forces.

''(2) A civilian official at the level of Deputy Assistant Secretary of Defense or above.

''(d) ACTIVITIES.—(1) Activities under the exchange program shall include the following:

''(A) Threat analysis.

''(B) Military doctrine.

''(C) Force planning.

''(D) Logistical support.

''(E) Intelligence collection and analysis.

''(F) Operational tactics, techniques, and procedures.

''(G) Civil-military relations, including parliamentary relations.

''(2) In the planning and conduct of activities under subparagraphs (A) through (F) of paragraph (1), particular emphasis shall be placed on issues relating to the defense of Taiwan against submarine and missile attacks.

''(e) LOCATIONS.—Activities under the exchange program shall be carried out in the United States and in Taiwan.

''(f) ACTIVITY DEFINED.—In this section, the term 'activity' includes an exercise, an event, and an opportunity for observation.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 713 the following new item:

''712a. Military personnel exchanges: Taiwan.''.

SA 3223. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, between lines 9 and 10, insert the following:

SEC. 642. ELIGIBILITY FOR REDUCED NON-REGULAR SERVICE RETIRED PAY BEFORE AGE 60.

(a) ELIGIBILITY BEGINNING AT AGE 55.—Section 12731(a)(1) of title 10, United States Code, is amended by striking ''60 years of age'' and inserting ''55 years of age''.

(b) REDUCED RETIRED PAY WHEN COMMENCED BEFORE AGE 60.—Section 12739 of such title is amended—

(1) in subsection (a), by inserting '', subject to subsection (d),'' after ''this chapter is'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection (d):

''(d) In the case of a person to whom payment of retired pay under this chapter commences after the person attains 55 years of age and before the person attains 60 years of age, the total amount of the monthly retired pay computed under subsections (a), (b), and (c) shall be reduced by the percentage specified for the age of the person when payment of the retired pay commences, as follows:

''Age (in years) when payment of retired pay commences:	Percentage by which retired pay is to be reduced:
55	12.5
56	9.0
57	6.0
58	3.5
59	1.5.''.

(c) CONTINUATION OF AGE 60 AS MINIMUM AGE FOR ELIGIBILITY FOR UNIFORMED SERVICES HEALTH BENEFITS.—Section 1074(b) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following new paragraph:

''(2) Paragraph (1) does not apply to a member or former member entitled to retired pay for non-regular service under chapter 1223 of this title who is under 60 years of age.''.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act.

SA 3224. Ms. COLLINS (for herself and Mr. LEVIN) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 290, after line 22, insert the following:

SEC. 1107. BID PROTESTS BY FEDERAL EMPLOYEES IN ACTIONS UNDER OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76.

(a) ELIGIBILITY TO PROTEST.—(1) Section 3551(2) of title 31, United States Code, is amended to read as follows:

''(2) The term 'interested party'—

''(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

''(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, includes—

''(i) any official who submitted the agency tender in such competition; and

''(ii) any one person who, for the purpose of representing them in a protest under this subchapter that relates to such competition, has been designated as their agent by a majority of the employees of such Federal agency who are engaged in the performance of such activity or function.''.

(2)(A) Subchapter V of chapter 35 of such title is amended by adding at the end the following new section:

"§ 3557. Expedited action in protests for public-private competitions

''For protests in cases of public-private competitions conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of Federal agencies, the Comptroller General shall administer the provisions of this subchapter in a manner best suited for expediting final resolution of such protests and final action in such competitions.''.

(B) The chapter analysis at the beginning of such chapter is amended by inserting after

the item relating to section 3556 the following new item:

''3557. Expedited action in protests for public-private competitions.''.

(b) RIGHT TO INTERVENE IN CIVIL ACTION.—Section 1491(b) of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) If a private sector interested party commences an action described in paragraph (1) in the case of a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, then an official or person described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.''.

(c) APPLICABILITY.—Subparagraph (B) of section 3551(2) of title 31, United States Code (as added by subsection (a)), and paragraph (5) of section 1491(b) of title 28, United States Code (as added by subsection (b)), shall apply to—

(1) protests and civil actions that challenge final selections of sources of performance of an activity or function of a Federal agency that are made pursuant to studies initiated under Office of Management and Budget Circular A–76 on or after January 1, 2004; and

(2) any other protests and civil actions that relate to public-private competitions initiated under Office of Management and Budget Circular A–76 on or after the date of the enactment of this Act.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, May 19, 2004. The purpose of this meeting will be to mark up legislation to reauthorize child nutrition programs.

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

COMMITTEE ON ARMED SERVICES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on May 19, 2004, at 8:30 a.m., in open session, to continue to receive testimony on allegations of mistreatment of Iraqi prisoners.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GREGG. 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 Wednesday, May 19, 2004, at 10:00 a.m. to conduct a hearing on ''Congressional Oversight of the IMF and World Bank.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 19, 2004, at 9:30 a.m. on from public service to private sector: Spinning the Revolving Door for Personal Gain.

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

COMMITTEE ON ENERGY AND NATIONAL RESOURCES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 19 at 11:30 a.m., to consider pending calendar business.

Agenda

Agenda Item 1: S. 155—A bill to convey to the town of Frannie, WY, certain land withdrawn by the Commissioner of Reclamation.

Agenda Item 2: S. 180—A bill to establish the National Aviation Heritage Area, and for other purposes.

Agenda Item 3: S. 203—A bill to open certain withdrawn land in Big Horn County, WY, to locatable mineral development and bentonite mining.

Agenda Item 4: S. 211—A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes.

Agenda Item 5: S. 323—A bill to establish the Atchafalaya National Heritage Area, LA.

Agenda Item 9: S. 1241—A bill to establish the Kate Mullany National Historic Site in the State of New York, and for other purposes.

Agenda Item 13: S. 1467—A bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado, and for other purposes.

Agenda Item 14: S. 1521—A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post 22 in Phrump, NV, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community.

Agenda Item 16: S. 1727—A bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978.

Agenda Item 17: S. 2046—A bill to authorize the exchange of certain land in Everglades National Park.

Agenda Item 18: S. 2052—A bill to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail.

Agenda Item 20: S. 2180—A bill to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

Agenda Item 21: S. 2319—A bill to authorize and facilitate hydroelectric power licensing of the Tapoco Project.

Agenda Item 23: H.R. 961—To promote Department of the Interior efforts to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin, and for other purposes.

Agenda Item 25: H.R. 1446—To support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

Agenda Item 26: H.R. 1658—To amend the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to facilitate the construction of the transcontinental railway, and for other purposes.

In addition, the committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON FINANCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, May 19, 2004, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on Oversight and Nomination Hearing: The Treasury Department and Terrorism Financing; and, to consider the nominations of John O. Colvin, to be Judge of the U.S. Tax Court; Juan C. Zarate, to be Assistant Secretary for Terrorism Finance, U.S. Department of the Treasury; and, Stuart Levey to the Under Secretary for Enforcement, U.S. Department of the Treasury.

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 19, 2004 at 9:30 a.m. to hold a hearing on Iraq's Transition—The Way Ahead (Part II).

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, May 19, 2004, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting on S.J. Res. 37, resolution to acknowledge a long history of official depredations and ill-conceived polices by the United States Government regarding Indian Tribes and offer an apology to all Native peoples on behalf of the United States, and S. 2277, a bill to amend the Act of November 2, 1966 (80 Stat. 1112) to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation; to be followed immediately by a hearing on S. 1696, a bill to amend the Indian Self-Determination and Education Assistance Act to provide further self government by Indian tribes.

The PRESIDING OFFICER. Without objection, it so ordered.

SPECIAL COMMITTEE ON AGING

Mr. GREGG. Mr. President, I ask unanimous consent that the Special

Committee on Aging be authorized to meet Wednesday, May 19, 2004 from 2:30 p.m.–5 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. GREGG. Mr. President, I ask unanimous consent that the subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 19th, at 2:30 p.m.

The purpose of the hearing is to receive testimony on S. 900, a bill to convey the Lower Yellowstone Irrigation Project, the savage unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts; S. 1876, a bill to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project; S. 1957, a bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes; S. 2304 and H.R. 3209, bills to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin Project; S. 2243, a bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska; H.R. 1648, a bill to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley water district and the Montecito water district; and H.R. 1732, a bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, TX, Water Recycling and Reuse Project, and for other purposes.

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

PRIVILEGES OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Elizabeth Prescott, a fellow in my office, be granted the privilege of the floor during consideration of this legislation.

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

Mr. REID. Mr. President, I ask unanimous consent that Bod Adebo of Senator BINGHAM's office be given the privilege of the floor during the pendency of S. 2400.

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

Mr. WYDEN. Mr. President, I ask unanimous consent that Matt Hiester, a legislative fellow in my office, be given floor privileges for the purpose of morning business.

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

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

Mr. FRIST. Mr. President, I want to discuss with the Democratic leader an approach that might enable us to move forward to conference on S. 1072, the 6-year reauthorization of our Nation's surface transportation laws.

While I am proud of the bipartisan agreements reached by the bill's managers that got us to this point, much work still remains, and it is important that we start as soon as possible.

There are significant differences with the House bill, so this is likely going to be a challenging process. I want to make sure all Senators know it is unrealistic to expect the House will agree with all our provisions and that we will likely have to make significant changes to S. 1072. But as we make those changes, we should make them together.

The transportation bill we passed this year was a model of bipartisan cooperation that was marked by good faith on both sides. That is the essence of the agreement I am proposing, a commitment from both sides that they will work in good faith in conference to get the best possible result. I have spoken to Senator INHOFE, who will chair the conference. He has agreed he will not pursue a conclusion to the conference, nor sign any conference report that would alter the text of S. 1072 in a way that undermines the bipartisan working relationship that has existed in the Senate.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I thank the majority leader for his leadership. I have discussed this with my colleagues and can commit wholeheartedly to the good-faith process he has proposed. Our side understands that changes will have to be made, and we are not entering this process demanding a specific outcome on any provision. Instead, we are asking any changes to S. 1072 be the result of the mutual agreement of the lead Senate conferees acting in good faith.

By moving S. 1072 through the Senate, Senators INHOFE, BOND, JEFFORDS, and REID have already demonstrated they can make that process work. If the process should break down due to disagreements over either transportation policy or extraneous provisions, then we understand he and I will not bring such a conference report to the floor.

Mr. FRIST. That is correct, so long as the Democratic conferees are acting in good faith, and I have every expectation they will. Our goal is to reach a conference agreement that reflects the balance and broad bipartisan consensus S. 1072 achieves. That will be the test of good faith for both sides. I think we can do that, and we will not bring a bill to the Senate floor if it does not reflect that commitment.

Mr. DASCHLE. Mr. President, I thank the leader again for his leadership. He has agreement from our side, and we look forward to the successful conclusion of this important legislation.

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the House-passed highway bill, H.R. 3550; provided further that all after the enacting clause be stricken and the text of S. 1072, as passed, with the addition of the amendment which is at the desk, be inserted in lieu thereof; the bill then be read a third time and passed; further, the Senate then insist on its amendment, request a conference with the House, and the Chair then be authorized to appoint conferees on the part of the Senate with a ratio of 11 to 10.

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

The amendment (No. 3219) was agreed to, as follows:

AMENDMENT NO. 3219

On page 40, line 9, strike ''$50,000,000'' and insert ''$60,000,000''.

On page 83, line 10, strike ''$50,000,000'' and insert ''$60,000,000''.

On page 164, between lines 20 and 21, insert the following:

''(3) MITIGATION IN CLOSED BASINS.—

''(A) IN GENERAL.—A State may use amounts deposited in the State fund for projects to protect existing roadways from anticipated flooding of a closed basin lake, including—

''(i) construction—

''(I) necessary for the continuation of roadway services and the impoundment of water, as the State determines to be appropriate; or

''(II) for a grade raise to permanently restore a roadway the use of which is lost or reduced, or could be lost or reduced, as a result of an actual or predicted water level that is within 3 feet of causing inundation of the roadway in a closed lake basin;

''(ii) monitoring, studies, evaluations, design, or preliminary engineering relating to construction; and

''(iii) monitoring and evaluations relating to proposed construction.

''(B) REIMBURSEMENT.—The Secretary may permit a State that expends funds under subparagraph (A) to be reimbursed for the expenditures through the use of amounts made available under section 125(c)(1).

On page 407, strike lines 3 through 8 and insert the following:

Section 1214(d)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended by striking

The bill (H.R. 3550), as amended, was read the third time and passed.

THE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Nos. 439 through 454, en bloc.

The PRESIDING OFFICER. Is there objection to consideration of the bills en bloc?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendments to S. 1848 and H.R. 417, which are at the desk, be agreed to; all committee amendments, where applicable,

be agreed to; the bills, as amended, if amended, be read the third time and passed; the motions to reconsider be laid upon the table en bloc; the title amendment to S. 1167 be withdrawn; and that any statements relating to the bills be printed in the RECORD.

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

ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION ACT

The Senate proceeded to consider the bill (S. 213) to amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidences on Indian reservations, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

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

S. 213

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 ''Albuquerque Biological Park Title Clarification Act''.

[SEC. 2. FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress finds that:

[(1) In 1997, the City of Albuquerque, New Mexico paid $3,875,000 to the Middle Rio Grande Conservancy District to acquire two parcels of land known as Tingley Beach and San Gabriel Park.

[(2) The City intends to develop and improve Tingley Beach and San Gabriel Park as part of its Albuquerque Biological Park Project.

[(3) In 2000, the United States claimed title to Tingley Beach and San Gabriel Park by asserting that these properties were transferred to the United States in the 1950's as part of the establishment of the Middle Rio Grande Project.

[(4) The City's ability to continue developing the Albuquerque Biological Park Project has been hindered by the United States claim of title to these properties.

[(5) The United States claim of ownership over the Middle Rio Grande Project properties is disputed by the City and MRGCD in Rio Grande Silvery Minnow v. John W. Keys, III, No. CV 99–1320 JP/RLP–ACE (D. N.M. filed Nov. 15, 1999).

[(6) Tingley Beach and San Gabriel Park are surplus to the needs of the Bureau of Reclamation and the United States in administering the Middle Rio Grande Project.

[(b) PURPOSE.—The purpose of this Act is to direct]

SEC. 2. PURPOSE.

The purpose of this Act is to direct the Secretary of the Interior to issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach or San Gabriel Park to the City, thereby removing the cloud on the City's title to these lands.

SEC. 3. DEFINITIONS.

In this Act:

(1) CITY.—The term ''City'' means the City of Albuquerque, New Mexico.

(2) MIDDLE RIO GRANDE CONSERVANCY DISTRICT.—The terms ''Middle Rio Grande Conservancy District'' and ''MRGCD'' mean a political subdivision of the State of New Mexico, created in 1925 to provide and maintain flood protection and drainage, and maintenance of ditches, canals, and distribution systems for irrigation and water delivery and operations in the Middle Rio Grande Valley.

(3) MIDDLE RIO GRANDE PROJECT.—The term ''Middle Rio Grande Project'' means the works associated with water deliveries and operations in the Rio Grande basin as authorized by the Flood Control Act of 1948 (Public Law 80–858; 62 Stat. 1175) and the Flood Control Act of 1950 (Public Law 81–516; 64 Stat. 170).

(4) SAN GABRIEL PARK.—The term ''San Gabriel Park'' means the tract of land containing 40.2236 acres, more or less, situated within Section 12 and Section 13, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

(5) TINGLEY BEACH.—The term ''Tingley Beach'' means the tract of land containing 25.2005 acres, more or less, situated within Section 13 and Section 24, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

SEC. 4. CLARIFICATION OF PROPERTY INTEREST.

(a) REQUIRED ACTION.—The Secretary of the Interior shall issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach and San Gabriel Park to the City.

(b) TIMING.—The Secretary shall carry out the action in subsection (a) as soon as practicable after the date of enactment of this title and in accordance with all applicable law.

(c) NO ADDITIONAL PAYMENT.—The City shall not be required to pay any additional costs to the United States for the value of San Gabriel Park and Tingley Beach.

SEC. 5. OTHER RIGHTS, TITLE, AND INTERESTS UNAFFECTED.

(a) IN GENERAL.—Except as expressly provided in section 4, nothing in this Act shall be construed to affect any right, title, or interest in and to any land associated with the Middle Rio Grande Project.

(b) ONGOING LITIGATION.—Nothing contained in this Act shall be construed or utilized to affect or otherwise interfere with any position set forth by any party in the lawsuit pending before the United States District Court for the District of New Mexico, No. CV 99–1320 JP/RLP–ACE, entitled Rio Grande Silvery Minnow v. John W. Keys, III, concerning the right, title, or interest in and to any property associated with the Middle Rio Grande Project.

The committee amendment was agreed to.

The bill (S. 213), as amended, was passed, as follows:

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

FORT DONELSON NATIONAL BATTTLEFIELD EXPANSION ACT OF 2003

The Senate proceeded to consider the bill (S. 524) to expand the boundaries of the Fort Donelson National Battlefield to authorize the acquisition and interpretation of lands associated with the campaign that resulted in the capture of the fort in 1862, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 524

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 ''Fort Donelson National Battlefield Expansion Act of 2003''.

[SEC. 2. FORT DONELSON NATIONAL BATTLEFIELD.

[(a) DESIGNATION; PURPOSE.—There exists as a unit of the National Park System the Fort Donelson National Battlefield to commemorate—

[(1) the Battle of Fort Donelson in February 1862; and

[(2) the campaign conducted by General Ulysses S. Grant and Admiral Andrew H. Foote that resulted in the capture of Fort Donelson by Union forces.

[(b) BOUNDARIES.—The Fort Donelson National Battlefield shall consist of the site of Fort Donelson and associated land that has been acquired by the Secretary of the Interior for administration by the National Park Service, including Fort Donelson National Cemetery, in Stewart County, Tennessee and the site of Fort Heiman and associated land in Calloway County, Kentucky, as generally depicted on the map entitled ''_____'' numbered _____, and dated ____. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

[(c) EXPANSION OF BOUNDARIES.—The Fort Donelson National Battlefield shall also include any land acquired pursuant to section 3.

[SEC. 3 LAND ACQUISITION RELATED TO FORT DONELSON NATIONAL BATTLEFIELD.

[(a) ACQUISITION AUTHORITY.—Subject to subsections (b) and (c), the Secretary of the Interior may acquire land, interests in land, and improvements thereon for inclusion in the Fort Donelson National Battlefield. Such land, interests in land, and improvements may be acquired by the Secretary only by purchase from willing sellers with appropriated or donated funds, by donation, or by exchange with willing owners.

[(b) LAND ELIGIBLE FOR ACQUISITION.—The Secretary of the Interior may acquire land, interests in land, and improvements thereon under subsection (a)—

[(1) within the boundaries of the Fort Donelson National Battlefield described in section 2(b); and

[(2) outside such boundaries if the land has been identified by the American Battlefield Protection Program as part of the battlefield associated with Fort Donelson or if the Secretary otherwise determines that acquisition under subsection (a) will protect critical resources associated with the Battle of Fort Donelson in 1862 and the Union campaign that resulted in the capture of Fort Donelson.

[(c) BOUNDARY REVISION.—Upon acquisition of land or interests in land described in subsection (b)(2), the Secretary of the Interior shall revise the boundaries of the Fort Donelson National Battlefield to include the acquired property.

[(d) LIMITATION ON TOTAL ACREAGE OF PARK.—The total area encompassed by the Fort Donelson National Battlefield may not exceed 2,000 acres.

[SEC. 4. ADMINISTRATION OF FORT DONELSON NATIONAL BATTLEFIELD.

[The Secretary of the Interior shall administer the Fort Donelson National Battlefield in accordance with this Act and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (commonly known as the Historic Sites, Buildings, and Antiquities Act; 16 U.S.C. 461 et seq.).

[SEC. 5. RELATION TO LAND BETWEEN THE LAKES NATIONAL RECREATION AREA.

[The Secretary of Agriculture and the Secretary of the Interior shall enter into a memorandum of understanding to facilitate cooperatively protecting and interpreting the remaining vestige of Fort Henry and other remaining Civil War resources in the Land Between the Lakes National Recreation Area affiliated with the Fort Donelson campaign.

[SEC. 6. REPEAL OF OBSOLETE PROVISIONS AND CONFORMING AMENDMENTS.

[(a) REPEALS.—

[(1) 1928 LAW.—The first section and sections 2 through 7 of the Act of March 26, 1928 (16 U.S.C. 428a–428f), are repealed.

[(2) 1937 LAW.—Section 3 of the Act of August 30, 1937 (16 U.S.C. 428d–3), is repealed.

[(3) 1960 LAW.—Sections 4 and 5 of Public Law 86–738 (16 U.S.C. 428n, 428o) are repealed.

[(b) CONFORMING AMENDMENTS.—

[(1) 1928 LAW.—The Act of March 26, 1928, is amended—

[(A) in section 8 (16 U.S.C. 428g), by striking ''Secretary of War'' and inserting ''Secretary of the Interior'';

[(B) in section 9 (16 U.S.C. 428h)—

[(i) by striking ''Fort Donelson National Park'' and inserting ''Fort Donelson National Battlefield''; and

[(ii) by striking ''Secretary of War'' and inserting ''Secretary of the Interior''; and

[(C) in section 10 (16 U.S.C. 428i), by striking ''Secretary of War'' and inserting ''Secretary of the Interior''.

[(2) 1937 LAW.—The Act of August 30, 1937, is amended—

[(A) in the first section (16 U.S.C. 428d–1)—

[(i) by striking ''Fort Donelson National Military Park'' and inserting ''Fort Donelson National Battlefield''; and

[(ii) by striking ''War Department'' and inserting ''Department of the Army''; and

[(B) in section 2 (16 U.S.C. 428d–2)—

[(i) by striking ''Fort Donelson National Military Park'' and inserting ''Fort Donelson National Battlefield'';

[(ii) by striking ''said national military park'' and inserting ''Fort Donelson National Battlefield''; and

[(iii) by striking the last sentence.

[(3) 1960 LAW.—The first section of Public Law 86–738 (16 U.S.C. 428k) is amended—

[(A) by striking ''Fort Donelson National Military Park'' and inserting ''Fort Donelson National Battlefield''; and

[(B) by striking '', but the total area commemorating the battle of Fort Donelson shall not exceed 600 acres''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Donelson National Battlefield Expansion Act of 2004''.

SEC. 2. FORT DONELSON NATIONAL BATTLEFIELD.

(a) DESIGNATION; PURPOSE.—There exists as a unit of the National Park System the Fort Donelson National Battlefield to commemorate—

(1) the Battle of Fort Donelson in February 1862; and

(2) the campaign conducted by General Ulysses S. Grant and Admiral Andrew H. Foote that resulted in the capture of Fort Donelson by Union forces.

(b) BOUNDARIES.—The boundary of the Fort Donelson National Battlefield is revised to include the site of Fort Donelson and associated land that has been acquired by the Secretary of the Interior for administration by the National Park Service, including Fort Donelson National Cemetery, in Stewart County, Tennessee and the site of Fort Heiman and associated land in Calloway County, Kentucky, as generally depicted on the map entitled ''Fort Donelson National Battlefield Boundary Adjustment'' numbered 328/80024, and dated September 2003. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) EXPANSION OF BOUNDARIES.—The Fort Donelson National Battlefield shall also include any land acquired pursuant to section 3.

SEC. 3. LAND ACQUISITION RELATED TO FORT DONELSON NATIONAL BATTLEFIELD.

(a) ACQUISITION AUTHORITY.—Subject to subsections (b) and (c), the Secretary of the Interior may acquire land, interests in land, and improvements thereon for inclusion in the Fort Donelson National Battlefield. Such land, interests in land, and improvements may be acquired by the Secretary only by purchase from willing sellers with appropriated or donated funds, by donation, or by exchange with willing owners.

(b) LAND ELIGIBLE FOR ACQUISITION.—The Secretary of the Interior may acquire land, interests in land, and improvements thereon under subsection (a)—

(1) within the boundaries of the Fort Donelson National Battlefield described in section 2(b); and

(2) outside such boundaries if the land has been identified by the American Battlefield Protection Program as part of the battlefield associated with Fort Donelson or if the Secretary otherwise determines that acquisition under subsection (a) will protect critical resources associated with the Battle of Fort Donelson in 1862 and the Union campaign that resulted in the capture of Fort Donelson.

(c) BOUNDARY REVISION.—Upon acquisition of land or interests in land described in subsection (b)(2), the Secretary of the Interior shall revise the boundaries of the Fort Donelson National Battlefield to include the acquired property.

(d) LIMITATION ON TOTAL ACREAGE OF PARK.—The total area encompassed by the Fort Donelson National Battlefield may not exceed 2,000 acres.

SEC. 4. ADMINISTRATION OF FORT DONELSON NATIONAL BATTLEFIELD.

The Secretary of the Interior shall administer the Fort Donelson National Battlefield in accordance with this Act and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (commonly known as the Historic Sites, Buildings, and Antiquities Act; 16 U.S.C. 461 et seq.).

SEC. 5. RELATION TO LAND BETWEEN THE LAKES NATIONAL RECREATION AREA.

The Secretary of Agriculture and the Secretary of the Interior shall enter into a memorandum of understanding to facilitate cooperatively protecting and interpreting the remaining vestige of Fort Henry and other remaining Civil War resources in the Land Between the Lakes National Recreation Area affiliated with the Fort Donelson campaign.

SEC. 6. CONFORMING AMENDMENT.

The first section of Public Law 86–738 (16 U.S.C. 428k) is amended by striking ''Tennessee'' and all that follows through the period at the end and inserting ''Tennessee.''.

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

The bill (S. 524), as amended, was passed.

CITY OF CHEYENNE, WYOMING KENDRICK WATER STORAGE PROJECT

The Senate proceeded to consider the bill (S. 943) to authorize the Secretary of the Interior to enter into one or more contracts with the city of Cheyenne, Wyoming, for the storage of water in the Kendrick Project, Wyoming, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 943

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. WATER STORAGE CONTRACTS.

[(a) DEFINITIONS.—In this Act:

[(1) CITY.—The term ''city'' means—

[(A) the city of Cheyenne, Wyoming;

[(B) the Board of Public Utilities of the city; and

[(C) any agency, public utility, or enterprise of the city.

[(2) KENDRICK PROJECT.—

[(A) IN GENERAL.—The term ''Kendrick Project'' means the Bureau of Reclamation project on the North Platte River in the State constructed for irrigation and the generation of electric power.

[(B) INCLUSIONS.—The term ''Kendrick Project'' includes—

[(i) the Seminoe dam, reservoir, and powerplant; and

[(ii) the Alcova dam and powerplant.

[(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

[(4) STATE.—The term ''State'' means the State of Wyoming.

[(b) CONTRACTS.—

[(1) IN GENERAL.—The Secretary may enter into 1 or more contracts with the city for the annual storage in Seminoe dam and reservoir of the Kendrick Project of water for municipal and industrial uses.

[(2) TERM; RENEWAL.—A contract under paragraph (1)—

[(A) shall have a term of not more than 40 years; and

[(B) may be renewed, subject to any terms agreed to by the Secretary and the city, for additional 40-year terms.

[(3) DISPOSITION OF PROCEEDS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), any proceeds received under a contract under paragraph (1) shall—

[(i) be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391); and

[(ii) be available for the Kendrick Project.

[(B) OPERATION AND MAINTENANCE.—Any amounts collected as payments for the operation and maintenance charges of the Kendrick Project under the contract under paragraph (1) shall be credited against applicable operation and maintenance costs of the Kendrick Project.

[(4) EFFECT.—A contract under paragraph (1) shall not affect Kendrick Project contractors or any other existing reclamation contractors on the North Platte River system.]

SECTION 1. WATER STORAGE CONTRACTS.

(a) DEFINITIONS.—In this Act:

(1) CITY.—The term ''city'' means—

(A) the city of Cheyenne, Wyoming;

(B) the Board of Public Utilities of the city; and

(C) any agency, public utility, or enterprise of the city.

(2) KENDRICK PROJECT.—The term ''Kendrick Project'' means the Bureau of Reclamation project on the North Platte River that was authorized by a finding of feasibility approved by the President on August 30, 1935, and constructed for irrigation and electric power generation, the major features of which include—

(A) Seminoe Dam, Reservoir, and Powerplant; and

(B) Alcova Dam and Powerplant.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(4) STATE.—The term ''State'' means the State of Wyoming.

(b) CONTRACTS.—

(1) IN GENERAL.—The Secretary may enter into 1 or more contracts with the city for annual storage of the city's water for municipal and industrial use in Seminoe Dam and Reservoir of the Kendrick Project.

(2) CONDITIONS.—

(A) TERM; RENEWAL.—A contract under paragraph (1) shall—

(i) have a term of not more than 40 years; and

(ii) may be renewed on terms agreeable to the Secretary and the city, for successive terms of not more than 40 years per term.

(B) REVENUES.—Notwithstanding the Act of May 9, 1938 (52 Stat. 322, chapter 187; 43 U.S.C. 392a)—

(i) any operation and maintenance charges received under a contract executed under paragraph (1) shall be credited against applicable operation and maintenance costs of the Kendrick Project; and

(ii) any other revenues received under a contract executed under paragraph (1) shall be credited to the Reclamation Fund as a credit to the construction costs of the Kendrick Project.

(C) EFFECT ON EXISTING CONTRACTORS.—A contract under paragraph (1) shall not adversely affect the Kendrick Project, any existing Kendrick Project contractor, or any existing Reclamation contractor on the North Platte River System.

Amend the title so as to read: ''A bill to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.''.

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

The bill (S. 943), as amended, was passed.

HAWAII WATER RESOURCES ACT OF 2004

The Senate proceeded to consider the bill (S. 960) to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii and to amend the Hawaii Water Resources Act of 2000 to modify the water resources study, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 960

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 ''Hawaii Water Resources Act of [2003] *2004*''.

SEC. 2. HAWAII RECLAMATION PROJECTS.

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.) is amended by adding at the end the following:

''SEC. [1636] *1637*. HAWAII RECLAMATION PROJECTS.

''(a) AUTHORIZATION.—The Secretary may—

''(1) in cooperation with the Board of Water Supply, City and County of Honolulu, Hawaii, participate in the design, planning, and construction of a project in Kalaeloa, Hawaii, to desalinate and distribute seawater for direct potable use within the service area of the Board;

''(2) in cooperation with the County of Hawaii Department of Environmental Management, Hawaii, participate in the design, planning, and construction of facilities in Kealakehe, Hawaii, for the treatment and distribution of recycled water and for environmental purposes within the County; and

''(3) in cooperation with the County of Maui Wastewater Reclamation Division, Hawaii, participate in the design, planning, and construction of, and acquire land for, facilities in Lahaina, Hawaii, for the distribution of recycled water from the Lahaina Wastewater Reclamation Facility for non-potable uses within the County.

''(b) COST SHARE.—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost of the project.

''(c) LIMITATION.—Funds provided by the Secretary shall not be used for the operation and maintenance of a project described in subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. prec. 371) [is amended by inserting after the item relating to section 1634 the following:

[''Sec. 1636. Hawaii reclamation projects.''.

[SEC. 3. HAWAII WATER RESOURCES STUDY.

[The Hawaii Water Resources Act of 2000 is amended—

[(1) in section 103(e) (114 Stat. 2819), by striking ''$300,000'' and inserting ''$2,000,000''; and

[(2) in section 104(b) (114 Stat. 2819), by striking ''cost-effective,'' and all that follows through the period at the end and inserting ''cost-effective.''.]

is amended by inserting after the item relating to section 1636 the following:

''Sec. 1637. Hawaii reclamation projects.''.

The committee amendments were agreed to.

The bill (S. 960), as amended, was passed, as follows:

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

RECREATIONAL FEE AUTHORITY ACT OF 2004

The Senate proceeded to consider the bill (S. 1107) to enhance the Recreational Fee Demonstration Program for the National Park Service, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike in parts shown in black brackets and insert the parts shown in italic.]

S. 1107

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 ''Recreational Fee Authority Act of [2003] *2004*''.

SEC. 2. RECREATION FEE AUTHORITY.

(a) IN GENERAL.—Beginning [in Fiscal Year 2004 and thereafter,] *on January 1, 2006*, the Secretary of the Interior (''Secretary'') may establish, modify, charge, and collect fees for admission to a unit of the National Park System and the use of National Park Service (''Service'') administered areas, lands, sites, facilities, and services (including reservations) by individuals and/or groups. Fees shall be based on an analysis by the Secretary of—

(1) the benefits and services provided to the visitor;

(2) the cumulative effect of fees;

(3) the comparable fees charged elsewhere and by other public agencies and by nearby private sector operators;

(4) the direct and indirect cost and benefit to the government;

(5) public policy or management objectives served;

(6) economic and administrative feasibility of fee collection; and

(7) other factors or criteria determined by the Secretary.

(b) NUMBER OF FEES.—The Secretary shall establish the minimum number of fees and shall avoid the collection of multiple or layered fees for a wide variety of uses, activities or programs.

(c) ANALYSIS.—The results of the analysis together with the Secretary's determination of appropriate fee levels shall be transmitted to the Congress at least three months prior to publication of such fees in the Federal Register. New fees and any increases or decreases in established fees shall be published in the Federal Register and no new fee or change in the amount of fees shall take place until at least 12 months after the date the notice is published in the Federal Register.

(d) ADDITIONAL AUTHORITIES.—Beginning on [October 1, 2003] *January 1, 2006*, the Secretary may enter into agreements, including contracts to provide reasonable commissions or reimbursements with any public or private entity for visitor reservation services, fee collection and/or processing services.

(e) ADMINISTRATION.—The Secretary may provide discounted or free admission days or use, may modify the National Park Passport, established pursuant to Public Law 105–391, and shall provide information to the public about the various fee programs and the costs and benefits of each program.

(f) STATE AGENCY ADMISSION AND SPECIAL USE PASSES.—Effective [October 1, 2003] *January 1, 2006*, and notwithstanding the Federal Grants Cooperative Agreements Act, the Secretary may enter into revenue sharing agreements with State agencies to accept their annual passes and convey the same privileges, terms and conditions as offered under the auspices of the National Park Passport, to State agency annual passes and shall only be accepted for all of the units of the National Park System within the boundaries of the State in which the specific revenue sharing agreement is entered into except where the Secretary has established a fee that includes a unit or units located in more than one State.

SEC. 3. DISTRIBUTION OF RECEIPTS.

Without further appropriation, all receipts collected pursuant to the Act or from sales of the National Park Passport shall be retained by the Secretary and may be expended as follows:

(1) 80 percent of amounts collected at a specific area, site, or project as determined by the Secretary, shall remain available for use at the specific area, site or project, except for those units of the National Park

System that participate in an active revenue sharing agreement with a State under Section 2(f) of this Act, not less than 90 percent of amounts collected at a specific area, site, or project shall remain available for use.

(2) The balance of the amounts collected shall remain available for use by the Service on a Service-wide basis as determined by the Secretary.

(3) Monies generated as a result of revenue sharing agreements established pursuant to Section 2(f) may provide for a fee-sharing arrangement. The Service shares of fees shall be distributed equally to all units of the National Park System in the specific States that are parties to the revenue sharing agreement.

(4) Not less than 50 percent of the amounts collected from the sale of the National Park Passport shall remain available for use at the specific area, site, or project at which the fees were collected and the balance of the receipts shall be distributed in accordance with paragraph 2 of this Section.

SEC. 4. EXPENDITURES.

(a) USE OF FEES AT SPECIFIC AREA, SITE, OR PROJECT.—Amounts available for expenditure at a specific area, site or project shall be accounted for separately and may be used for—

(1) repair, maintenance, facility enhancement, media services and infrastructure including projects and expenses relating to visitor enjoyment, visitor access, environmental compliance, and health and safety;

(2) interpretation, visitor information, visitor service, visitor needs assessments, monitoring, and signs;

(3) habitat enhancement, resource assessment, preservation, protection, and restoration related to recreation use; and

(4) law enforcement relating to public use and recreation.

(b) The Secretary may use not more than fifteen percent of total revenues to administer the recreation fee program including direct operating or capital costs, cost of fee collection, notification of fee requirements, direct infrastructure, fee program management costs, bonding of volunteers, start-up costs, and analysis and reporting on program accomplishments and effects.

SEC. 5. REPORTS.

On January 1, [2006,] *2009*, and every three years thereafter the Secretary shall submit to the Congress a report detailing the status of the Recreation Fee Program conducted in units of the National Park System including an evaluation of the Recreation Fee Program conducted at each unit of the National Park System; a description of projects that were funded, work accomplished, and future projects and programs for funding with fees, and any recommendations for changes in the overall fee system.

The committee amendments were agreed to.

The bill (S. 1107), as amended, was passed, as follows:

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

BOUNDARY CONFLICTS IN BARRY AND STONE COUNTIES, MISSOURI

The Senate proceeded to consider the bill (S. 1167) to resolve the boundary conflicts in Barry and Stone Counties in the State of Missouri, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress finds and declares that—

[(1) certain landowners in Barry and Stone Counties, Missouri, have innocently and in good faith relied on subsequent land surveys, which they believed to have been correct, and have occupied, improved, or claimed portions of adjoining Federal lands based on such survey information; and

[(2) the appropriate Federal agencies should undertake actions to reestablish the corners of the Public Land Survey system, and to rectify boundary conflicts and land-ownership claims against Federal lands resulting from subsequent Federal and private land surveys, and do so in a manner which imposes the least cost and inconvenience to affected private landowners.

[(b) PURPOSES.—Within Barry and Stone Counties, Missouri, the purposes of this Act are—

[(1) to resolve any boundary disputes arising from these subsequent land surveys; and

[(2) to minimize costs and inconvenience to the affected private property owners in Barry and Stone County, Missouri.

[SEC. 2. DEFINITIONS.

[For the purposes of this Act, the term—

[(1) ''appropriate Secretary'' means either the Secretary of the Army or the Secretary of Agriculture;

[(2) ''boundary conflict'' means the situation where the private claim of ownership for non-Federal lands, based on subsequent land surveys, overlaps or conflicts with Federal ownership;

[(3) ''Bureau of Land Management'' means the agency of that name within the United States Department of the Interior, the successor agency to the United States General Land Office.

[(4) ''Corps of Engineers'' means the U.S. Army Corps of Engineers;

[(5) ''Federal land surveys'' means any land survey made by an agency or department of the Federal Government with Federal employees, or by Federal contract with State licensed private land surveyors or corporations and businesses licensed to provide professional land surveying services in the State of Missouri;

[(6) ''Forest Service'' means the Forest Service, an agency of the U.S. Department of Agriculture;

[(7) ''National Forest System lands'' means Federal lands within the National Forest System as such System is defined by section 10(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1609(a));

[(8) ''original land surveys'' means the land surveys made by the General Land Office as part of the United States Public Land Survey System in the State of Missouri, and upon which the Government land patents were issued conveying the land from the Federal Government into private ownership;

[(9) ''United States Public Land Survey System'' means the rectangular system of original Government lands survey made by the United States General Land Office and its successor, the Bureau of Land Management, under Federal laws providing for the survey of the public lands upon which the original land patents were issued;

[(10) ''qualifying claimant'' means a private owner of real property in Barry and Stone Counties, Missouri, who has boundary conflict as a result of good faith and innocent reliance on subsequent land surveys, and as a result of such reliance, has occupied, improved, or made ownership claims to Federal lands, and who files a claim for relief under this Act within the time period prescribed in section 4(b); and

[(11) ''subsequent land surveys'' mean any land surveys made after the original land surveys.

[SEC. 3. RESOLUTION OF BOUNDARY CONFLICTS.

[(a) AUTHORITIES.—Notwithstanding any other provision of law, including the Federal Property Administration Services Act of 1949, and without requirements for further administrative or environmental analyses or examination, the appropriate Secretary is authorized discretion to take any of the following actions, or combinations of actions, in order to resolve boundary conflicts with qualifying claimants on lands under their respective administrative jurisdiction—

[(1) to convey and quitclaim all right, title, and interest of the United States in land for which there is a boundary conflict; or

[(2) to confirm Federal title to and retain in Federal management any land for which there is a boundary conflict where there are Federal interests which may include improvements, authorized uses, easements, hazardous materials, historical and cultural resources; and

[(3) to compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management pursuant to paragraph (2) of this subsection.

[(b) CONSIDERATION AND COSTS.—The Appropriate Secretary shall—

[(1) waive consideration for the value of the Federal land conveyed and quitclaimed pursuant to subsection (a)(1) upon a finding that the boundary conflict was the result of the innocent detrimental reliance by the qualifying claimant on a subsequent land survey;

[(2) pay administrative, personnel and any other costs associated with the implementation of this Act, including the costs of survey, marking and monumenting property lines and corners; and

[(3) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this Act.

[(c) VALUATION.—Compensation paid to qualifying claimants for land retained in Federal ownership pursuant to subsection (a)(2) shall be valued on the basis of the contributory value of the tract of land to the larger adjoining private parcel and not on the basis of the land being a separate tract, and shall not include the value of Federal improvements to the land.

[(d) PREEXISTING CONDITION.—

[(1) The United States shall not compensate a qualifying claimant or any other person for any preexisting condition or reduction in value of any land which is the subject of a boundary conflict because of any existing or outstanding permits, use authorizations, reservations, timber removal, or other land use or condition.

[(2) The requirements of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) shall not apply to conveyances or transfers of jurisdiction under this Act, but the United States shall continue to be liable for the cleanup costs of any hazardous substances on the lands so conveyed or transferred if the contamination by hazardous substances is caused by actions of the United States or its agents.

[(e) RESERVATIONS, VALID EXISTING RIGHTS AND USES.—

[(1) Any conveyance pursuant to subsection (a)(1) shall be subject to—

[(A) reservations for existing public uses for roads, utilities, and facilities; and

[(B) permits, rights-of-way, contracts and any other authorization to use the property; and

[(2) For any land subject to a special use authorization or permit for access or utilities, the appropriate Secretary may, at the request of the holder, convert such authorization to a permanent easement prior to any conveyance pursuant to subsection (a)(1); and

[(3) The appropriate Secretary may reserve rights for future public uses in conveyances made pursuant to subsection (a)(1) of this section if the qualifying claimant is paid for the reservation in cash or in land of equal value.

[(f) RESPONSIBILITIES OF CLAIMANTS.—The qualifying claimant shall have the responsibility for establishing that they qualify for the remedies allowed under this Act.

[SEC. 4. ADMINISTRATIVE PROCEDURE.

[(a) Qualifying claimants shall notify the appropriate Secretary in writing of their claims of a boundary conflict with adjoining Federal land. Such notification shall be accompanied by the following information provided by the qualifying claimant which, except as provided in section 3(b)(3), shall be without cost to the United States—

[(1) a land survey plat and legal description of the affected Federal lands claimed which are based upon a correctly made land survey completed and certified by a Missouri State licensed Professional Land Surveyor, and done in conformity with the United States Public Land Survey System and in compliance with the applicable State and Federal land surveying statutes and regulations; and

[(2) information relating to the claim of ownership of such Federal lands, including supporting documentation showing the landowner relied on a subsequent land survey due to actions by the Federal Government in making or approving surveys for the Table Rock Reservoir; and

[(b) Any qualifying claimant must file for resolution of a boundary conflict within 15 years of the date of enactment of this Act.

[(c) Except for such additional authorities provided in this Act, nothing herein shall affect the Quiet Title Act (28 U.S.C. 2409a) or other applicable law, or affect the exchange and disposal authorities of the Secretary of Agriculture including, but not limited to, the Small Tracts Act (16 U.S.C. 521c), or the exchange and disposal authorities of the Secretary of the Army.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as necessary to carry out this Act.]

SECTION 1. RESOLUTION OF BOUNDARY CONFLICTS, VICINITY OF MARK TWAIN NATIONAL FOREST, BARRY AND STONE COUNTIES, MISSOURI.

(a) DEFINITIONS.—In this section:

(1) The term ''appropriate Secretary'' means the Secretary of the Army or the Secretary of Agriculture.

(2) The term ''boundary conflict'' means the situation in which the private claim of ownership to certain lands, based on subsequent Federal land surveys, overlaps or conflicts with Federal ownership of the same lands.

(3) The term ''Federal land surveys'' means any land survey made by any agency or department of the Federal Government using Federal employees, or by Federal contract with State-licensed private land surveyors or corporations and businesses licensed to provide professional land surveying services in the State of Missouri for Table Rock Reservoir.

(4) The term ''original land surveys'' means the land surveys made by the United States General Land Office as part of the Public Land Survey System in the State of Missouri, and upon which Government land patents were issued conveying the land.

(5) The term ''Public Land Survey System'' means the rectangular system of original Government land surveys made by the United States General Land Office and its successor, the Bureau of Land Management, under Federal laws providing for the survey of the public lands upon which the original land patents were issued.

(6) The term ''qualifying claimant'' means a private owner of real property in Barry or Stone County, Missouri, who has a boundary conflict as a result of good faith and innocent reliance on subsequent Federal land surveys, and as a result of such reliance, has occupied or improved Federal lands administered by the appropriate Secretary.

(7) The term ''subsequent Federal land surveys'' means any Federal land surveys made after the original land surveys that are inconsistent with the Public Land Survey System.

(b) RESOLUTION OF BOUNDARY CONFLICTS.—The Secretary of the Army and the Secretary of Agriculture shall cooperatively undertake actions to rectify boundary conflicts and landownership claims against Federal lands resulting from subsequent Federal land surveys and correctly reestablish the corners of the Public Land Survey System in Barry and Stone Counties, Missouri, and shall attempt to do so in a manner which imposes the least cost and inconvenience to affected private landowners.

(c) NOTICE OF BOUNDARY CONFLICT.—

(1) SUBMISSION AND CONTENTS.—A qualifying claimant shall notify the appropriate Secretary in writing of a claim that a boundary conflict exists with Federal land administered by the appropriate Secretary. The notice shall be accompanied by the following information, which, except as provided in subsection (e)(2)(B), shall be provided without cost to the United States:

(A) A land survey plat and legal description of the affected Federal lands, which are based upon a land survey completed and certified by a Missouri State-licensed professional land surveyor and done in conformity with the Public Land Survey System and in compliance with the applicable State and Federal land surveying laws.

(B) Information relating to the claim of ownership of the Federal lands, including supporting documentation showing that the landowner relied on a subsequent Federal land survey due to actions by the Federal Government in making or approving surveys for the Table Rock Reservoir.

(2) DEADLINE FOR SUBMISSION.—To obtain relief under this section, a qualifying claimant shall submit the notice and information required by paragraph (1) within 15 years after the date of the enactment of this Act.

(d) RESOLUTION AUTHORITIES.—In addition to using existing authorities, the appropriate Secretary is authorized to take any of the following actions in order to resolve boundary conflicts with qualifying claimants involving lands under the administrative jurisdiction of the appropriate Secretary:

(1) Convey by quitclaim deed right, title, and interest in land of the United States subject to a boundary conflict consistent with the rights, title, and interest associated with the privately-owned land from which a qualifying claimant has based a claim.

(2) Confirm Federal title to, and retain in Federal management, any land subject to a boundary conflict, if the appropriate Secretary determines that there are Federal interests, including improvements, authorized uses, easements, hazardous materials, or historical and cultural resources, on the land that necessitates retention of the land or interests in land.

(3) Compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management pursuant to paragraph (2).

(e) CONSIDERATION AND COST.—

(1) CONVEYANCE WITHOUT CONSIDERATION.—The conveyance of land under subsection (d)(1) shall be made without consideration.

(2) COSTS.—The appropriate Secretary shall—

(A) pay administrative, personnel, and any other costs associated with the implementation of this section by his or her Department, including the costs of survey, marking, and monumenting property lines and corners; and

(B) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this section.

(3) VALUATION.—Compensation paid to a qualifying claimant pursuant to subsection (d)(3) for land retained in Federal ownership pursuant to subsection (d)(2) shall be valued on the basis of the contributory value of the tract of land to the larger adjoining private parcel and not on the basis of the land being a separate tract. The appropriate Secretary shall not consider the value of any Federal improvements to the land. The appropriate Secretary shall be responsible for compensation provided as a result of subsequent Federal land surveys conducted or commissioned by the appropriate Secretary's Department.

(f) PREEXISTING CONDITIONS; RESERVATIONS; EXISTING RIGHTS AND USES.—

(1) PREEXISTING CONDITIONS.—The appropriate Secretary shall not compensate a qualifying claimant or any other person for any preexisting condition or reduction in value of any land subject to a boundary conflict because of any existing or outstanding permits, use authorizations, reservations, timber removal, or other land use or condition.

(2) EXISTING RESERVATIONS AND RIGHTS AND USES.—Any conveyance pursuant to subsection (d)(1) shall be subject to—

(A) reservations for existing public uses for roads, utilities, and facilities; and

(B) permits, rights-of-way, contracts and any other authorization to use the property.

(3) TREATMENT OF LAND SUBJECT TO SPECIAL USE AUTHORIZATION OR PERMIT.—For any land subject to a special use authorization or permit for access or utilities, the appropriate Secretary may convert, at the request of the holder, such authorization to a permanent easement prior to any conveyance pursuant to subsection (d)(1).

(4) FUTURE RESERVATIONS.—The appropriate Secretary may reserve rights for future public uses in a conveyance made pursuant to subsection (d)(1) if the qualifying claimant is compensated for the reservation in cash or in land of equal value.

(5) HAZARDOUS SUBSTANCES.—The requirements of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) shall not apply to conveyances or transfers of jurisdiction pursuant to subsection (d), but the United States shall continue to be liable for the cleanup costs of any hazardous substances on the lands so conveyed or transferred if the contamination by hazardous substances is caused by actions of the United States or its agents.

(g) RELATION TO OTHER CONVEYANCE AUTHORITY.—Nothing in this section affects the Quiet Title Act (28 U.S.C. 2409a) or other applicable law, or affects the exchange and disposal authorities of the Secretary of Agriculture, including the Small Tracts Act (16 U.S.C. 521c), or the exchange and disposal authorities of the Secretary of the Army.

(h) ADDITIONAL TERMS AND CONDITIONS.—The appropriate Secretary may require such additional terms and conditions in connection with a conveyance under subsection (d)(1) as the Secretary considers appropriate to protect the interests of the United States.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

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

The bill (S. 1167), as amended, was passed.

SALT CEDAR AND RUSSIAN OLIVE CONTROL DEMONSTRATION ACT

The Senate proceeded to consider the bill (S. 1516) to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the commissioner of Reclamation, to carry out an assessment and demonstration program to assess potential increases in water availability for Bureau of Reclamation projects and other uses through control of salt cedar and Russian olive, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

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 ''Salt Cedar Control Demonstration Act''.

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) the western United States is currently experiencing its worst drought in modern history;

[(2) it is estimated that throughout the western United States salt cedar and Russian olive—

[(A) occupy between 1,000,000 and 1,500,000 acres of land; and

[(B) are non-beneficial users of 2,000,000 to 4,500,000 acre-feet of water per year;

[(3) the quantity of non-beneficial use of water by salt cedar and Russian olive is greater than the quantity that valuable native vegetation would use;

[(4) much of the salt cedar and Russian olive infestation is located on Bureau of Land Management land or other land of the Department of the Interior; and

[(5) as drought conditions and legal requirements relating to water supply accelerate water shortages, innovative approaches are needed to address the increasing demand for a diminishing water supply.

[SEC. 3. SALT CEDAR AND RUSSIAN OLIVE ASSESSMENT AND DEMONSTRATION PROGRAM.

[(a) ESTABLISHMENT.—In furtherance of the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 (106 Stat. 4600), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this Act as the ''Secretary''), shall carry out a salt cedar and Russian olive assessment and demonstration program to—

[(1) assess the extent of the infestation of salt cedar and Russian olive in the western United States; and

[(2) develop strategic solutions for long-term management of salt cedar and Russian olive.

[(b) ASSESSMENT.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation in the western United States. The assessment shall—

[(1) consider past and ongoing research on tested and innovative methods to control salt cedar and Russian olive;

[(2) consider the feasibility of reducing water consumption;

[(3) consider methods of and challenges associated with the restoration of infested land;

[(4) estimate the costs of destruction of salt cedar and Russian olive, biomass removal, and restoration and maintenance of the infested land; and

[(5) identify long-term management and funding strategies that could be implemented by Federal, State, and private land managers.

[(c) DEMONSTRATION PROJECTS.—The Secretary shall carry out not less than 5 projects to demonstrate and evaluate the most effective methods of controlling salt ceder and Russian olive. Projects carried out under this subsection shall—

[(1) monitor and document any water savings from the control of salt cedar and Russian olive;

[(2) identify the quantity of, and rates at which, any water savings under paragraph (1) return to surface water supplies;

[(3) assess the best approach to and tools for implementing available control methods;

[(4) assess all costs and benefits associated with control methods and the restoration and maintenance of land;

[(5) determine conditions under which removal of biomass is appropriate and the optimal methods for its disposal or use;

[(6) define appropriate final vegetative states and optimal revegetation methods; and

[(7) identify methods for preventing the regrowth and reintroduction of salt cedar and Russian olive.

[(d) CONTROL METHODS.—The demonstration projects carried out under subsection (c) may implement 1 or more control method per project, but to assess the full range of control mechanisms—

[(1) at least 1 project shall use airborne application of herbicides;

[(2) at least 1 project shall use mechanical removal; and

[(3) at least 1 project shall use biocontrol methods such as goats or insects.

[(e) IMPLEMENTATION.—A demonstration project shall be carried out during a time period and to a scale designed to meet the requirements of subsection (c).

[(f) COSTS.—

[(1) IN GENERAL.—Each demonstration project under subsection (c) shall be carried out at a cost of not more than $7,000,000, including costs of planning, design, implementation, maintenance, and monitoring.

[(2) COST-SHARING.—

[(A) FEDERAL SHARE.—The Federal share of the costs of a demonstration project shall not exceed 75 percent.

[(B) FORM OF NON-FEDERAL SHARE.—The non-Federal share of the costs of a demonstration project may be provided in the form of in-kind contributions, including services provided by a State agency.

[(g) COOPERATION.—In carrying out the program, the Secretary shall—

[(1) use the expertise of Federal agencies, national laboratories, Indian tribes, institutions of higher education, State agencies, and soil and water conservation districts that are actively conducting research on or implementing salt cedar and Russian olive control activities; and

[(2) cooperate with other Federal agencies and affected States, local units of government, and Indian tribes.

[SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to carry out this Act—

[(1) $50,000,000 for fiscal year 2004; and

[(2) such sums as are necessary for each fiscal year thereafter.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Salt Cedar and Russian Olive Control Demonstration Act''.

SEC. 2. SALT CEDAR AND RUSSIAN OLIVE CONTROL DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of the Interior (referred to in this Act as the ''Secretary''), acting through the Commissioner of Reclamation and in cooperation with the Secretary of Agriculture and the Secretary of Defense, shall carry out a salt cedar (Tamarix spp) and Russian olive (Elaeagnus angustifolia) assessment and demonstration program—

(1) to assess the extent of the infestation by salt cedar and Russian olive trees in the western United States;

(2) to demonstrate strategic solutions for—

(A) the long-term management of salt cedar and Russian olive trees; and

(B) the reestablishment of native vegetation; and

(3) to assess economic means to dispose of biomass created as a result of removal of salt cedar and Russian olive trees.

(b) ASSESSMENT.—

(1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation on public and private land in the western United States.

(2) REQUIREMENTS.—In addition to describing the acreage of and severity of infestation by salt cedar and Russian olive trees in the western United States, the assessment shall—

(A) consider existing research on methods to control salt cedar and Russian olive trees;

(B) consider the feasibility of reducing water consumption by salt cedar and Russian olive trees;

(C) consider methods of and challenges associated with the revegetation or restoration of infested land; and

(D) estimate the costs of destruction of salt cedar and Russian olive trees, related biomass removal, and revegetation or restoration and maintenance of the infested land.

(c) LONG-TERM MANAGEMENT STRATEGIES.—

(1) IN GENERAL.—The Secretary shall identify and document long-term management and funding strategies that—

(A) could be implemented by Federal, State, and private land managers in addressing infestation by salt cedar and Russian olive trees; and

(B) should be tested as components of demonstration projects under subsection (d).

(2) GRANTS.—The Secretary shall provide grants to institutions of higher education to develop public policy expertise in, and assist in developing a long-term strategy to address, infestation by salt cedar and Russian olive trees.

(d) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—Not later than 180 days after the date on which funds are made available to carry out this Act, the Secretary shall establish a program that selects and funds not less than 5 projects proposed by and implemented in collaboration with Federal agencies, units of State and local government, national laboratories, Indian tribes, institutions of higher education, individuals, organizations, or soil and water conservation districts to demonstrate and evaluate the most effective methods of controlling salt cedar and Russian olive trees.

(2) PROJECT REQUIREMENTS.—The demonstration projects under paragraph (1) shall—

(A) be carried out over a time period and to a scale designed to fully assess long-term management strategies;

(B) implement salt cedar or Russian olive tree control using 1 or more methods for each project in order to assess the full range of control methods, including—

(i) airborne application of herbicides;

(ii) mechanical removal; and

(iii) biocontrol methods, such as the use of goats or insects;

(C) individually or in conjunction with other demonstration projects, assess the effects of and

obstacles to combining multiple control methods and determine optimal combinations of control methods;

(D) assess soil conditions resulting from salt cedar and Russian olive tree infestation and means to revitalize soils;

(E) define and implement appropriate final vegetative states and optimal revegetation methods, with preference for self-maintaining vegetative states and native vegetation, and taking into consideration downstream impacts, wildfire potential, and water savings;

(F) identify methods for preventing the regrowth and reintroduction of salt cedar and Russian olive trees;

(G) monitor and document any water savings from the control of salt cedar and Russian olive trees, including impacts to both groundwater and surface water;

(H) assess wildfire activity and management strategies;

(I) assess changes in wildlife habitat;

(J) determine conditions under which removal of biomass is appropriate (including optimal methods for the disposal or use of biomass); and

(K) assess economic and other impacts associated with control methods and the restoration and maintenance of land.

(e) DISPOSITION OF BIOMASS.—

(1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary, in cooperation with the Secretary of Agriculture, shall complete an analysis of economic means to use or dispose of biomass created as a result of removal of salt cedar and Russian olive trees.

(2) REQUIREMENTS.—The analysis shall—

(A) determine conditions under which removal of biomass is economically viable;

(B) consider and build upon existing research by the Department of Agriculture and other agencies on beneficial uses of salt cedar and Russian olive tree fiber; and

(C) consider economic development opportunities, including manufacture of wood products using biomass resulting from demonstration projects under subsection (d) as a means of defraying costs of control.

(f) COSTS.—

(1) IN GENERAL.—With respect to projects and activities carried out under this Act—

(A) the assessment under subsection (b) shall be carried out at a cost of not more than $4,000,000;

(B) the identification and documentation of long-term management strategies under subsection (c) shall be carried out at a cost of not more than $2,000,000;

(C) each demonstration project under subsection (d) shall be carried out at a Federal cost of not more than $7,000,000 (including costs of planning, design, implementation, maintenance, and monitoring); and

(D) the analysis under subsection (e) shall be carried out at a cost of not more than $3,000,000.

(2) COST-SHARING.—

(A) IN GENERAL.—The assessment under subsection (b), the identification and documentation of long-term management strategies under subsection (c), a demonstration project or portion of a demonstration project under subsection (d) that is carried out on Federal land, and the analysis under subsection (e) shall be carried out at full Federal expense.

(B) DEMONSTRATION PROJECTS CARRIED OUT ON NON-FEDERAL LAND.—

(i) IN GENERAL.—The Federal share of the costs of any demonstration project funded under subsection (d) that is not carried out on Federal land shall not exceed—

(I) 75 percent for each of the first 5 years of the demonstration project; and

(II) for the purpose of long-term monitoring, 100 percent for each of such 5-year extensions as the Secretary may grant.

(ii) FORM OF NON-FEDERAL SHARE.—The non-Federal share of the costs of a demonstration project that is not carried out on Federal land may be provided in the form of in-kind contributions, including services provided by a State agency or any other public or private partner.

(g) COOPERATION.—In carrying out the assessment under subsection (b), the demonstration projects under subsection (d), and the analysis under subsection (e), the Secretary shall cooperate with and use the expertise of Federal agencies and the other entities specified in subsection (d)(1) that are actively conducting research on or implementing salt cedar and Russian olive tree control activities.

(h) INDEPENDENT REVIEW.—The Secretary shall subject to independent review—

(1) the assessment under subsection (b);

(2) the identification and documentation of long-term management strategies under subsection (c);

(3) the demonstration projects under subsection (d); and

(4) the analysis under subsection (e).

(i) REPORTING.—

(1) IN GENERAL.—The Secretary shall submit to Congress an annual report that describes the results of carrying out this Act, including a synopsis of any independent review under subsection (h) and details of the manner and purposes for which funds are expended.

(2) PUBLIC ACCESS.—The Secretary shall facilitate public access to all information that results from carrying out this Act.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act—

(1) $20,000,000 for fiscal year 2005; and

(2) $15,000,000 for each subsequent fiscal year.

Amend the title so as to read: ''A bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment and demonstration program to control salt cedar and Russian olive, and for other purposes.''.

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

The bill (S. 1516), as amended, was passed.

HARPERS FERRY NATIONAL HISTORICAL PARK BOUNDARY REVISION ACT OF 2003

The bill (S. 1576) to revise the boundary of Harpers Ferry National Historical Park, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time and passed; as follows:

S. 1576

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 ''Harpers Ferry National Historical Park Boundary Revision Act of 2003''.

SEC. 2. HARPERS FERRY NATIONAL HISTORICAL PARK.

The first section of the Act of June 30, 1944 (58 Stat. 645, chapter 328; 16 U.S.C. 450bb), is amended to read as follows:

''SECTION 1. HARPERS FERRY NATIONAL HISTORICAL PARK.

''(a) IN GENERAL.—To carry out the purposes of this Act, the Secretary of the Interior (referred to in this Act as the 'Secretary') is authorized to acquire, by purchase from a willing seller with donated or appropriated funds, by donation, or by exchange, land or an interest in land within the boundaries as generally depicted on the map entitled 'Boundary Map, Harpers Ferry National Historical Park', numbered 385–80,021A, and dated April 1979.

''(b) BRADLEY AND RUTH NASH ADDITION.—The Secretary is authorized to acquire, by donation only, approximately 27 acres of land or interests in land that are outside the boundary of the Harpers Ferry National Historical Park and generally depicted on the map entitled 'Proposed Bradley and Ruth Nash Addition—Harpers Ferry National Historical Park', numbered 385–80056, and dated April 1, 1989.

''(c) BOUNDARY EXPANSION.—

''(1) IN GENERAL.—The Secretary is authorized to acquire, by purchase from a willing seller with donated or appropriated funds, by donation, or by exchange, land or an interest in land within the area depicted as 'Private Lands' on the map entitled 'Harpers Ferry National Historical Park Proposed Boundary Expansion,' numbered 385/80,126, and dated July 14, 2003.

''(2) ADMINISTRATION.—The Secretary shall—

''(A) transfer to the National Park Service for inclusion in the Harpers Ferry National Historical Park (referred to in this Act as the 'Park') the land depicted on the map referred to in paragraph (1) as 'U.S. Fish and Wildlife Service Lands' and revise the boundary of the Park accordingly; and

''(B) revise the boundary of the Park to include the land depicted on the map referred to in paragraph (1) as 'Appalachian NST' and exclude that land from the boundary of the Appalachian National Scenic Trail.

''(d) MAXIMUM NUMBER OF ACRES.—The number of acres of the Park shall not exceed 3,745.

''(e) MAPS.—The maps referred to in this section shall be on file and available for public inspection in the appropriate offices of the National Park Service.

''(f) ACQUIRED LAND.—Land or an interest in land acquired under this section shall become a part of the Park, subject to the laws (including regulations) applicable to the Park.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

SEC. 3. CONFORMING AMENDMENTS.

Sections 2 and 3 of the Act of June 30, 1944 (58 Stat. 646, chapter 328; 16 U.S.C. 450bb–1, 450bb–2), are amended by striking ''Secretary of the Interior'' each place it appears and inserting ''Secretary''.

EXTENSION OF THE DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN THE STATE OF WYOMING

The bill (S. 1577) to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming, was considered, ordered to be engrossed for a third reading, read the third time and passed; as follows:

S. 1577

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR THE FEDERAL ENERGY REGULATORY COMMISSION HYDROELECTRIC PROJECT.

Notwithstanding the time period specified in section 13 of Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 1651, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the

Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for three consecutive two-year periods from the date of the expiration of the extension originally issued by the Commission.

BEND PINE NURSERY LAND CONVEYANCE ACT AMENDMENTS

The Senate proceeded to consider the bill (S. 1848) to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SALE OF BEND PINE NURSERY ADMINISTRATIVE SITE.

[The Bend Pine Nursery Land Conveyance Act (114 Stat. 2512) is amended—

[(1) in section 3—

[(A) in subsection (a)—

[(i) by striking paragraph (1);

[(ii) by redesignating paragraphs (2) through (7) as subparagraphs (A) through (F), respectively, and adjusting the margins appropriately; and

[(iii) by striking ''(a) IN GENERAL.—The Secretary may'' and inserting the following:

[''(a) IN GENERAL.—The Secretary—

[''(1) shall offer to sell to the Bend Metro Park and Recreation District in Deschutes County, Oregon, for consideration in the amount of $3,505,676, all right, title, and interest of the United States in and to approximately 170 acres of the parcel of land identified as Tract A, Bend Pine Nursery, as depicted on the site plan map entitled 'Bend Pine Nursery Administrative Site, May 13, 1999'; and

[''(2) may'';

[(B) by striking subsection (e)(3); and

[(C) by inserting after subsection (f) the following:

[''(g) BEND PINE NURSERY ADMINISTRATIVE SITE.—The land conveyed to the Bend Metro Park and Recreation District under section 3(a)(1)—

[''(1) shall be used only for recreation purposes; and

[''(2) may be developed for those purposes.''.

[(2) by redesignating section 6 as section 7; and

[(3) by inserting after section 5 the following:

[''SEC. 6. CONVEYANCE TO BEND-LA PINE SCHOOL DISTRICT.

[''The Secretary, in accordance with section 202 of the Education Land Grant Act (16 U.S.C. 479a), shall convey to Administrative School District No. 1, Deschutes County, Oregon, for no consideration, 15 acres of land located in the northwest corner of the tract described in section 3(a)(1), to be used for educational purposes.''.]

SECTION 1. MODIFICATION OF BEND PINE NURSERY LAND CONVEYANCE.

(a) DESIGNATION OF RECIPIENTS AND CONSIDERATION.—Section 3 of the Bend Pine Nursery Land Conveyance Act (Public Law 106–526; 114 Stat. 2512) is amended—

(1) in subsection (a), by striking paragraph (1) and redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively;

(2) in subsection (e)—

(A) by striking ''this section'' both places it appears and inserting ''subsection (a)'';

(B) in paragraph (1), by striking ''Subject to paragraph (3), the'' and inserting ''The''; and

(C) by striking paragraph (3); and

(3) by adding at the end the following:

''(g) BEND PINE NURSERY CONVEYANCE.—

''(1) CONVEYANCE TO PARK AND RECREATION DISTRICT.—Upon receipt of consideration in the amount of $3,503,676 from the Bend Metro Park and Recreation District in Deschutes County, Oregon, the Secretary shall convey to the Bend Metro Park and Recreation District all right, title, and interest of the United States in and to a parcel of real property consisting of approximately 185 acres and containing the Bend Pine Nursery, as depicted on the site plan map entitled 'Bend Pine Nursery Administrative Site, May 13, 1999'. Subject to paragraph (2), the real property conveyed to the Bend Metro Park and Recreation District shall be used only for public recreation purposes and may be developed for those purposes. If the Secretary determines that the real property subject to this condition is converted, in whole or in part, to a use other than public recreation, the Secretary shall require the Bend Metro Park and Recreation District to pay to the United States an amount equal to the fair market value of the property at the time of conversion, less the consideration paid under this paragraph.

''(2) RECONVEYANCE OF PORTION TO SCHOOL DISTRICT.—As soon as practicable after the receipt by the Bend Metro Park and Recreation District of the real property described in paragraph (1), the Bend Metro Park and Recreation District shall convey to the Administrative School District No. 1, Deschutes County, Oregon, without consideration, a parcel of real property located in the northwest corner of the real property described in paragraph (1) and consisting of approximately 15 acres. The deed of conveyance shall contain a covenant requiring that the real property conveyed to the School District be used only for public education purposes.''.

(b) CONFORMING AMENDMENT.—Section 4(a) of such Act is amended by striking ''section 3(a)'' and inserting ''section 3''.

The amendment (No. 3216) was agreed to, as follows:

AMENDMENT NO. 3216

On page 4, line 22, strike ''1999'' and insert ''2004''.

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

The bill (S. 1848), as amended, was passed, as follows:

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

NATIONAL PARK SYSTEM LAWS TECHNICAL AMENDMENTS ACT OF 2004

The bill (S. 2178) to make technical corrections to laws relating to certain units of the National Park System and to National Park programs, was considered, ordered to be engrossed for a third reading, read the third time and passed; as follows:

S. 2178

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 ''National Park System Laws Technical Amendments Act of 2004''.

SEC. 2. LACKAWANNA VALLEY HERITAGE AREA.

Section 106 of the Lackawanna Valley National Heritage Area Act of 2000 (16 U.S.C. 461 note; Public Law 106–278) is amended by striking subsection (a) and inserting the following:

''(a) AUTHORITIES OF MANAGEMENT ENTITY.—For purposes of preparing and implementing the management plan, the management entity may—

''(1) make grants to, and enter into cooperative agreements with, the State and political subdivisions of the State, private organizations, or any person; and

''(2) hire and compensate staff.''.

SEC. 3. HAWAI'I VOLCANOES NATIONAL PARK.

Section 5 of the Act of June 20, 1938 (16 U.S.C. 392c) is amended by striking ''Hawaii Volcanoes'' each place it appears and inserting ''Hawai'i Volcanoes''.

SEC. 4. "I HAVE A DREAM" PLAQUE AT LINCOLN MEMORIAL.

Section 2 of Public Law 106–365 (114 Stat. 1409) is amended by striking ''and expand contributions'' and inserting ''and expend contributions''.

SEC. 5. WILD AND SCENIC RIVERS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended—

(1) by redesignating paragraph (162) (relating to White Clay Creek, Delaware and Pennsylvania) as paragraph (163);

(2) by designating the second paragraph (161) (relating to the Wekiva River, Wekiwa Springs Run, Rock Springs Run, and Black Water Creek, Florida) as paragraph (162);

(3) by designating the undesignated paragraph relating to the Wildhorse and Kiger Creeks, Oregon, as paragraph (164);

(4) by redesignating the third paragraph (161) (relating to the Lower Delaware River and associated tributaries, New Jersey and Pennsylvania) as paragraph (165) and by indenting appropriately; and

(5) by redesignating the undesignated paragraph relating to the Rivers of Caribbean National Forest, Puerto Rico, as paragraph (166).

SEC. 6. ROSIE THE RIVETER/WORLD WAR II HOME FRONT NATIONAL HISTORICAL PARK.

The Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000 (16 U.S.C. 410ggg et seq.) is amended—

(1) in section 2(b), by striking ''numbered 963/80000'' and inserting ''numbered 963/80,000''; and

(2) in section 3—

(A) in subsection (a)(1), by striking ''August 35'' and inserting ''August 25'';

(B) in subsection (b)(1), by striking ''the World War II Child Development Centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67A'' and inserting ''the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A''; and

(C) in subsection (e)(2), by striking ''the World War II day care centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67,'' and inserting ''the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A,''.

SEC. 7. VICKSBURG CAMPAIGN TRAIL BATTLEFIELDS.

The Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (114 Stat. 2202) is amended—

(1) in section 2(a)(1), by striking ''and Tennessee'' and inserting ''Tennessee, and Kentucky''; and

(2) in section 3—

(A) in paragraph (1), by striking ''and Tennessee,'' and inserting ''Tennessee, and Kentucky,''; and

(B) in paragraph (2)—

(i) in subparagraph (R), by striking ''and'' at the end;

(ii) by redesignating subparagraph (S) as subparagraph (T); and

(iii) by inserting after subparagraph (R) the following:

''(S) Fort Heiman in Calloway County, Kentucky, and resources in and around Columbus in Hickman County, Kentucky; and''.

SEC. 8. HARRIET TUBMAN SPECIAL RESOURCE STUDY.

Section 3(c) of the Harriet Tubman Special Resource Study Act (Public Law 106–516; 114 Stat. 2405) is amended by striking ''Public Law 91–383'' and all that follows through ''(P.L. 105–391; 112 Stat. 3501)'' and inserting ''section 8 of Public Law 91–383 (16 U.S.C. 1a–5)''.

SEC. 9. PUBLIC LAND MANAGEMENT AGENCY FOUNDATIONS.

Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management agencies shall qualify for General Service Administration contract airfares.

SEC. 10. SHORT TITLES.

(a) NATIONAL PARK SERVICE ORGANIC ACT.—The Act of August 25, 1916 (commonly known as the ''National Park Service Organic Act'') (16 U.S.C. 1 et seq.) is amended by adding at the end the following:

''SEC. 5. SHORT TITLE.

''This Act may be cited as the 'National Park Service Organic Act'.''.

(b) NATIONAL PARK SYSTEM GENERAL AUTHORITIES ACT.—Public Law 91–383 (commonly known as the ''National Park System General Authorities Act'') (16 U.S.C. 1a–1 et seq.) is amended by adding at the end the following:

''SEC. 14. SHORT TITLE.

''This Act may be cited as the 'National Park System General Authorities Act'.''.

SEC. 11. PARK POLICE INDEMNIFICATION.

Section 2(b) of Public Law 106–437 (114 Stat. 1921) is amended by striking ''the Act'' and inserting ''of the Act''.

SEC. 12. BOSTON HARBOR ISLANDS NATIONAL RECREATION AREA.

Section 1029 of division I of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4233) is amended—

(1) in subsection (c)(2)(B)(i), by striking ''reference'' and inserting ''referenced''; and

(2) in subsection (d)(4), by inserting a period after ''plans''.

SEC. 13. NATIONAL HISTORIC PRESERVATION ACT.

Section 5(a)(8) of the National Historic Preservation Act Amendments of 2000 (Public Law 106–208; 114 Stat. 319) is amended by striking ''section 110(1)'' and inserting ''section 110(*l*)''.

SEC. 14. NATIONAL TRAILS SYSTEM ACT.

The National Trails System Act (16 U.S.C. 1241 et seq.) is amended—

(1) in section 5—

(A) in subsection (c)—

(i) in paragraph (19), by striking ''Kissimme'' and inserting ''Kissimmee'';

(ii) in paragraph (40)(D) by striking ''later that'' and inserting ''later than''; and

(iii) by designating the undesignated paragraphs relating to the Metacomet-Monadnock-Mattabesett Trail and The Long Walk Trail as paragraphs (41) and (42), respectively; and

(B) in the first sentence of subsection (d), by striking ''establishment.''; and

(2) in section 10(c)(1), by striking ''The Ice Age'' and inserting ''the Ice Age''.

SEC. 15. VICKSBURG NATIONAL MILITARY PARK.

Section 3(b) of the Vicksburg National Military Park Boundary Modification Act of 2002 (16 U.S.C. 430h–11) is amended by striking ''the Secretary add it'' and inserting ''the Secretary shall add the property''.

SEC. 16. ALLEGHENY PORTAGE RAILROAD NATIONAL HISTORIC SITE.

Section 2(2) of the Allegheny Portage Railroad National Historic Site Boundary Revision Act (Public Law 107–369; 116 Stat. 3069) is amended by striking ''NERO 423/80,014 and dated May 01'' and inserting ''NERO 423/80,014A and dated July 02''.

SEC. 17. TALLGRASS PRAIRIE NATIONAL PRESERVE.

Section 1006(b) of division I of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4208) is amended by striking ''subsection (a)(1)'' and inserting ''subsection (a)''.

EXPANSION OF THE SLEEPING BEAR DUNES NATIONAL LAKESHORE

The bill (H.R. 408) to provide for expansion of Sleeping Bear Dunes National Lakeshore, was considered, ordered to a third reading, read the third time, and passed.

CIBOLA NATIONAL WILDLIFE REFUGE, CALIFORNIA PUBLIC LAND ORDER

The Senate proceeded to consider the bill (H.R. 417) to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.

The amendment (No. 3217) was agreed to, as follows:

(Purpose: To adjust the boundaries of Green Mountain National Forest)

At the end, add the following:

SEC. ____. GREEN MOUNTAIN NATIONAL FOREST EXPANSION.

(a) IN GENERAL.—The boundaries of the Green Mountain National Forest are modified to include all parcels of land depicted on the forest maps entitled ''Green Mountain Expansion Area Map I'' and ''Green Mountain Expansion Area Map II'', each dated February 20, 2002, which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia.

(b) MANAGEMENT.—Federally owned land delineated on the maps acquired for National Forest purposes shall continue to be managed in accordance with the laws (including regulations) applicable to the National Forest System.

(c) LAND AND WATER CONSERVATION FUND.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9), the boundaries of the Green Mountain National Forest, as adjusted by this Act, shall be considered to be the boundaries of the national forest as of January 1, 1965.

The bill (H.R. 417), as amended, was ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN LANDS IN MENDOCINO NATIONAL FOREST

The bill (H.R. 708) to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

REVISED PAYMENT CONTRACT WITH THE TOM GREEN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT

The bill (H.R. 856) to authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

H.R. 856

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TOM GREEN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1; REPAYMENT PERIOD EXTENDED.

The Secretary of the Interior may revise the repayment contract with the Tom Green County Water Control and Improvement District No. 1 numbered 14–06–500–369, by extending the period authorized for repayment of reimbursable constructions costs of the San Angelo project from 40 years to 50 years.

IRVINE BASIN SURFACE AND GROUNDWATER IMPROVEMENT ACT OF 2003

The bill (H.R. 1598) to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in projects within the San Diego Creek Watershed, California, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

H.R. 1598

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 ''Irvine Basin Surface and Groundwater Improvement Act of 2003''.

SEC. 2. PROJECT AUTHORIZATION.

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102–575, title XVI; 43 U.S.C. 390h et seq.) is amended by inserting after section 1635 the following:

''SEC. 1636. IRVINE BASIN GROUNDWATER AND SURFACE WATER IMPROVEMENT PROJECTS.

''(a) AUTHORIZATION.—The Secretary, in cooperation with the Irvine Ranch Water District, California, is authorized to participate in the design, planning, and construction of projects to naturally treat impaired surface water, reclaim and reuse impaired groundwater, and provide brine disposal within the San Diego Creek Watershed.

''(b) COST SHARE.—The Federal share of the costs of the projects authorized by this section shall not exceed 25 percent of the total cost.

''(c) LIMITATION.—The Secretary shall not provide funds for the operation or maintenance of a project authorized by this section.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 is amended by inserting after the item relating to section 1635 the following:

''1636. Irvine basin groundwater and surface water improvement projects.''.

50TH ANNIVERSARY OF THE BROWN v. BOARD OF EDUCATION DECISION

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H. Con. Res. 414 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 414) expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 414) was agreed to.

The preamble was agreed to.

Mr. DURBIN. Mr. President, I rise today to mark a bittersweet anniversary in our Nation's history. Fifty years ago today, the U.S. Supreme Court handed down the most important Court decision of the 20th century and perhaps of all time: Brown v. Board of Education.

Fifty years ago today, on May 17, 1954, the Supreme Court unanimously ruled that ''in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.''

The Brown decision struck down laws that permitted racially segregated schools in 17 states and the District of Columbia. The Supreme Court said that such laws violate the fourteenth amendment of the U.S. Constitution—the amendment that was passed after the Civil War to guarantee ''equal protection of the laws.''

The day after Brown was handed down, the Chicago Daily Tribune wrote that the idea of educational equality ''may appear dangerously novel to some citizens, but the Supreme Court didn't invent it. Indeed, they can be said to have borrowed it from a distinguished Virginian named Thomas Jefferson.''

A May 19, 1954 editorial in the New York Times stated: ''The Supreme Court's historic decision in the school desegregation cases brings the United States back into the mainstream of its own best traditions. Segregation is a hangover of slavery, and its ugliest manifestation has been in the schools.''

The Brown decision was a victory for equality and a victory for America. But many African Americans had a muted reaction to the decision because it was so long overdue. As Richard Kluger wrote in the classic book Simple Justice:

Too many proclamations of white America's good intentions had reached African Americans' ears in the past to permit premature celebration now. There was added hesitation, no doubt in expressing open glee lest it be taken as a sign of gratitude and thereby provide whites the emotional satisfaction over a deed well done. For, upon analysis, all the Supreme Court had truly and at long last granted to the black man was simple justice.

The impact of the Brown decision occurred mainly in the South, but the Chicago Daily Sun-Times offered a prescient observation. In a May 19, 1954 editorial the Sun-Times wrote: ''We of the North would do well to apply ourselves with equal diligence and sincerity to our own unsolved problems of racial discrimination and prejudice.''

Indeed, there were segregated schools in my home State of Illinois in 1954—the Land of Lincoln. My State had a law that banned racial segregation in our public schools, but there was inadequate enforcement.

Although we have made great strides over the past century in Illinois and in our Nation, we continue to have severe racial disparities in our public school systems—50 years after Brown v. Board of Education.

For that reason, the 50th anniversary is bittersweet. In 2004, we see that the racism has not been alleviated. Equal opportunity has not been assured.

Our schools are not fully integrated. In Illinois, 92 percent of white children attend majority white schools, and 68 percent of Black children attend majority Black schools. School segregation for our rapidly growing Latino population is on the rise.

And our schools are not equal. In Illinois a Black child is about 40 times more likely to attend a school that has failed to meet State standards for 4 consecutive years, a so-called ''academic watch list'' school. A Latino student is 20 times more likely. But less than 1 percent of the White children in Illinois are enrolled at a school on the academic watch list.

The Supreme Court in Brown v. Board of Education stated that equal access to education is a civil right of every citizen. And what a promise that was. We believed racial disparities in education would eventually be erased.

In 2001, we realized that this promise had not been realized. We enacted No Child Left Behind to try and tackle the enduring problem of racial inequality in our public schools. No Child Left Behind requires schools to break out test scores by racial and economic categories to show that each segment of a school's population is succeeding.

Many of us worked in concert with the more conservative champions of the effort because we believed the law would provide more resources and more opportunities for minority children in public schools.

Today schools are struggling to implement the law without the promised resources. We have not lived up to the promise of No Child Left Behind. And we have not lived up to the promise of Brown v. Board of Education.

Many of our schools today are separate and unequal. This commemoration is bittersweet, but we have the means to make it less bitter and more sweet.

We can live up to the promise of the Brown decision by investing in our public schools rather than giving up on them. Giving vouchers to a handful of lucky families only leaves the have-nots in an increasingly hopeless situation.

We can live up to the promise of Brown by adopting the Student's Bill of Rights—requiring an equitable apportionment of funds and qualified teachers and small class sizes.

We can live up to the promise of Brown by fully funding the Individuals with Disabilities Education Act, ensuring that students with disabilities can exercise their right to a public education.

We can live up to the promise of Brown by funding No Child Left Behind as promised, making it possible for struggling schools to improve the quality of education for all its students.

Let us honor the legacy of the Supreme Court's historic decision in Brown v. Board of Education by making the appropriate investments in public education and working to ensure equality of opportunity.

TAX ADMINISTRATION GOOD GOVERNMENT ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 498, S. 882.

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

The legislative clerk read as follows:

A bill (S. 882) to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes.

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

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 882

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; ETC.

[(a) SHORT TITLE.—This Act may be cited as the ''Tax Administration Good Government Act''.

[(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

[(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

[Sec. 1. Short title; etc.

[TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

[Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection

[Sec. 101. Waiver of user fee for installment agreements using automated withdrawals.
[Sec. 102. Partial payment of tax liability in installment agreements.
[Sec. 103. Termination of installment agreements.
[Sec. 104. Office of Chief Counsel review of offers in compromise.
[Sec. 105. Seven-day threshold on tolling of statute of limitations during National Taxpayer Advocate review.
[Sec. 106. Increase in penalty for bad checks or money orders.
[Sec. 107. Financial management service fees.
[Sec. 108. Elimination of restriction on offsetting refunds from former residents.

[Subtitle B—Processing and Personnel

[Sec. 111. Explanation of statute of limitations and consequences of failure to file.
[Sec. 112. Disclosure of tax information to facilitate combined employment tax reporting.
[Sec. 113. Expansion of declaratory judgment remedy to tax-exempt organizations.
[Sec. 114. Amendment to Treasury auction reforms.
[Sec. 115. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.
[Sec. 116. IRS Oversight Board approval of use of critical pay authority.
[Sec. 117. Low-income taxpayer clinics.
[Sec. 118. Enrolled agents.
[Sec. 119. Establishment of disaster response team.
[Sec. 120. Accelerated tax refunds.
[Sec. 121. Study on clarifying record-keeping responsibilities.
[Sec. 122. Streamline reporting process for National Taxpayer Advocate.

[Subtitle C—Other Provisions

[Sec. 131. Penalty on failure to report interests in foreign financial accounts.
[Sec. 132. Repeal of personal holding company tax.

[TITLE II—REFORM OF PENALTY AND INTEREST

[Sec. 201. Individual estimated tax.
[Sec. 202. Corporate estimated tax.
[Sec. 203. Increase in large corporation threshold for estimated tax payments.
[Sec. 204. Abatement of interest.
[Sec. 205. Deposits made to suspend running of interest on potential underpayments.
[Sec. 206. Freeze of provision regarding suspension of interest where Secretary fails to contact taxpayer.
[Sec. 207. Expansion of interest netting.
[Sec. 208. Clarification of application of Federal tax deposit penalty.
[Sec. 209. Frivolous tax submissions.

[TITLE III—UNITED STATES TAX COURT MODERNIZATION

[Subtitle A—Tax Court Procedure

[Sec. 301. Jurisdiction of Tax Court over collection due process cases.
[Sec. 302. Authority for special trial judges to hear and decide certain employment status cases.
[Sec. 303. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.
[Sec. 304. Tax Court filing fee in all cases commenced by filing petition.
[Sec. 305. Amendments to appoint employees.
[Sec. 306. Expanded use of Tax Court practice fee for pro se taxpayers.

[Subtitle B—Tax Court Pension and Compensation

[Sec. 311. Annuities for survivors of Tax Court judges who are assassinated.
[Sec. 312. Cost-of-living adjustments for Tax Court judicial survivor annuities.
[Sec. 313. Life insurance coverage for Tax Court judges.
[Sec. 314. Cost of life insurance coverage for Tax Court judges age 65 or over.
[Sec. 315. Modification of timing of lump-sum payment of judges' accrued annual leave.
[Sec. 316. Participation of Tax Court judges in the Thrift Savings Plan.
[Sec. 317. Exemption of teaching compensation of retired judges from limitation on outside earned income.
[Sec. 318. General provisions relating to magistrate judges of the Tax Court.
[Sec. 319. Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court.
[Sec. 320. Retirement and annuity program.
[Sec. 321. Incumbent magistrate judges of the Tax Court.
[Sec. 322. Provisions for recall.
[Sec. 323. Effective date.

[TITLE IV—CONFIDENTIALITY AND DISCLOSURE

[Sec. 401. Clarification of definition of church tax inquiry.
[Sec. 402. Collection activities with respect to joint return disclosable to either spouse based on oral request.
[Sec. 403. Taxpayer representatives not subject to examination on sole basis of representation of taxpayers.
[Sec. 404. Prohibition of disclosure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise.
[Sec. 405. Compliance by contractors and other agents with confidentiality safeguards.
[Sec. 406. Higher standards for requests for and consents to disclosure.
[Sec. 407. Civil damages for unauthorized inspection or disclosure.
[Sec. 408. Expanded disclosure in emergency circumstances.
[Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
[Sec. 410. Disclosure to State officials of proposed actions related to section 501(c) organizations.
[Sec. 411. Treatment of public records.
[Sec. 412. Investigative disclosures.
[Sec. 413. TIN matching.
[Sec. 414. Form 8300 disclosures.
[Sec. 415. Technical amendment.

[TITLE V—SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

[Sec. 501. Simplification through elimination of inoperative provisions.

[TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

[Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection

[SEC. 101. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

[(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

[''(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

[SEC. 102. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

[(a) IN GENERAL.—

[(1) Section 6159(a) (relating to authorization of agreements) is amended—

[(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

[(B) by inserting ''full or partial'' after ''facilitate''.

[(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

[(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

[''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

[SEC. 103. TERMINATION OF INSTALLMENT AGREEMENTS.

[(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

[''(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

[''(D) to file a return of tax imposed under this title by its due date (including extensions), or''.

[(b) CONFORMING AMENDMENT.—Section 6159(b)(4) is amended by striking ''FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION'' and inserting ''FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

[SEC. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

[(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

[(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

[SEC. 105. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING NATIONAL TAXPAYER ADVOCATE REVIEW.

[(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

[SEC. 106. INCREASE IN PENALTY FOR BAD CHECKS OR MONEY ORDERS.

[(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

[(1) by striking ''$750'' and inserting ''$1,250'', and

[(2) by striking ''$15'' and inserting ''$25''.

[(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after December 31, 2003.

[SEC. 107. FINANCIAL MANAGEMENT SERVICE FEES.

[Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

[SEC. 108. ELIMINATION OF RESTRICTION ON OFFSETTING REFUNDS FROM FORMER RESIDENTS.

[Section 6402(e) (relating to collection of past-due, legally enforceable State income tax obligations) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

[Subtitle B—Processing and Personnel

[SEC. 111. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

[The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2001 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of—

[(1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and

[(2) the consequences under such section 6511 of the failure to file a return of tax.

[SEC. 112. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

[Section 6103(d)(5) is amended to read as follows:

[''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

[SEC. 113. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

[(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

[(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

[(2) by amending subparagraph (C) to read as follows:

[''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) or 501(d) which is exempt from tax under section 501(a), or''.

[(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after December 31, 2003.

[SEC. 114. AMENDMENT TO TREASURY AUCTION REFORMS.

[(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to meetings held after the date of the enactment of this Act.

[SEC. 115. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

[(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

[''SEC. 7804A. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

[''(a) IN GENERAL.—Subject to subsection (c), the Commissioner shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

[''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

[''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets,

[''(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative,

[''(3) with respect to a taxpayer or taxpayer representative, the violation of—

[''(A) any right under the Constitution of the United States, or

[''(B) any civil right established under—

[''(i) title VI or VII of the Civil Rights Act of 1964,

[''(ii) title IX of the Education Amendments of 1972,

[''(iii) the Age Discrimination in Employment Act of 1967,

[''(iv) the Age Discrimination Act of 1975,

[''(v) section 501 or 504 of the Rehabilitation Act of 1973, or

[''(vi) title I of the Americans with Disabilities Act of 1990,

[''(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative,

[''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery,

[''(6) violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative,

[''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry,

[''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect,

[''(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect, and

[''(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

[''(c) DETERMINATIONS OF COMMISSIONER.—

[''(1) IN GENERAL.—The Commissioner may take a personnel action other than termination for an act or omission described under subsection (b).

[''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in the Commissioner's sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

[''(3) NO APPEAL.—Any determination of the Commissioner under this subsection may not be appealed in any administrative or judicial proceeding.

[''(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.''.

[(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

[''Sec. 7804A. Termination of employment for misconduct.''.

[(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 720) is repealed.

[(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

[SEC. 116. IRS OVERSIGHT BOARD APPROVAL OF USE OF CRITICAL PAY AUTHORITY.

[(a) IN GENERAL.—Section 7802(d)(3) (relating to management) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ''; and'', and by adding at the end the following new subparagraph:

[''(D) review and approve the Commissioner's use of critical pay authority under section 9502 of title 5, United States Code, and streamlined critical pay authority under section 9503 of such title.''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to personnel hired after the date of the enactment of this Act.

[SEC. 117. LOW-INCOME TAXPAYER CLINICS.

[(a) GRANTS FOR RETURN PREPARATION CLINICS.—

[(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

[''SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

[''(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

[''(b) DEFINITIONS.—For purposes of this section—

[''(1) QUALIFIED RETURN PREPARATION CLINIC.—

[''(A) IN GENERAL.—The term 'qualified return preparation clinic' means a clinic which—

[''(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

[''(ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

[''(B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as assisting low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

[''(2) CLINIC.—The term 'clinic' includes—

[''(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

[''(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

[''(c) SPECIAL RULES AND LIMITATIONS.—

[''(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

[''(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.''.

[(2) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

[''Sec. 7526A. Return preparation clinics for low-income taxpayers.''.

[(b) GRANTS FOR TAXPAYER REPRESENTATION AND ASSISTANCE CLINICS.—

[(1) INCREASE IN AUTHORIZED GRANTS.—Section 7526(c)(1) (relating to aggregate limitation) is amended by striking ''$6,000,000'' and inserting ''$10,000,000''.

[(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

[(A) IN GENERAL.—Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

[''(6) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.''.

[(B) CONFORMING AMENDMENTS.—Section 7526(c)(5) is amended—

[(i) by inserting ''qualified'' before ''low-income'', and

[(ii) by striking the last sentence.

[(3) PROMOTION OF CLINICS.—Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

[''(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to grants made after the date of the enactment of this Act.

[SEC. 118. ENROLLED AGENTS.

[(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

[''SEC. 7527. ENROLLED AGENTS.

[''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

[''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

[(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

[''Sec. 7527. Enrolled agents.''.

[(c) PRIOR REGULATIONS.—Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

[SEC. 119. ESTABLISHMENT OF DISASTER RESPONSE TEAM.

[(a) IN GENERAL.—Section 7508A (relating to authority to postpone certain tax-related deadlines by reason of presidentially declared disaster) is amended by adding at the end the following new subsection:

[''(c) DUTIES OF DISASTER RESPONSE TEAM.—

[''(1) RESPONSE TO DISASTERS.—The Secretary shall—

[''(A) establish as a permanent office in the national office of the Internal Revenue Service a disaster response team composed of members, who in addition to their regular responsibilities, shall assist taxpayers in clarifying and resolving Federal tax matters associated with or resulting from any Presidentially declared disaster (as so defined), and

[''(B) respond to requests by such taxpayers for filing extensions and technical guidance expeditiously.

[''(2) PERSONNEL OF DISASTER RESPONSE TEAM.—The disaster response team shall be composed of—

[''(A) personnel from the Office of the Taxpayer Advocate, and

[''(B) personnel from the national office of the Internal Revenue Service with expertise in individual, corporate, and small business tax matters.

[''(3) COORDINATION WITH FEMA.—The disaster response team shall operate in coordination with the Director of the Federal Emergency Management Agency.

[''(4) TOLL-FREE TELEPHONE NUMBER.—The Commissioner of Internal Revenue shall establish and maintain a toll-free telephone number for taxpayers to use to receive assistance from the disaster response team.

[''(5) INTERNET WEBPAGE SITE.—The Commissioner of Internal Revenue shall establish and maintain a site on the Internet webpage of the Internal Revenue Service for information for taxpayers described in paragraph (1)(A).''.

[(b) FEMA.—The Director of the Federal Emergency Management Agency shall work in coordination with the disaster response team established under section 7804(c)(1)(A) of the Internal Revenue Code of 1986 to provide timely assistance to disaster victims described in such section, including—

[(1) informing the disaster response team regarding any tax-related problems or issues arising in connection with the disaster,

[(2) providing the toll-free telephone number established and maintained by the Internal Revenue Service for the disaster victims in all materials provided to such victims, and

[(3) providing the information described in section 7804(c)(5) of such Code on the Internet webpage of the Federal Emergency Management Agency or through a link on such webpage to the Internet webpage site of the Internal Revenue Service described in such section.

[(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[SEC. 120. ACCELERATED TAX REFUNDS.

[(a) STUDY.—The Secretary of the Treasury shall study the implementation of an accelerated refund program for taxpayers who—

[(1) maintain the same filing characteristics from year to year, and

[(2) elect the direct deposit option for any refund under the program.

[(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

[SEC. 121. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.

[(a) STUDY.—The Secretary of the Treasury shall study—

[(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986,

[(2) the utility of requiring taxpayers to maintain all records indefinitely,

[(3) such requirement given the necessity to upgrade technological storage for outdated records,

[(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service, and

[(5) proposals regarding taxpayer recordkeeping.

[(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

[SEC. 122. STREAMLINE REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.

[(a) ONE ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office) is amended—

[(1) by striking all matter preceding subclause (I) of clause (ii) and inserting the following:

[''(B) ANNUAL REPORT.—

[''(i) IN GENERAL.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer of Advocate for the fiscal year beginning in such calendar year and the activities of such Office during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—'',

[(2) by striking ''clause (ii)'' in clause (iv) and inserting ''clause (i)'', and

[(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to reports in calendar year 2003 and thereafter.

[Subtitle C—Other Provisions

[SEC. 131. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

[(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

[''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

[''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

[''(B) AMOUNT OF PENALTY.—

[''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

[''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

[''(I) such violation was due to reasonable cause, and

[''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

[''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

[''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

[''(I) $25,000, or

[''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

[''(ii) subparagraph (B)(ii) shall not apply.

[''(D) AMOUNT.—The amount determined under this subparagraph is—

[''(i) in the case of a violation involving a transaction, the amount of the transaction, or

[''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

[SEC. 132. REPEAL OF PERSONAL HOLDING COMPANY TAX.

[(a) IN GENERAL.—Part II of subchapter G of chapter 1 (relating to personal holding companies) is hereby repealed.

[(b) CONFORMING AMENDMENTS.—

[(1) Section 12(2) is amended to read as follows:

[''(2) For accumulated earnings tax, see part I of subchapter G (sec. 531 and following).''.

[(2) Section 26(b)(2) is amended by striking subparagraph (G) and by redesignating the succeeding subparagraphs accordingly.

[(3) Section 30A(c) is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

[(4) Section 41(e)(7)(E) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

[(5) Section 56(b)(2) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

[(6) Section 170(e)(4)(D) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

[(7) Section 111(d) is amended to read as follows:

[''(d) SPECIAL RULES FOR ACCUMULATED EARNINGS TAX.—In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531—

[''(1) any excluded amount under subsection (a) allowed for purposes of this subtitle (other than section 531) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 for the prior taxable year, and

[''(2) where any excluded amount under subsection (a) was not allowed as a deduction for the prior taxable year for purposes of this subtitle other than section 531 but was allowable for the same taxable year under section 531, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531.''.

[(8)(A) Section 316(b) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

[(B) Section 331(b) is amended by striking ''(other than a distribution referred to in paragraph (2)(B) of section 316(b))''.

[(9) Section 341(d) is amended—

[(A) by striking ''section 544(a)'' and inserting ''section 465(f)'', and

[(B) by inserting before the period at the end of the next to the last sentence ''and such paragraph (2) shall be applied by inserting 'by or for his partner' after 'his family' ''.

[(10) Section 381(c) is amended by striking paragraphs (14) and (17).

[(11) Section 443(e) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

[(12) Section 447(g)(4)(A) is amended by striking ''other than—'' and all that follows and inserting ''other than an S corporation.''

[(13)(A) Section 465(a)(1)(B) is amended to read as follows:

[''(B) a C corporation which is closely held,''.

[(B) Section 465(a)(3) is amended to read as follows:

[''(3) CLOSELY HELD DETERMINATION.—For purposes of paragraph (1), a corporation is closely held if, at any time during the last half of the taxable year, more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) shall be considered an individual.''

[(C) Section 465 is amended by adding at the end the following new subsection:

[''(f) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of subsection (a)(3)—

[''(1) STOCK NOT OWNED BY INDIVIDUAL.—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

[''(2) FAMILY OWNERSHIP.—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

[''(3) OPTIONS.—If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

[''(4) APPLICATION OF FAMILY AND OPTION RULES.—Paragraphs (2) and (3) shall be applied if, but only if, the effect is to make the corporation closely held under subsection (a)(3).

[''(5) CONSTRUCTIVE OWNERSHIP AS ACTUAL OWNERSHIP.—Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

[''(6) OPTION RULE IN LIEU OF FAMILY RULE.—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

[''(7) CONVERTIBLE SECURITIES.—Outstanding securities convertible into stock

(whether or not convertible during the taxable year) shall be considered as outstanding stock if the effect of the inclusion of all such securities is to make the corporation closely held under subsection (a)(3). The requirement under the preceding sentence that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.''

[(D) Section 465(c)(7)(B) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

[(E) Section 465(c)(7)(G) is amended to read as follows:

[''(G) LOSS OF 1 MEMBER OF AFFILIATED GROUP MAY NOT OFFSET INCOME OF PERSONAL SERVICE CORPORATION.—Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal service corporation (as defined in section 269A(b) but determined by substituting '5 percent' for '10 percent' in section 269A(b)(2)).''

[(14) Sections 508(d), 4947, and 4948(c)(4) are each amended by striking ''545(b)(2),'' each place it appears.

[(15) Section 532(b) is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

[(16) Sections 535(b)(1) and 556(b)(1) are each amended by striking ''section 541'' and inserting ''section 541 (as in effect before its repeal)''.

[(17)(A) Section 553(a)(1) is amended by striking ''section 543(d)'' and inserting ''subsection (c)''.

[(B) Section 553 is amended by adding at the end the following new subsection:

[''(c) ACTIVE BUSINESS COMPUTER SOFTWARE ROYALTIES.—

[''(1) IN GENERAL.—For purposes of subsection (a), the term 'active business computer software royalties' means any royalties—

[''(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

[''(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

[''(2) ROYALTIES MUST BE RECEIVED BY CORPORATION ACTIVELY ENGAGED IN COMPUTER SOFTWARE BUSINESS.—The requirements of this paragraph are met if the royalties described in paragraph (1)—

[''(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

[''(B) are attributable to computer software which—

[''(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

[''(ii) is directly related to such trade or business.

[''(3) ROYALTIES MUST CONSTITUTE AT LEAST 50 PERCENT OF INCOME.—The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

[''(4) DEDUCTIONS UNDER SECTIONS 162 AND 174 RELATING TO ROYALTIES MUST EQUAL OR EXCEED 25 PERCENT OF ORDINARY GROSS INCOME.—

[''(A) IN GENERAL.—The requirements of this paragraph are met if—

[''(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

[''(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

[''(B) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

[''(C) LIMITATION ON ALLOWABLE DEDUCTIONS.—For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account.''

[(18) Section 561(a) is amended by striking paragraph (3), by inserting ''and'' at the end of paragraph (1), and by striking '', and'' at the end of paragraph (2) and inserting a period.

[(19) Section 562(b) is amended to read as follows:

[''(b) DISTRIBUTIONS IN LIQUIDATION.—Except in the case of a foreign personal holding company described in section 552—

[''(1) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

[''(2) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of paragraph (1), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.''

[(20) Section 563 is amended by striking subsection (b).

[(21) Section 564 is hereby repealed.

[(22) Section 631(c) is amended by striking ''or section 545(b)(5)''.

[(23) Section 852(b)(1) is amended by striking ''which is a personal holding company (as defined in section 542) or''.

[(24)(A) Section 856(h)(1) is amended to read as follows:

[''(1) IN GENERAL.—For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 465(a)(3) is met.''

[(B) Section 856(h)(3)(A)(i) is amended by striking ''section 542(a)(2)'' and inserting ''section 465(a)(3)''.

[(C) Paragraph (3) of section 856(h) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

[(D) Subparagraph (C) of section 856(h)(3), as redesignating by the preceding subparagraph, is amended by striking ''subparagraph (C)'' and inserting ''subparagraph (B)''.

[(25) The last sentence of section 882(c)(2) is amended to read as follows:

''The preceding sentence shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.''.

[(26) Section 936(a)(3) is amended by striking subparagraph (C), by inserting ''or'' at the end of subparagraph (B), and by redesignating subparagraph (D) as subparagraph (C).

[(27) Section 992(d) is amended by striking paragraph (2) and by redesignating succeeding paragraphs accordingly.

[(28) Section 992(e) is amended by striking ''and section 541 (relating to personal holding company tax)''.

[(29) Section 1202(e)(8) is amended by striking ''section 543(d)(1)'' and inserting ''section 553(c)(1)''.

[(30) Section 1362(d)(3)(C)(iii) is amended by adding at the end the following new sentence: ''References to section 542 in the preceding sentence shall be treated as references to such section as in effect on the day before its repeal.''

[(31) Section 1504(c)(2)(B) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

[(32) Section 2057(e)(2)(C) is amended by adding at the end the following new sentence: ''References to sections 542 and 543 in the preceding sentence shall be treated as references to such sections as in effect on the day before their repeal.''

[(33) Sections 6422 is amended by striking paragraph (3) and by redesignating paragraphs (4) through (12) and paragraphs (3) through (11), respectively.

[(34) Section 6501 is amended by striking subsection (f).

[(35) Section 6503(k) is amended by striking paragraph (1) and by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

[(36) Section 6515 is amended by striking paragraph (1) and by redesignating paragraphs (2) through (6) as paragraphs (1) through (5), respectively.

[(37) Subsections (d)(1)(B) and (e)(2) of section 6662 are each amended by striking ''or a personal holding company (as defined in section 542)''.

[(38) Section 6683 is hereby repealed.

[(c) CLERICAL AMENDMENTS.—

[(1) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part II.

[(2) The table of sections for part IV of such subchapter G is amended by striking the item relating to section 564.

[(3) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6683.

[(d) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 2003.

[TITLE II—REFORM OF PENALTY AND INTEREST

[SEC. 201. INDIVIDUAL ESTIMATED TAX.

[(a) INCREASE IN EXCEPTION FOR INDIVIDUALS OWING SMALL AMOUNT OF TAX.—Section 6654(e)(1) (relating to exception where tax is small amount) is amended by striking ''$1,000'' and inserting ''$2,000''.

[(b) COMPUTATION OF ADDITION TO TAX.—Subsections (a) and (b) of section 6654 (relating to failure by individual to pay estimated taxes) are amended to read as follows:

[''(a) ADDITION TO THE TAX.—

[''(1) IN GENERAL.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual for a taxable year, there shall be added to the tax under chapters 1 and 2 for the taxable year the amount determined under paragraph (2) for each day of underpayment.

[''(2) AMOUNT.—The amount of the addition to tax for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

[''(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

[''(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

[''(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

[''(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

[''(2) DETERMINATION OF INTEREST RATE.—

[''(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

[''(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

[''(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

[''(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.''

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

[SEC. 202. CORPORATE ESTIMATED TAX.

[(a) INCREASE IN SMALL TAX AMOUNT EXCEPTION.—Section 6655(f) (relating to exception where tax is small amount) is amended by striking ''$500'' and inserting ''$1,000''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

[SEC. 203. INCREASE IN LARGE CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

[(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

[(1) by striking ''$1,000,000'' in subparagraph (A) and inserting ''the applicable amount'',

[(2) by redesignating subparagraph (B) as subparagraph (C), and

[(3) by inserting after subparagraph (A) the following new subparagraph:

[''(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A), the applicable amount is $1,000,000 increased (but not above $1,500,000) by $50,000 for each taxable year beginning after 2004.''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

[SEC. 204. ABATEMENT OF INTEREST.

[(a) ABATEMENT OF INTEREST FOR PERIODS ATTRIBUTABLE TO ANY UNREASONABLE IRS ERROR OR DELAY.—Section 6404(e)(1) is amended—

[(1) by striking ''in performing a ministerial or managerial act'' in subparagraphs (A) and (B),

[(2) by striking ''deficiency'' in subparagraph (A) and inserting ''underpayment of any tax, addition to tax, or penalty imposed by this title'', and

[(3) by striking ''tax described in section 6212(a)'' in subparagraph (B) and inserting ''tax, addition to tax, or penalty imposed by this title''.

[(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

[(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

[(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

[SEC. 205. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

[(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

[''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

[''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

[''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

[''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

[''(d) PAYMENT OF INTEREST.—

[''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

[''(2) DISPUTABLE TAX.—

[''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

[''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

[''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

[''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

[''(i) has a reasonable basis for its treatment of such item, and

[''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

[''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

[''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

[''(e) USE OF DEPOSITS.—

[''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

[''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

[(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

[''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

[(c) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after December 31, 2003.

[(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

[SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

[(a) IN GENERAL.—Section 6404(G) (relating to suspension of interest and certain penalties where secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

[SEC. 207. EXPANSION OF INTEREST NETTING.

[(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest accrued after December 31, 2003.

[SEC. 208. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

[Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

[SEC. 209. FRIVOLOUS TAX SUBMISSIONS.

[(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

[''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

[''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

[''(1) such person files what purports to be a return of a tax imposed by this title but which—

[''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

[''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

[''(2) the conduct referred to in paragraph (1)—

[''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

[''(B) reflects a desire to delay or impede the administration of Federal tax laws.

[''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

[''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

[''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

[''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

[''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

[''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

[''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

[''(i) a request for a hearing under—

[''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

[''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

[''(ii) an application under—

[''(I) section 7811 (relating to taxpayer assistance orders),

[''(II) section 6159 (relating to agreements for payment of tax liability in installments), or

[''(III) section 7122 (relating to compromises).

[''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

[''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

[''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

[''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

[(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

[(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

[''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

[(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

[(A) by striking ''(A)'' and inserting ''(A)(i)'';

[(B) by striking ''(B)'' and inserting ''(ii)'';

[(C) by striking the period at the end of the first sentence and inserting ''; or''; and

[(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

[''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

[(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

[(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

[(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

[(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

[(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

[''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

[(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

'[''Sec. 6702. Frivolous tax submissions.''

[(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

[TITLE III—UNITED STATES TAX COURT MODERNIZATION

[Subtitle A—Tax Court Procedure

[SEC. 301. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

[(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

[''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date of the enactment of this Act.

[SEC. 302. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

[(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

[''(5) any proceeding under section 7436(c), and''.

[(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

[SEC. 303. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

[(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

[SEC. 304. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

[(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[SEC. 305. AMENDMENTS TO APPOINT EMPLOYEES.

[(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

[''(a) APPOINTMENT AND COMPENSATION.—

[''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

[''(2) LAW CLERKS AND SECRETARIES.—

[''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

[''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

[''(3) DEPUTIES AND OTHER EMPLOYEES.—The clerk may appoint necessary deputies and employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such deputies and employees shall be subject to removal by the clerk.

[''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of

title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

[''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

[''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

[''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

[''(B) promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment.

[''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

[''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

[''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

[''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

[''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

[''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

[''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

[''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

[''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

[''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

[''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

[''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

[SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

[(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[Subtitle B—Tax Court Pension and Compensation

[SEC. 311. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

[(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

[''(h) ENTITLEMENT TO ANNUITY.—

[''(1) IN GENERAL.—

[''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

[''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

[''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

[''(ii) 20 percent of such average annual salary, divided by the number of such children.

[''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

[''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

[''(ii) 40 percent of such average annual salary, divided by the number of such children.

[''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

[''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

[''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

[''(3) TERMINATION OF ANNUITY.—

[''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

[''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

[''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

[''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

[''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

[''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

[''(B) the amount of such salary deductions that were actually made before the date of the judge's death.

[(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

[''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

[(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

[(1) by striking the subsection heading and inserting the following:

[''(i) DETERMINATIONS BY CHIEF JUDGE.—

[''(1) DEPENDENCY AND DISABILITY.—'',

[(2) by moving the text 2 ems to the right, and

[(3) by adding at the end the following new paragraph:

[''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

[(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

[(1) by striking the subsection heading and inserting the following:

[''(m) COMPUTATION OF ANNUITIES.—

[''(1) IN GENERAL.—'',

[(2) by moving the text 2 ems to the right, and

[(3) by adding at the end the following new paragraph:

[''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''.

[(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

[''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and

chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

[SEC. 312. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

[(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

[''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

[SEC. 313. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

[(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

[''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

[SEC. 314. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

[Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

[SEC. 315. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

[(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

[''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

[SEC. 316. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

[(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

[''(k) THRIFT SAVINGS PLAN.—

[''(1) ELECTION TO CONTRIBUTE.—

[''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

[''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

[''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

[''(3) SPECIAL RULES.—

[''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

[''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

[''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

[''(i) retires under subsection (b), or

[''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

[''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

[''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

[SEC. 317. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

[(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

[''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under subsection (a)(5) of that section shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

[SEC. 318. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

[(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

[''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

[(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

[''(a) APPOINTMENT, TENURE, AND REMOVAL.—

[''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

[''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

[(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

[(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

[''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

[''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

[''(2) TREATMENT OF UNUSED LEAVE.—

[''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

[''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code,

except that these days will not be counted in determining average pay or annuity eligibility.

[''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

[(e) CONFORMING AMENDMENTS.—

[(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

[(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

[(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

[(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

[(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

[(6) Subsection (c) of section 7471 is amended—

[(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

[(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

[SEC. 319. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

[(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

[''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

[''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

[(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

[(1) by striking the subsection heading and inserting the following:

[''(b) ELECTION.—

[''(1) JUDGES.—'',

[(2) by moving the text 2 ems to the right, and

[(3) by adding at the end the following new paragraph:

[''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

[''(A) 6 months after the date of the enactment of this paragraph,

[''(B) the date the judge takes office, or

[''(C) the date the judge marries.''.

[(c) CONFORMING AMENDMENTS.—

[(1) The heading of section 7448 is amended by inserting ''**AND MAGISTRATE JUDGES**'' after ''**JUDGES**''.

[(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

[(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

[(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

[(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

[(4) Section 7448(c) is amended—

[(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

[(B) in paragraph (2)—

[(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

[(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

[(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

[(6) Section 7448(j)(1) is amended—

[(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

[(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

[(7) Section 7448(m)(1), as amended by this Act, is amended—

[(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

[(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

[(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

[(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

[(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

[SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

[(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

[''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

[''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

[''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

[''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

[''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

[''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

[''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

[''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

[''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

[''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

[''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

[''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

[''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

[''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

[''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

[''(C) retired pay under section 7447, or

[''(D) retired pay under section 7296 of title 38, United States Code.

[''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

[''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

[''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

[''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

[''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

[''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

[''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

[''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

[''(i) PAYMENTS PURSUANT TO COURT ORDER.—

[''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

[''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

[''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

[''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

[''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

[''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

[''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

[''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

[''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

[''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

[''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

[''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

[''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

[''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

[''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

[''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

[''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

[''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

[''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

[''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

[''(n) LUMP-SUM PAYMENTS.—

[''(1) ELIGIBILITY.—

[''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

[''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

[''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

[''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

[''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

[''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

[''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

[''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

[''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

[''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

[''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief

judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

[''(2) SPOUSES AND FORMER SPOUSES.—

[''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

[''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

[''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

[''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

[''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

[''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

[''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

[''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

[''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

[''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

[''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

[''(i) if the service covered thereby aggregates 1 year or less, or

[''(ii) for the fractional part of a month in the total service.

[''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

[''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

[''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

[''(3) UNFUNDED LIABILITY.—

[''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

[''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

[''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

[''(ii) the balance in the Fund as of the date the unfunded liability is determined.

[''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

[''(1) ELECTION TO CONTRIBUTE.—

[''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 321 of the Tax Administration Good Government Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

[''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

[''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

[''(3) SPECIAL RULES.—

[''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

[''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

[''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

[''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 321 of the Tax Administration Good Government Act,

[''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 321 of the Tax Administration Good Government Act, or

[''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 321 of the Tax Administration Good Government Act.

[''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 321 of the Tax Administration Good Government Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

[''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

[''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

[''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

[(b) CONFORMING AMENDMENT.—The table of section for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

[''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

[SEC. 321. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

[(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

[(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

[(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

[(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

[(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

[(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act,

in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

[(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

[(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

[(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

[(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

[SEC. 322. PROVISIONS FOR RECALL.

[(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

["SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

["(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

["(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

["(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

["(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

["(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

[(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

["Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

[SEC. 323. EFFECTIVE DATE.

[Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

[TITLE IV—CONFIDENTIALITY AND DISCLOSURE

[SEC. 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

[Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

["(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

[SEC. 402. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

[(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

[(b) ELIMINATION OF REPORTING REQUIREMENT.—Section 7803(d)(1) (relating to annual reporting) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), (F), and (G) as subparagraphs (B), (C), (D), (E), and (F), respectively.

[(c) EFFECTIVE DATES.—

[(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

[(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

[SEC. 403. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

[(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

[(1) by striking ''TREASURY.—Returns and return information'' and inserting ''TREASURY.—

["(A) IN GENERAL.—Returns and return information'', and

[(2) by adding at the end the following new subparagraph:

["(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return or return information of such representative on a basis other than by reason of such relationship.''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

[SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFYING NUMBER WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

[(a) IN GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's identifying number)'' after ''Return information''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

[SEC. 405. COMPLIANCE BY CONTRACTORS AND OTHER AGENTS WITH CONFIDENTIALITY SAFEGUARDS.

[(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

["(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

["(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

["(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor or other agent to determine compliance with such requirements,

["(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

["(D) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this paragraph shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration.''.

[(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

[(c) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after December 31, 2003.

[(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

[SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

[(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended—

[(1) by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

["(1) IN GENERAL.—The Secretary'', and

[(2) by adding at the end the following new paragraphs:

["(2) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—The return of any taxpayer, or return information with respect to such taxpayer, disclosed to a person or persons under paragraph (1) for a purpose specified in

writing, electronically, or orally may be disclosed or used by such person or persons only for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified and shall not be disclosed or used for any other purpose.

[''(3) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for written requests and consents which shall—

[''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

[''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

[''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

[''(4) CROSS REFERENCE.—

["For provision providing for civil damages for violation of paragraph (2), see section 7431(i).".

[(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

[''(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SUBSECTION 6103(c).—Disclosure or use of returns or return information obtained under section 6103(c) other than for—

[''(1) the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified in writing, electronically, or orally, or

[''(2) subject to the safeguards set forth in section 6103, for purposes permitted under section 6103,

shall be treated as a violation of section 6103(a).''.

[(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

[(1) evaluate (on the basis of random sampling) whether—

[(A) the amendment made by subsection (a) is achieving the purposes of this section;

[(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

[(C) the sanctions for violations of such requirements are adequate; and

[(2) include such recommendations that the Secretary of the Treasury considers necessary or appropriate to better achieve the purposes of this section.

[(d) SUNSET OF EXISTING CONSENTS.—Notwithstanding any other provision of law, any request for or consent to disclose any return or return information under section 6103(c) of the Internal Revenue Code of 1986 made before the date of the enactment of this Act shall remain in effect until the earlier of the date such request or consent is otherwise terminated or the date which is 3 taxable years after such date of enactment.

[(e) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

[SEC. 407. CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OR DISCLOSURE.

[(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Internal Revenue Service or, upon notice to the Secretary by a Federal or State agency, if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The notice described in this subsection shall include the date of the inspection or disclosure and the rights of the taxpayer under such administrative determination.''.

[(b) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—Section 7431, as amended by this Act, is amended by adding at the end the following new subsection:

[''(j) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—A judgment for damages shall not be awarded under subsection (c) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.''.

[(c) PAYMENT AUTHORITY CLARIFIED.—

[(1) IN GENERAL.—Section 7431, as amended by subsection (b), is amended by adding at the end the following new subsection:

[''(k) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.''.

[(2) ANNUAL REPORTS OF PAYMENTS.—The Secretary of the Treasury shall annually report to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding payments made from the United States Judgment Fund under section 7431(k) of the Internal Revenue Code of 1986.

[(d) BURDEN OF PROOF FOR GOOD FAITH EXCEPTION RESTS WITH SECRETARY.—Section 7431(b) (relating to exceptions) is amended by adding at the end the following new flush sentence:

[''In any proceeding involving the issue of the existence of good faith, the burden of proof with respect to such issue shall be on the Secretary.''.

[(e) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by this Act, is amended by adding at the end the following new paragraph:

[''(10) REPORT ON WILLFUL UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the willful unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

[''(A) administrative investigations,

[''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

[''(C) criminal prosecutions.''.

[(c) EFFECTIVE DATES.—

[(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

[(2) EXHAUSTION OF REMEDIES AND BURDEN OF PROOF.—The amendments made by subsections (b) and (d) shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act.

[(3) PAYMENT AUTHORITY.—The amendment made by subsection (c)(1) shall take effect on the date of the enactment of this Act.

[(4) REPORTS.—The amendment made by subsection (e) shall apply to calendar years ending after the date of the enactment of this Act.

[SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

[(a) IN GENERAL.—Section 6103(i)(3)(B)(i) (relating to danger of death or physical injury) is amended by striking ''or State law enforcement agency'' and inserting '', State, or local law enforcement agency''.

[(b) CONFORMING AMENDMENTS.—Section 6103(p)(4) is amended—

[(1) by striking ''(i)(3)(B)(i) or (7)(A)(ii)'' and inserting ''(i)(7)(A)(ii)'', and

[(2) by striking '', (i)(3)(B)(i),''.

[(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

[(a) IN GENERAL.—Section 6103(m)(1) (relating to tax refunds) is amended by striking ''taxpayer identity information to the press and other media'' and by inserting ''a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

[SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c) ORGANIZATIONS.

[(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

[''(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

[''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

[''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

[''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

[''(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

[''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

[''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

[''(i) upon written request by an appropriate State officer, and

[''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

[''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

[''(3) DISCLOSURE WITH RESPECT TO CERTAIN OTHER EXEMPT ORGANIZATIONS.—Upon written

request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may be inspected only by or disclosed only to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

[''(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

[''(5) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

[''(6) DEFINITIONS.—For purposes of this subsection—

[''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

[''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

[''(i) the State attorney general,

[''(ii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

[''(iii) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.''.

[(b) CONFORMING AMENDMENTS.—

[(1) Subsection (a) of section 6103 is amended—

[(A) by inserting ''or any appropriate State officer who has or had access to returns or return information under section 6104(c)'' after ''this section'' in paragraph (2), and

[(B) by striking ''or subsection (n)'' in paragraph (3) and inserting ''subsection (n), or section 6104(c)''.

[(2) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

[(3) Paragraph (4) of section 6103(p), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18) or any appropriate State officer (as defined in section 6104(c))''.

[(4) The heading for paragraph (1) of section 6104(c) is amended by inserting ''FOR CHARITABLE ORGANIZATIONS''.

[(5) Paragraph (2) of section 7213(a) is amended by inserting ''or under section 6104(c)'' after ''6103''.

[(6) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

[(7) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

[SEC. 411. TREATMENT OF PUBLIC RECORDS.

[(a) IN GENERAL.—Section 6103(b) (relating to definitions) is amended by adding at the end the following new paragraph:

[''(12) TREATMENT OF PUBLIC RECORDS.—Returns and return information shall not be subject to subsection (a) if disclosed—

[''(A) in the course of any judicial or administrative proceeding or pursuant to tax administration activities, and

[''(B) properly made part of the public record.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

[SEC. 412. INVESTIGATIVE DISCLOSURES.

[(a) IN GENERAL.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

[''(q) INVESTIGATIVE DISCLOSURES.—Nothing in this section may be construed to prohibit investigative agents of the Internal Revenue Service from identifying themselves, their organizational affiliation, and the criminal nature of an investigation when contacting third parties in writing or in person.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[SEC. 413. TIN MATCHING.

[(a) IN GENERAL.—Section 6103(k) (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

[''(10) TIN MATCHING.—The Secretary may disclose to any person required to provide a taxpayer identifying number (as described in section 6109) to the Secretary whether such information matches records maintained by the Secretary.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[SEC. 414. FORM 8300 DISCLOSURES.

[(a) IN GENERAL.—Section 6103(p)(4) (relating to safeguards) is amended by striking ''(15),'' both places it appears.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[SEC. 415. TECHNICAL AMENDMENT.

[(a) IN GENERAL.—Section 6103(i)(7)(A) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new clause:

[''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

[(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

[TITLE V—SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

[SEC. 501. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS.

[(a) IN GENERAL.—

[(1) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—Paragraph (7) of section 1(f) is amended to read as follows:

[''(7) SPECIAL RULE FOR CERTAIN BRACKETS.—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''.

[(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—Paragraph (2) of section 1(h) is amended by striking ''In the case of any taxable year beginning after December 31, 2000, the'' and inserting ''The''.

[(3) CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.—Section 29 is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

[(4) EARNED INCOME CREDIT.—Paragraph (1) of section 32(b) is amended—

[(A) by striking subparagraphs (B) and (C), and

[(B) in subparagraph (A) by striking ''(A) IN GENERAL.—In the case of taxable years beginning after 1995'' and moving the table 2 ems to the left.

[(5) GENERAL BUSINESS CREDITS.—Subsection (d) of section 38 is amended by striking paragraph (3).

[(6) CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.—Subsection (d) of section 39 is amended by striking paragraphs (1) through (8) and by redesignating paragraphs (9) and (10) as paragraphs (1) and (2), respectively.

[(7) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

[(8) ITEMS OF TAX PREFERENCE; DEPLETION.—Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

[(9) INTANGIBLE DRILLING COSTS.—

[(A) Clause (i) of section 57(a)(2)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''.

[(B) Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993)''.

[(10) ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—

[(A) in subsection (c)(4) by striking ''; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954'', and

[(B) in subsection (g)(3) by striking ''January 1, 1954, or'' and '', whichever is later''.

[(11) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking ''or (d)''.

[(12) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

[(13) CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 112 is amended—

[(A) by striking ''(after June 24, 1950)'' in paragraph (2), and

[(B) striking ''such zone;'' and all that follows in paragraph (3) and inserting ''such zone.''.

[(14) PRINCIPAL RESIDENCE.—Section 121(b)(3) is amended—

[(A) by striking subparagraph (B); and

[(B) in subparagraph (A) by striking ''(A) IN GENERAL.—'' and moving the text 2 ems to the left.

[(15) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking ''after December 31, 1965,''.

[(16) GREAT PLAINS CONSERVATION PROGRAM.—Section 126(a) is amended by striking

paragraph (6) and by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

[(17) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).

[(18) INTERIM AUTHORITY FOR GOVERNOR.—

[(A) Section 146(e) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

[(B) Section 42(h)(3)(F) is amended by striking ''(other than paragraph (2)(B) thereof)''.

[(19) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAW.—Section 162(g) is amended by striking the last sentence.

[(20) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

[(21) INTEREST.—

[(A) Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) (relating to phase-in of limitation) of subsection (h).

[(B) Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively.

[(22) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—Section 170 is amended by striking subsection (k).

[(23) AMORTIZABLE BOND PREMIUM.—Subparagraph (B) of section 171(b)(1) is amended to read as follows:

[''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

[''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period of earlier call date, with reference to the amount payable on earlier call date), and''.

[(24) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

[(A) Section 172 is amended—

[(i) by striking subparagraph (D) of subsection (b)(1) and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively,

[(ii) by striking subsection (g), and

[(iii) by striking subparagraph (F) of subsection (h)(2).

[(B) Section 172(h)(4) is amended by striking ''subsection (b)(1)(E)'' each place it appears and inserting ''subsection (b)(1)(D)''.

[(C) Section 172(i)(3) is amended by striking ''subsection (b)(1)(G)'' each place it appears and inserting ''subsection (b)(1)(F)''.

[(D) Section 172(j) is amended by striking ''subsection (b)(1)(H)'' each place it appears and inserting ''subsection (b)(1)(G)''.

[(E) Section 172, as amended by subparagraphs (A) through (D) of this paragraph, is amended—

[(i) by redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively,

[(ii) by striking ''subsection (h)'' each place it appears and inserting ''subsection (g)'', and

[(iii) by striking ''subsection (i)'' each place it appears and inserting ''subsection (h)''.

[(25) RESEARCH AND EXPERIMENTAL EXPENDITURES.—Subparagraph (A) of section 174(a)(2) is amended to read as follows:

[''(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.''.

[(26) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

[(27) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:

[''(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''.

[(28) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—Section 183(e)(1) is amended by striking the last sentence.

[(29) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK; AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—

[(A) Sections 244 and 247 are hereby repealed and the table of sections for part VIII of subchapter B of chapter 1 is amended by striking the items relating to sections 244 and 247.

[(B) Paragraph (5) of section 172(d) is amended to read as follows:

[''(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED.—The deductions allowed by section 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''.

[(C) Paragraph (1) of section 243(c) is amended to read as follows:

[''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''.

[(D) Section 243(d) is amended by striking paragraph (4).

[(E) Section 246 is amended—

[(i) by striking '', 244,'' in subsection (a)(1),

[(ii) in subsection (b)(1)—

[(I) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears and inserting ''section 243(a)(1),'',

[(II) by striking ''244(a),'' the second place it appears therein, and

[(III) by striking ''subsection (a) or (b) of section 245, and 247,'' and inserting ''and subsection (a) or (b) of section 245,'', and

[(iii) by striking '', 244,'' in subsection (c)(1).

[(F) Section 246A is amended by striking '', 244,'' both places it appears in subsections (a) and (e).

[(G) Sections 263(g)(2)(B)(iii), 277(a), 301(e)(2), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 815(c)(2)(A)(iii), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

[(H) Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

[(I) Section 810(c)(2)(B) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

[(30) ORGANIZATION EXPENSES.—Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

[(31) BOND REPURCHASE PREMIUM.—Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

[(32) AMOUNT OF GAIN WHERE LOSS PREVIOUSLY DISALLOWED.—Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

[(33) ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 269(a) are each amended by striking ''or acquired on or after October 8, 1940,''.

[(34) INTEREST ON INDEBTEDNESS INCURRED BY CORPORATIONS TO ACQUIRE STOCK OR ASSETS OF ANOTHER CORPORATION.—Section 279 is amended—

[(A) by striking ''after December 31, 1967,'' in subsection (a)(2),

[(B) by striking ''after October 9, 1969,'' in subsection (b),

[(C) by striking ''after October 9, 1969, and'' in subsection (d)(5), and

[(D) by striking subsection (i) and by redesignating subsection (j) as subsection (i).

[(35) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

[(36) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.—Section 409 is amended by striking subsections (a), (g), and (q).

[(37) FUNDING STANDARDS.—Section 412(m)(4) is amended—

[(A) by striking ''the applicable percentage'' in subparagraph (A) and inserting ''25 percent'', and

[(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

[(38) RETIREE HEALTH ACCOUNTS.—Section 420 is amended—

[(A) by striking paragraph (4) in subsection (b) and by redesignating paragraph (5) as paragraph (4), and

[(B) by amending paragraph (2) of subsection (c) to read as follows:

[''(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).''.

[(39) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) is amended by striking ''after December 31, 1963,''.

[(40) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended—

[(A) by striking ''any farming syndicate (as defined in subsection (c))'' both places it appears in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and

[(B) by striking subsection (g).

[(41) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—

[(A) Paragraph (3) of section 465(c) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''.

[(B) Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

[(42) NUCLEAR DECOMMISSIONING COSTS.—Section 468A(e)(2) is amended—

[(A) by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and

[(B) by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

[(43) PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.—

[(A) Section 469 is amended by striking subsection (m).

[(B) Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1),

by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

[(44) ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.—Section 481(b)(3) is amended by striking subparagraph (C).

[(45) EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.—Section 501 is amended by striking subsection (p).

[(46) REQUIREMENTS FOR EXEMPTION.—

[(A) Section 503(a)(1) is amended to read as follows:

[''(1) GENERAL RULE.—An organization described in paragraph (17) or (18) of section 501(a) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.''.

[(B) Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''.

[(C) Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

[(47) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT.—Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

[(48) INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.—Section 692(a)(1) is amended by striking ''after June 24, 1950''.

[(49) INSURANCE COMPANY TAXABLE INCOME.—

[(A) Section 832(e) is amended by striking ''of taxable years beginning after December 31, 1966,''.

[(B) Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

[(50) TAX ON NONRESIDENT ALIEN INDIVIDUALS.—Subparagraph (B) of section 871(a)(1) is amended to read as follows:

[''(B) gains described in subsection (b) or (c) of section 631,''.

[(51) PROPERTY ON WHICH LESSEE HAS MADE IMPROVEMENTS.—Section 1019 is amended by striking the last sentence.

[(52) INVOLUNTARY CONVERSION.—Section 1033 is amended by striking subsection (j) and by redesignating subsection (k) as subsection (j).

[(53) PROPERTY ACQUIRED DURING AFFILIATION.—Section 1051 is repealed and the table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1051.

[(54) HOLDING PERIOD OF PROPERTY.—

[(A) Paragraph (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''.

[(B) Paragraph (7) of section 1223 is amended by striking the last sentence.

[(C) Paragraph (9) of section 1223 is repealed.

[(55) PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.—Subparagraph (A) of section 1231(c)(2) is amended by striking ''beginning after December 31, 1981''.

[(56) SALE OR EXCHANGE OF PATENTS.—Section 1235 is amended—

[(A) by striking subsection (c) and by redesignating subsections (d) and (e) as (c) and (d), respectively, and

[(B) by striking ''(d)'' in subsection (b) and inserting ''(c)''.

[(57) DEALERS IN SECURITIES.—Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

[(58) SALE OF PATENTS.—Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

[(59) GAIN FROM DISPOSITION OF FARM LAND.—Paragraph (1) of section 1252(a) is amended by striking ''after December 31, 1969,'' both places it appears.

[(60) TREATMENT OF AMOUNTS RECEIVED ON RETIREMENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.—Subsection (c) of section 1271 is amended to read as follows:

[''(c) SPECIAL RULE FOR CERTAIN OBLIGATIONS WITH RESPECT TO WHICH ORIGINAL ISSUE DISCOUNT NOT CURRENTLY INCLUDIBLE.—

[''(1) IN GENERAL.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

[''(A) an amount equal to the original issue discount, or

[''(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

[''(2) SUBSECTION (a)(2)(A) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

[''(3) CROSS REFERENCE.—

''For current inclusion of original issue discount, see section 1272.''.

[(61) AMOUNT AND METHOD OF ADJUSTMENT.—Section 1314 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

[(62) ELECTION; REVOCATION; TERMINATION.—Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''.

[(63) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''.

[(64) HOSPITAL INSURANCE.—Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''.

[(65) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

[(66) WITHHOLDING OF TAX ON NONRESIDENT ALIENS.—The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''.

[(67) AFFILIATED GROUP DEFINED.—Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

[(68) DISALLOWANCE OF THE BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.—

[(A) Subsection (a) of section 1551 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

[(B) Section 1551(b) is amended—

[(i) by striking ''or (2)'' in paragraph (1), and

[(ii) by striking ''(a)(3)'' in paragraph (2) and inserting ''(a)(2)''.

[(69) DEFINITION OF WAGES.—Section 3121(b) is amended by striking paragraph (17).

[(70) CREDITS AGAINST TAX.—

[(A) Paragraph (4) of section 3302(f) is amended by striking ''subsection—'' and all that follows through ''(A) IN GENERAL.—'', by striking subparagraph (B), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving the text of such subparagraphs (as so redesignated) 2 ems to the left.

[(B) Paragraph (5) of section 3302(f) is amended by striking subparagraphs (D) and by redesignating subparagraph (E) as subparagraph (D).

[(71) DOMESTIC SERVICE EMPLOYMENT TAXES.—Section 3510(b) is amended by striking paragraph (4).

[(72) TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Section 4042(b)(2)(A) is amended to read as follows:

[''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''.

[(73) TRANSPORTATION BY AIR.—Section 4261(e) is amended—

[(A) in paragraph (1) by striking subparagraph (C), and

[(B) by striking paragraph (5).

[(74) TAXES ON FAILURE TO DISTRIBUTE INCOME.—Section 4942 is amended—

[(A) by striking subsection (f)(2)(D),

[(B) in subsection (g)(2)(A) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'',

[(C) in subsection (g) by striking paragraph (4), and

[(D) in subsection (i)(2) by striking ''beginning after December 31, 1969, and''.

[(75) TAXES ON TAXABLE EXPENDITURES.—Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

[(76) RETURNS.—Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''.

[(77) INFORMATION RETURNS.—Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

[(78) ABATEMENTS.—Section 6404(f) is amended by striking paragraph (3).

[(79) FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.—Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

[(80) RETIREMENT.—Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

[(81) ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF JUDGES.—

[(A) Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939'' and by striking ''or pursuant to section 1106(d) of the Internal Revenue Code of 1939''.

[(B) Subsection (g) of section 7448 is amended by striking ''or other than pursuant to section 1106 of the Internal Revenue Code of 1939''.

[(C) Subsection (j)(1) and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

[(82) MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.—Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any

nonqualified withdrawal shall be determined''.

[(83) VALUATION TABLES.—Paragraph (3) of section 7520(c) is amended—

[(A) by striking ''Not later than December 31, 1989, the'' and inserting ''The'', and

[(B) by striking ''thereafter'' in the last sentence thereof.

[(84) ADMINISTRATION AND COLLECTION OF TAXES IN POSSESSIONS.—Section 7651 is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

[(85) DEFINITION OF EMPLOYEE.—(A) Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

[(b) EFFECTIVE DATE.—

[(1) GENERAL RULE.—Except as otherwise provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of enactment of this Act.

[(2) SAVINGS PROVISION.—If—

[(A) any provision amended or repealed by subsection (a) applied to—

[(i) any transaction occurring before the date of the enactment of this Act,

[(ii) any property acquired before such date of enactment, or

[(iii) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

[(B) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by subsection (a)) affect the liability for tax for periods ending after such date of enactment,

nothing in the amendments made by subsection (a) shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.]

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Administration Good Government Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

Sec. 101. Waiver of user fee for installment agreements using automated withdrawals.
Sec. 102. Authorization for IRS to enter into installment agreements that provide for partial payment.
Sec. 103. Termination of installment agreements.
Sec. 104. Office of Chief Counsel review of offers-in-compromise.
Sec. 105. Authorization for IRS to require increased electronic filing of returns prepared by paid return preparers.
Sec. 106. Threshold on tolling of statute of limitations during review by Taxpayer Advocate Service.
Sec. 107. Increase in penalty for bad checks and money orders.
Sec. 108. Extension of time limit for contesting IRS levy.
Sec. 109. Individuals held harmless on improper levy on individual retirement plan.
Sec. 110. Authorization for Financial Management Service retention of transaction fees from levied amounts.
Sec. 111. Elimination of restriction on offsetting refunds from former residents.

Subtitle B—Processing and Personnel

Sec. 121. Information regarding statute of limitations.
Sec. 122. Annual report on IRS performance measures.
Sec. 123. Disclosure of tax information to facilitate combined employment tax reporting.
Sec. 124. Extension of declaratory judgment procedures to non-501(c)(3) tax-exempt organizations.
Sec. 125. Amendment to Treasury auction reforms.
Sec. 126. Revisions relating to termination of employment of IRS employees for misconduct.
Sec. 127. Expansion of IRS Oversight Board Authority.
Sec. 128. IRS Oversight Board approval of use of critical pay authority.
Sec. 129. Low-income taxpayer clinics.
Sec. 130. Taxpayer access to financial institutions.
Sec. 131. Enrolled agents.
Sec. 132. Establishment of disaster response team.
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Sec. 614. Authorization of appropriations for tax law enforcement.

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Sec. 621. Affirmation of consolidated return regulation authority.
Sec. 622. Declaration by chief executive officer relating to Federal annual income tax return of a corporation.
Sec. 623. Denial of deduction for certain fines, penalties, and other amounts.
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Sec. 625. Increase in criminal monetary penalty for individuals to the amount of the tax at issue.
Sec. 626. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.

PART III—EXTENSION OF IRS USER FEES

Sec. 631. Extension of IRS user fees.

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 101. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 102. AUTHORIZATION FOR IRS TO ENTER INTO INSTALLMENT AGREEMENTS THAT PROVIDE FOR PARTIAL PAYMENT.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years with the primary purpose of determining whether the financial condition of the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 103. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

''(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

''(D) to file a return of tax imposed under this title by its due date (including extensions), or''.

(b) CONFORMING AMENDMENT.—Section 6159(b)(4) is amended by striking ''FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION'' and inserting ''FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 105. AUTHORIZATION FOR IRS TO REQUIRE INCREASED ELECTRONIC FILING OF RETURNS PREPARED BY PAID RETURN PREPARERS.

(a) IN GENERAL.—Section 6011(e) (relating to regulations requiring returns on magnetic media, etc.) is amended—

(1) by striking the second sentence in paragraph (1), and

(2) by striking ''250'' in paragraph (2)(A) and inserting ''5''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 106. THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING REVIEW BY TAXPAYER ADVOCATE SERVICE.

(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''such application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 107. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking ''$750'' and inserting ''$1,250'', and

(2) by striking ''$15'' and inserting ''$25''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SEC. 108. EXTENSION OF TIME LIMIT FOR CONTESTING IRS LEVY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6343 (relating to return of property) is amended by striking ''9 months'' and inserting ''2 years''.

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking ''9 months'' and inserting ''2 years'', and

(2) in paragraph (2) by striking ''9-month'' and inserting ''2-year''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 109. INDIVIDUALS HELD HARMLESS ON IMPROPER LEVY ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

''(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

''(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies and an amount is returned to the individual who is the beneficiary of such plan, the individual may deposit an amount equal to the sum of—

''(A) the amount of money returned by the Secretary on account of such levy, and

''(B) interest paid under subsection (c) on such amount of money,

into an individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

''(2) TREATMENT AS ROLLOVER.—The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if such distribution and deposit were part of a rollover described in section 408(d)(3)(A)(i); except that—

''(A) interest paid under subsection (c) shall be treated as part of such distribution and as not includible in gross income,

''(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

''(C) such deposit shall not be taken into account under section 408(d)(3)(B).

''(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for

a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

''(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after December 31, 2004.

SEC. 110. AUTHORIZATION FOR FINANCIAL MANAGEMENT SERVICE RETENTION OF TRANSACTION FEES FROM LEVIED AMOUNTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act.

SEC. 111. ELIMINATION OF RESTRICTION ON OFFSETTING REFUNDS FROM FORMER RESIDENTS.

(a) IN GENERAL.—Section 6402(e) (relating to collection of past-due, legally enforceable State income tax obligations) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

(b) CLARIFICATION OF DISCLOSURE AUTHORITY.—Section 6103(l)(10) (relating to disclosure of certain information to agencies requesting a reduction under subsection (c), (d), or (e) or section 6402) is amended—

(1) by striking '', (d), or (e)'' each place it appears and inserting ''or (d)'', and

(2) by striking '', (d), OR (e)'' in the heading and inserting ''OR (d)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Processing and Personnel

SEC. 121. INFORMATION REGARDING STATUTE OF LIMITATIONS.

The Secretary of the Treasury or the Secretary's delegate shall—

(1) as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and

(2) for taxable years beginning after December 31, 2004, revise any instructions booklet accompanying a general income tax return form (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds, and the consequences under such section 6511 of the failure to file a return of tax.

SEC. 122. ANNUAL REPORT ON IRS PERFORMANCE MEASURES.

(a) IN GENERAL.—Section 7803(a) (relating to Commissioner of Internal Revenue) is amended by adding at the end the following new paragraph:

''(4) ANNUAL REPORT ON IRS PERFORMANCE MEASURES.—Not later than December 31 of each calendar year, the Commissioner shall report to Congress and the Oversight Board on performance goals and projections for the 5-fiscal-year period beginning with the fiscal year ending in such calendar year against which to measure the performance of the Internal Revenue Service in the areas of the public rating of the Internal Revenue Service, customer service, compliance, and management initiatives. The report shall include the long-term performance goal for each measurement and a brief narrative explaining how the Commissioner plans to meet each goal. For each performance goal, the report shall include comparisons between the projected performance level and actual performance level. For each performance measurement, the report shall include a volume projection for such period. If the Internal Revenue Service fails to achieve one of its goals, the report shall explain why. The report shall also include data and a narrative regarding the actual and projected level of the workload and resources of the Internal Revenue Service for such 5-year period.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for fiscal year 2004 and thereafter.

SEC. 123. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Paragraph (5) of section 6103(d) (relating to disclosure to State tax officials and State and local law enforcement agencies) is amended to read as follows:

''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary shall disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 124. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO NON-501(c)(3) TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

(2) by amending subparagraph (C) to read as follows:

''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) or 501(d) which is exempt from tax under section 501(a), or''.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after December 31, 2004.

SEC. 125. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to meetings held after the date of the enactment of this Act.

SEC. 126. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF IRS EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

''SEC. 7804A. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

''(a) IN GENERAL.—Subject to subsection (c), the Commissioner shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets,

''(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative,

''(3) with respect to a taxpayer or taxpayer representative, the violation of—

''(A) any right under the Constitution of the United States, or

''(B) any civil right established under—

''(i) title VI or VII of the Civil Rights Act of 1964,

''(ii) title IX of the Education Amendments of 1972,

''(iii) the Age Discrimination in Employment Act of 1967,

''(iv) the Age Discrimination Act of 1975,

''(v) section 501 or 504 of the Rehabilitation Act of 1973, or

''(vi) title I of the Americans with Disabilities Act of 1990,

''(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative,

''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery,

''(6) violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative,

''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry,

''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect,

''(9) willful understatement of Federal tax liability, unless such understatement is due to

reasonable cause and not due to willful neglect, and

''(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

''(c) DETERMINATIONS OF COMMISSIONER.—

''(1) IN GENERAL.—The Commissioner may take a personnel action other than termination for an act or omission described under subsection (b).

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in the Commissioner's sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

''(3) NO APPEAL.—Any determination of the Commissioner under this subsection may not be appealed in any administrative or judicial proceeding.

''(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

''Sec. 7804A. Termination of employment for misconduct.''.

(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 127. EXPANSION OF IRS OVERSIGHT BOARD AUTHORITY.

(a) APPROVAL WITH RESPECT TO SENIOR EXECUTIVES.—Section 7802(d)(3)(B) (relating to management) is amended by inserting ''and approve'' after ''review''.

(b) REPORTS.—

(1) BUDGET REQUEST.—Section 7802(d) (relating to specific responsibilities) is amended—

(A) by inserting ''with detailed analysis'' after ''budget request'' in paragraph (4)(B), and

(B) by inserting ''without any additional review or comment from the Commissioner, the Secretary, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget'' before ''to the President'' in the last sentence thereof.

(2) DATE OF SUBMISSION OF ANNUAL REPORT.—Section 7802(f)(3)(A) (relating to annual reports) is amended by striking ''The Oversight Board shall each year report'' and insert ''Not later than March 1 of each calendar year, the Oversight Board shall report''.

(c) CONTINUITY IN OFFICE.—Section 7802(b)(2) (relating to qualifications and terms) is amended by adding at the end the following new subparagraph:

''(E) CONTINUATION IN OFFICE.—Any member whose term expires shall serve until the earlier of the date on which the member's successor takes office or the date which is 1 year after the date of the expiration of the member's term.

(d) ACCESS TO HEALTH BENEFITS.—Section 7802(e) (relating to Board personnel matters) is amended by adding at the end the following new paragraph:

''(5) MEMBERS ACCESS TO FEHBP.—Each member of the Oversight Board who—

''(A) is described in subsection (b)(1)(A), or

''(B) is described in subsection (b)(1)(D) and is not otherwise a Federal officer or employee,

shall be considered an employee solely for purposes of chapter 89 of title 5, United States Code.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 128. IRS OVERSIGHT BOARD APPROVAL OF USE OF CRITICAL PAY AUTHORITY.

(a) IN GENERAL.—Section 7802(d)(3) (relating to management) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ''; and'', and by adding at the end the following new subparagraph:

''(D) review and approve the Commissioner's use of critical pay authority under section 9502 of title 5, United States Code, and streamlined critical pay authority under section 9503 of such title.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to personnel hired after the date of the enactment of this Act.

SEC. 129. LOW-INCOME TAXPAYER CLINICS.

(a) GRANTS FOR RETURN PREPARATION CLINICS.—

(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

''SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

''(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED RETURN PREPARATION CLINIC.—

''(A) IN GENERAL.—The term 'qualified return preparation clinic' means a clinic which—

''(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

''(ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

''(B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as assisting low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

''(2) CLINIC.—The term 'clinic' includes—

''(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

''(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

''(c) SPECIAL RULES AND LIMITATIONS.—

''(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

''(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

''Sec. 7526A. Return preparation clinics for low-income taxpayers.''.

(b) GRANTS FOR TAXPAYER REPRESENTATION AND ASSISTANCE CLINICS.—

(1) INCREASE IN AUTHORIZED GRANTS.—Section 7526(c)(1) (relating to aggregate limitation) is amended by striking ''$6,000,000'' and inserting ''$10,000,000''.

(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

(A) IN GENERAL.—Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

''(6) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.''.

(B) CONFORMING AMENDMENTS.—Section 7526(c)(5) is amended—

(i) by inserting ''qualified'' before ''low-income'', and

(ii) by striking the last sentence.

(3) PROMOTION OF CLINICS.—Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

''(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to grants made after the date of the enactment of this Act.

SEC. 130. TAXPAYER ACCESS TO FINANCIAL INSTITUTIONS.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized to award demonstration project grants (including multi-year grants) to eligible entities to provide tax preparation services and assistance in connection with establishing an account in a federally insured depository institution for individuals that currently do not have such an account.

(b) ELIGIBLE ENTITIES.—

(1) IN GENERAL.—An entity is eligible to receive a grant under this section if such an entity is—

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

(B) a federally insured depository institution,

(C) an agency of a State or local government,

(D) a community development financial institution,

(E) an Indian tribal organization,

(F) an Alaska Native Corporation,

(G) a Native Hawaiian organization,

(H) a labor organization, or

(I) a partnership comprised of 1 or more of the entities described in the preceding subparagraphs.

(2) DEFINITIONS.—For purposes of this section—

(A) FEDERALLY INSURED DEPOSITORY INSTITUTION.—The term ''federally insured depository institution'' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(B) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term ''community development financial institution'' means any organization that has been certified as such pursuant to section 1805.201 of title 12, Code of Federal Regulations.

(C) ALASKA NATIVE CORPORATION.—The term ''Alaska Native Corporation'' has the same meaning as the term ''Native Corporation'' under section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(D) NATIVE HAWAIIAN ORGANIZATION.—The term ''Native Hawaiian organization'' means any organization that—

(i) serves and represents the interests of Native Hawaiians, and

(ii) has as a primary and stated purpose the provision of services to Native Hawaiians.

(E) LABOR ORGANIZATION.—The term ''labor organization'' means an organization—

(i) in which employees participate,

(ii) which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and

(iii) which is described in section 501(c)(5).

(c) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(d) LIMITATION ON ADMINISTRATIVE COSTS.—A recipient of a grant under this section may not use more than 6 percent of the total amount of such grant in any fiscal year for the administrative costs of carrying out the programs funded by such grant in such fiscal year.

(e) EVALUATION AND REPORT.—For each fiscal year in which a grant is awarded under this section, the Secretary shall submit a report to Congress containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary, for the grant program described in this section, $10,000,000, or such additional amounts as deemed necessary, to remain available until expended.

(g) REGULATIONS.—The Secretary is authorized to promulgate regulations to implement and administer the grant program under this section.

SEC. 131. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7529. ENROLLED AGENTS.

''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7529. Enrolled agents.''.

(c) PRIOR REGULATIONS.—The authorization to prescribe regulations under the amendments made by this section may not be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other related Federal rule or regulation issued before the date of the enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 132. ESTABLISHMENT OF DISASTER RESPONSE TEAM.

(a) IN GENERAL.—Section 7803 (relating to Commissioner of Internal Revenue; other officials) is amended by adding at the end the following new subsection:

''(e) DISASTER RESPONSE TEAM.—

''(1) RESPONSE TO DISASTERS.—The Secretary shall—

''(A) establish as a permanent office in the national office of the Internal Revenue Service a disaster response team composed of members, who in addition to their regular responsibilities, shall assist taxpayers in clarifying and resolving Federal tax matters associated with or resulting from any Presidentially declared disaster (as defined in section 1033(h)(3)), and

''(B) respond to requests by such taxpayers for filing extensions and technical guidance expeditiously.

''(2) PERSONNEL OF DISASTER RESPONSE TEAM.—The disaster response team shall be composed of—

''(A) personnel from the Office of the Taxpayer Advocate, and

''(B) personnel from the national office of the Internal Revenue Service with expertise in individual, corporate, and small business tax matters.

''(3) COORDINATION WITH FEMA.—The disaster response team shall operate in coordination with the Director of the Federal Emergency Management Agency.

''(4) TOLL-FREE TELEPHONE NUMBER.—The Commissioner of Internal Revenue shall establish and maintain a toll-free telephone number for taxpayers to use to receive assistance from the disaster response team.

''(5) INTERNET WEBPAGE SITE.—The Commissioner of Internal Revenue shall establish and maintain a site on the Internet webpage of the Internal Revenue Service for information for taxpayers described in paragraph (1)(A).''.

(b) FEMA.—The Director of the Federal Emergency Management Agency shall work in coordination with the disaster response team established under section 7803(e) of the Internal Revenue Code of 1986 to provide timely assistance to disaster victims described in such section, including—

(1) informing the disaster response team regarding any tax-related problems or issues arising in connection with the disaster,

(2) providing the toll-free telephone number established and maintained by the Internal Revenue Service for the disaster victims in all materials provided to such victims, and

(3) providing the information described in section 7803(e)(5) of such Code on the Internet webpage of the Federal Emergency Management Agency or through a link on such webpage to the Internet webpage site of the Internal Revenue Service described in such section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 133. STUDY OF ACCELERATED TAX REFUNDS.

(a) STUDY.—The Secretary of the Treasury shall study the implementation of an accelerated refund program for taxpayers who—

(1) maintain the same filing characteristics from year to year, and

(2) elect the direct deposit option for any refund under the program.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 134. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.

(a) STUDY.—The Secretary of the Treasury shall study—

(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986,

(2) the utility of requiring taxpayers to maintain all records indefinitely,

(3) such requirement given the necessity to upgrade technological storage for outdated records,

(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service, and

(5) proposals regarding taxpayer record-keeping.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 135. STREAMLINE REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.

(a) ONE ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office) is amended—

(1) by striking all matter preceding subclause (I) of clause (ii) and inserting the following:

''(B) ANNUAL REPORT.—

''(i) IN GENERAL.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer of Advocate for the fiscal year beginning in such calendar year and the activities of such Office during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—'',

(2) by striking ''clause (ii)'' in clause (iv) and inserting ''clause (i)'', and

(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) ADDITIONAL REPORTS.—Section 7803(c)(2)(C) (relating to other responsibilities) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ''; and'', and by adding at the end the following new clause:

''(v) at the discretion of the National Taxpayer Advocate, report at any time to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on significant issues affecting taxpayer rights.''.

(c) EFFECTIVE DATES.—

(1) ANNUAL REPORTS.—The amendments made by subsection (a) shall apply to reports in calendar year 2005 and thereafter.

(2) ADDITIONAL REPORTS.—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 136. IRS FREE FILE PROGRAM.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall require that a taxpayer must provide an affirmative consent before such taxpayer may be solicited with respect to any product or service by an entity participating in the Internal Revenue Service Free File program. Any request for such consent must be prominently displayed and clearly written, in large print, on any material relating to such program.

(b) EFFECTIVE DATE.—This section shall take effect with respect to returns filed after December 31, 2004.

SEC. 137. MODIFICATION OF TIGTA REPORTING REQUIREMENTS.

(a) IN GENERAL.—Paragraph (1) of section 7803(d) (relating to additional duties of the Treasury Inspector General for Tax Administration) is amended—

(1) by striking ''ANNUAL'' in the heading and inserting ''SEMIANNUAL'',

(2) by striking ''one of the semiannual reports'' in the matter preceding subparagraph (A) and inserting ''each semiannual report'',

(3) by striking clause (ii) of subparagraph (A),

(4) by redesignating clauses (iii), (iv), and (v) of subparagraph (A) as clauses (ii), (iii), and (iv) of subparagraph (A), respectively,

(5) by striking subparagraph (B),

(6) by striking ''and'' at the end of subparagraph (F),

(7) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively, and

(8) by striking subparagraph (G) and inserting the following new subparagraphs:

''(F) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources; and

''(G) with respect to allegations of serious employee misconduct—

''(i) a summary of the status of such allegations; and

''(ii) a summary of the disposition of such allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such allegations.''.

(b) CONFORMING AMENDMENTS.—Section 7803(d) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 138. STUDY OF IRS ACCOUNTS RECEIVABLE.

(a) STUDY.—The Secretary of the Treasury shall conduct a study of the provisions of the Internal Revenue Code of 1986, and the application of such provisions, regarding collection procedures to determine if impediments exist to the efficient and timely collection of tax debts. Such study shall include an examination of the accounts receivable inventory of the Internal Revenue Service.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, including the findings of the study described in subsection (a) and such legislative or administrative recommendations as the Secretary deems appropriate to increase the efficient and timely collection of tax debts.

SEC. 139. ELECTRONIC COMMERCE ADVISORY GROUP.

(a) IN GENERAL.—Section 2001(b)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998 is amended by inserting '', and at least 2 representatives from the consumer advocate community'' after ''industry''.

(b) APPLICATION OF AMENDMENT.—The initial appointments in accordance with the amendment made by this section shall be made not later than the date which is 180 days after the date of the enactment of this Act.

SEC. 140. STUDY ON MODIFICATIONS TO SCHEDULES L AND M–1.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on proposals to modify tax schedules L and M–1 of Form 1120 to require the disclosure of additional information, such as the items described in subsection (b).

(b) ITEMS OF DISCLOSURE.—The items described in this subsection is as follows:

(1) The parent company names and identification numbers for both tax and book purposes.

(2) An asset reconciliation of consolidated book assets on the public financial disclosures with the consolidated tax return.

(3) Worldwide net income from public financial disclosures.

(4) The components of tax expense presently recorded in financial statement tax footnotes.

(5) The reconciliation of the book income of entities included in the consolidated financial statement with book income included in the consolidated tax return.

(6) The adjustment for book income from domestic and foreign entities excluded from financial reporting but included for tax reconciliation.

(7) The book income of United States entities included in the United States consolidated return.

(8) Taxable income due to actual or deemed dividends from foreign subsidiaries.

(9) A reconciliation which should reflect pretax book income of United States consolidated tax group plus taxable deemed or actual foreign repatriations.

(10) The differences in the reporting of income and expense between book and tax reporting, including specific reporting on pension expense, stock options, and the amortization of goodwill.

(11) Other reconciliation items in a consistent manner among all entities.

(c) PUBLIC AVAILABILITY OF SPECIFIED INFORMATION.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission and the Commissioner of Internal Revenue shall each report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on proposals to expand the public availability and clarity of information relating to book and tax differences and Federal tax liability with respect to corporations.

SEC. 141. REGULATION OF FEDERAL INCOME TAX RETURN PREPARERS AND REFUND ANTICIPATION LOAN PROVIDERS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 7530. FEDERAL INCOME TAX RETURN PREPARERS AND REFUND ANTICIPATION LOAN PROVIDERS.

''(a) REGISTRATION.—

''(1) IN GENERAL.—The Secretary shall prescribe such regulations as may be necessary—

''(A) to require the registration of Federal income tax return preparers and refund anticipation loan providers with the Secretary or the designee of the Secretary, and

''(B) to prohibit the payment of a refund of tax to a Federal income tax return preparer or refund anticipation loan provider that is the result of a tax return which is prepared by such preparer or provider which does not include the preparer's or provider's registration number.

''(2) NO DISCIPLINARY ACTION.—The regulations under paragraph (1) shall require that an applicant for registration must not have demonstrated any conduct that would warrant disciplinary action under part 10 of title 31, Code of Federal Regulations.

''(3) BURDEN OF REGISTRATION.—In promulgating the regulations under paragraph (1), the Secretary shall minimize the burden and cost on the registrant.

''(b) EXAMINATION.—In promulgating the regulations under subsection (a)—

''(1) IN GENERAL.—The Secretary shall develop a series of examinations designed to test the technical knowledge and competency of each applicant for registration to prepare Federal tax returns, including an examination testing knowledge of individual income tax return preparation, including the earned income tax credit under section 32.

''(2) INITIAL EXAMINATION.—The Secretary shall require that each applicant for registration pass an initial examination testing the applicant's technical knowledge and competency to prepare individual and business Federal income tax returns.

''(c) RULES OF CONDUCT.—All registrants shall be subject to rules of conduct that are consistent with the rules that govern any federally authorized tax practitioner within the meaning of section 7525(a)(3)(A).

''(d) DISCLOSURE OF INFORMATION.—The Secretary shall provide guidance on the manner and timing of disclosure to taxpayers of information relating to fees and interest rates imposed in connection with loans made to taxpayers by refund anticipation loan providers.

''(e) ANNUAL RENEWAL OF REGISTRATION.—

''(1) IN GENERAL.—The regulations under subsection (a) shall require an annual renewal of registration and shall set forth the manner in which a registered Federal income tax return preparer or refund anticipation loan provider must renew such registration.

''(2) ANNUAL EXAMINATIONS.—As part of the annual registration, such regulations shall require that each registrant pass an annual refresher examination (including tax law updates).

''(f) FEES.—

''(1) IN GENERAL.—The Secretary may require the payment of reasonable fees for registration and for renewal of registration under the regulations promulgated under subsection (a).

''(2) PURPOSE OF FEES.—Any fees described in paragraph (1) shall be available without fiscal year limitation to the Secretary for the purpose of reimbursement of the costs of administering the requirements of the regulations.

''(g) FEDERAL INCOME TAX RETURN PREPARER.—For purposes of this section—

''(1) IN GENERAL.—The term 'Federal income tax return preparer' means any individual who is an income tax return preparer (within the meaning of section 7701(a)(36)) who prepares not less than 5 returns of tax imposed by subtitle A or claims for refunds of tax imposed by subtitle A per taxable year.

''(2) EXCEPTION.—Such term shall not include a federally authorized tax practitioner (as defined in section 7525(a)(3)(A).

''(h) REFUND ANTICIPATION LOAN PROVIDER.—For purposes of this section, the term 'refund anticipation loan provider' means a person who makes a loan of money or of any other thing of value to a taxpayer in connection with the taxpayer's anticipated receipt of a Federal tax refund.''.

(b) PROHIBITION.—

(1) IN GENERAL.—Section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons) is amended by adding at the end the following new subsection:

''(h) ACTIONS ON A TAXPAYER'S BEHALF BY A NON-REGISTERED PERSON.—Any person not registered pursuant to the regulations promulgated by the Secretary under section 7530 who—

''(1) prepares a tax return for another taxpayer, or

''(2) provides a loan of money or of any other thing of value to a taxpayer in connection with the taxpayer's anticipated receipt of a Federal tax refund,

shall be subject to a $500 penalty for each incident of noncompliance.''.

(2) USE OF PENALTIES.—There is authorized to be appropriated and is appropriated to the Secretary of the Treasury for each fiscal year for the administration of the requirements of the regulations promulgated under section 7530 of the Internal Revenue Code of 1986 an amount equal to the penalties imposed under section 6695(h) of such Code for the preceding fiscal year.

(c) COORDINATION WITH SECTION 6060(a).—The Secretary of the Treasury shall coordinate the registration required under the regulations promulgated under section 7530 of the Internal Revenue Code of 1986 with the return requirements of section 6060 of such Code.

(d) PUBLIC AWARENESS CAMPAIGN.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a public information and consumer education campaign, utilizing paid advertising, to inform the public of the requirements that Federal income tax return preparers (as defined in section 7530(g) of the Internal Revenue Code of 1986) must sign the return prepared for a fee and display notice of their registration under the regulations promulgated under section 7530 of such Code.

(2) PUBLIC LIST.—The Secretary of the Treasury shall maintain a public list (in print and electronic media, including Internet-based) of Federal income tax return preparers (as so defined) who are so registered and whose registration has been revoked.

(3) NOTIFICATION.—The Secretary of the Treasury shall notify any taxpayer if such taxpayer's return was prepared by such an unregistered Federal income tax return preparer .

(e) ADDITIONAL FUNDS AVAILABLE FOR COMPLIANCE ACTIVITIES.—The Secretary of the Treasury may use any specifically appropriated funds for earned income tax credit compliance to improve and expand enforcement of Federal income tax preparers under the regulations promulgated under section 7530 of the Internal Revenue Code of 1986.

(f) CLERICAL AMENDMENT.—The table of sections for chapter 77, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 7530. Federal income tax return preparers and refund anticipation loan providers.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle C—Other Provisions

SEC. 151. PENALTY FOR FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 152. REPEAL OF APPLICATION OF BELOW-MARKET LOAN RULES TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

(2) by striking ''(C), or (F)'' in subparagraph (E) and inserting ''or (C)''.

(b) FULL EXCEPTION.—Section 7872(g) (relating to exception for certain loans to qualified continuing care facilities) is amended—

(1) by striking ''made by a lender to a qualified continuing care facility pursuant to a continuing care contract'' in paragraph (1) and inserting ''owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and'',

(2) by striking ''increased personal care services or'' in paragraph (3)(C),

(3) by adding at the end of paragraph (3) the following new flush sentence:

''The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual's spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.'',

(4) by inserting ''independent living unit'' after ''all of the'' in paragraph (4)(A)(ii),

(5) by striking paragraphs (2) and (5),

(6) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and

(7) by striking ''CERTAIN'' in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

TITLE II—REFORM OF PENALTY AND INTEREST

SEC. 201. INDIVIDUAL ESTIMATED TAX.

(a) INCREASE IN EXCEPTION FOR INDIVIDUALS OWING SMALL AMOUNT OF TAX.—Section 6654(e)(1) (relating to exception where tax is small amount) is amended by striking ''$1,000'' and inserting ''$2,000''.

(b) COMPUTATION OF ADDITION TO TAX.—Subsections (a) and (b) of section 6654 (relating to failure by individual to pay estimated taxes) are amended to read as follows:

''(a) ADDITION TO THE TAX.—

''(1) IN GENERAL.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual for a taxable year, there shall be added to the tax under chapters 1 and 2 for the taxable year the amount determined under paragraph (2) for each day of underpayment.

''(2) AMOUNT.—The amount of the addition to tax for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

''(b) AMOUNT OF UNDERPAYMENT; UNDERPAYMENT RATE.—For purposes of subsection (a)—

''(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

''(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

''(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

''(2) DETERMINATION OF UNDERPAYMENT RATE.—

''(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

''(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

''(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

''(3) TERMINATION OF ESTIMATED TAX UNDERPAYMENT.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estimated tax payments made for taxable years beginning after December 31, 2004.

SEC. 202. CORPORATE ESTIMATED TAX.

(a) INCREASE IN SMALL TAX AMOUNT EXCEPTION.—Section 6655(f) (relating to exception where tax is small amount) is amended by striking ''$500'' and inserting ''$1,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 203. INCREASE IN LARGE CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

(1) by striking ''$1,000,000'' in subparagraph (A) and inserting ''the applicable amount'',

(2) by striking ''the $1,000,000 amount specified in subparagraph (A)'' in subparagraph (B)(ii) and inserting ''the applicable amount'',

(3) by redesignating subparagraph (B) as subparagraph (C), and

(4) by inserting after subparagraph (A) the following new subparagraph:

''(B) APPLICABLE AMOUNT.—For purposes of this paragraph, the applicable amount is $1,000,000 increased (but not above $1,500,000) by $50,000 for each taxable year beginning after 2004.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 204. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST FOR PERIODS ATTRIBUTABLE TO ANY UNREASONABLE IRS ERROR OR DELAY.—Section 6404(e)(1) is amended—

(1) by striking ''in performing a ministerial or managerial act'' in subparagraphs (A) and (B),

(2) by striking ''deficiency'' in subparagraph (A) and inserting ''underpayment of any tax, addition to tax, or penalty imposed by this title'', and

(3) by striking ''tax described in section 6212(a)'' in subparagraph (B) and inserting ''tax, addition to tax, or penalty imposed by this title''.

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 205. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax

under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date which is 1 year after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or the Secretary's delegate on the date which is 1 year after the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) ADDITIONAL EXCEPTION.—Section 6404(g)(2) (relating to exceptions) is amended by striking ''or'' at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

''(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or''.

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 207. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

SEC. 208. FRIVOLOUS TAX RETURNS AND SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 209. EXTENSION OF NOTICE REQUIREMENTS WITH RESPECT TO INTEREST AND PENALTY CALCULATIONS.

Sections 3306(c) and 3308(c) of the Internal Revenue Service Restructuring and Reform Act of 1998 are each amended by inserting ''and during the period beginning on the date of the enactment of the Tax Administration Good Government Act, and ending before July 1, 2006,'' after ''July 1, 2003,''.

SEC. 210. EXPANSION OF INTEREST NETTING.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest accrued after December 31, 2010.

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure

SEC. 301. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date of the enactment of this Act.

SEC. 302. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

''(5) any proceeding under section 7436(c), and''.

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 303. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 304. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 305. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

''(3) OTHER EMPLOYEES.—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge

surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.''.

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 312. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 313. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 314. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

SEC. 315. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 316. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b). Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

SEC. 317. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under section 502(a)(5) of such Act shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 318. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 319. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''AND MAGISTRATE JUDGES'' after ''JUDGES''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder

of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection

(o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 321 of the Tax Administration Good Government Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 321 of the Tax Administration Good Government Act,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 321 of the Tax Administration Good Government Act, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 321 of the Tax Administration Good Government Act.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 321 of the Tax Administration Good Government Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) CONFORMING AMENDMENT.—The table of section for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 321. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 322. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

''(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

''(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

''(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

''(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

''Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

SEC. 323. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SEC. 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

(a) IN GENERAL.—Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

''(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 402. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

(b) ELIMINATION OF REPORTING REQUIREMENT.—Section 7803(d)(1) (relating to annual reporting), as amended by this Act, is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), (F), (G), and (H) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

SEC. 403. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking ''TREASURY.—Returns and return information'' and inserting ''TREASURY.—

''(A) IN GENERAL.—Returns and return information'', and

(2) by adding at the end the following new subparagraph:

''(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return or return information of such representative on a basis other than by reason of such relationship.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's TIN)'' after ''Return information''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor or other agent to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this paragraph shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after the date of the enactment of this Act.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to the portion of calendar year 2004 following the date of the enactment of this Act.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended—

(1) by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

''(1) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new paragraphs:

''(2) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—The return of any taxpayer, or return information with respect to such taxpayer, disclosed to a person or persons under paragraph (1) for a purpose specified in writing, electronically, or orally may be disclosed or used

by such person or persons only for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified and shall not be disclosed or used for any other purpose.

''(3) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for written requests and consents which shall—

''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

''(4) CROSS REFERENCE.—

''For provision providing for civil damages for violation of paragraph (2), see section 7431(i).''.

(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

''(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SUBSECTION 6103(c).—Disclosure or use of returns or return information obtained under section 6103(c) other than for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified in writing, electronically, or orally, shall be treated as a violation of section 6103(a).''.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Secretary of the Treasury considers necessary or appropriate to better achieve the purposes of this section.

(d) SUNSET OF EXISTING CONSENTS.—Notwithstanding any other provision of law, any request for or consent to disclose any return or return information under section 6103(c) of the Internal Revenue Code of 1986 made before the date of the enactment of this Act shall remain in effect until the earlier of the date such request or consent is otherwise terminated or the date which is 3 years after such date of enactment.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after the date which is 3 months after the date of the enactment of this Act.

SEC. 407. CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OR INSPECTION.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Internal Revenue Service or, upon notice to the Secretary by a Federal or State agency, if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The notice described in this subsection shall include the date of the inspection or disclosure and the rights of the taxpayer under such administrative determination.''.

(b) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—Section 7431, as amended by this Act, is amended by adding at the end the following new subsection:

''(j) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—A judgment for damages shall not be awarded under subsection (c) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff.''.

(c) PAYMENT AUTHORITY CLARIFIED.—

(1) IN GENERAL.—Section 7431, as amended by subsection (b), is amended by adding at the end the following new subsection:

''(k) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.''.

(2) ANNUAL REPORTS OF PAYMENTS.—The Secretary of the Treasury shall annually report to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding payments made from the United States Judgment Fund under section 7431(k) of the Internal Revenue Code of 1986.

(d) BURDEN OF PROOF FOR GOOD FAITH EXCEPTION RESTS WITH INDIVIDUAL MAKING INSPECTION OR DISCLOSURE.—Section 7431(b) (relating to exceptions) is amended by adding at the end the following new flush sentence:

''In any proceeding involving the issue of the existence of good faith, the burden of proof with respect to such issue shall be on the individual who made the inspection or disclosure.''.

(e) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) REPORT ON WILLFUL UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the willful unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

''(A) administrative investigations,

''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

''(C) criminal prosecutions.''.

(c) EFFECTIVE DATES.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date which is 180 days after the date of the enactment of this Act.

(2) EXHAUSTION OF REMEDIES AND BURDEN OF PROOF.—The amendments made by subsections (b) and (d) shall apply to inspections and disclosures occurring on and after the date which is 180 days after the date of the enactment of this Act.

(3) PAYMENT AUTHORITY.—The amendment made by subsection (c)(1) shall take effect on the date which is 180 days after the date of the enactment of this Act.

(4) REPORTS.—The amendment made by subsection (e) shall apply to calendar years ending after the date which is 180 days after the date of the enactment of this Act.

SEC. 408. EXPANSION OF DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL.—Section 6103(i)(3)(B)(i) (relating to danger of death or physical injury) is amended by striking ''or State law enforcement agency'' and inserting '', State, or local law enforcement agency''.

(b) CONFORMING AMENDMENTS.—Section 6103(p)(4) is amended—

(1) by striking ''(i)(3)(B)(i) or (7)(A)(ii)'' and inserting ''(i)(7)(A)(ii)'', and

(2) by striking '', (i)(3)(B)(i),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL.—Section 6103(m)(1) (relating to tax refunds) is amended by striking ''taxpayer identity information to the press and other media'' and by inserting ''a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c) ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

''(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

''(i) upon written request by an appropriate State officer, and

''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

''(3) DISCLOSURE WITH RESPECT TO CERTAIN OTHER EXEMPT ORGANIZATIONS.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may be inspected only by or disclosed only to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection

may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

''(5) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

''(i) the State attorney general,

''(ii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

''(iii) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 6103 is amended—

(A) by inserting ''or any appropriate State officer who has or had access to returns or return information under section 6104(c)'' after ''this section'' in paragraph (2), and

(B) by striking ''or subsection (n)'' in paragraph (3) and inserting ''subsection (n), or section 6104(c)''.

(2) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

(3) Paragraph (4) of section 6103(p), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18) or any appropriate State officer (as defined in section 6104(c))''.

(4) The heading for paragraph (1) of section 6104(c) is amended by inserting ''FOR CHARITABLE ORGANIZATIONS''.

(5) Paragraph (2) of section 7213(a) is amended by inserting ''or under section 6104(c)'' after ''6103''.

(6) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

(7) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. TREATMENT OF PUBLIC RECORDS.

(a) IN GENERAL.—Section 6103(b) (relating to definitions) is amended by adding at the end the following new paragraph:

''(12) TREATMENT OF PUBLIC RECORDS.—Returns and return information shall not be subject to subsection (a) if disclosed—

''(A) in the course of any judicial or administrative proceeding or pursuant to tax administration activities, and

''(B) properly made part of the public record.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 412. EMPLOYEE IDENTITY DISCLOSURES.

(a) IN GENERAL.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) EMPLOYEE IDENTITY DISCLOSURES.—Nothing in this section may be construed to prohibit agents of the Department of the Treasury from identifying themselves, their organizational affiliation, and the nature of an investigation when contacting third parties in writing or in person.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 413. TAXPAYER IDENTIFICATION NUMBER MATCHING.

(a) IN GENERAL.—Section 6103(k) (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

''(10) TIN MATCHING.—The Secretary may disclose to any person required to provide a TIN (as defined in section 7701(a)(41)) to the Secretary whether such information matches records maintained by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 414. FORM 8300 DISCLOSURES.

(a) IN GENERAL.—Section 6103(p)(4) (relating to safeguards) is amended by striking ''(15),'' both places it appears.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 415. DISCLOSURE TO LAW ENFORCEMENT AGENCIES REGARDING TERRORIST ACTIVITIES.

(a) IN GENERAL.—Section 6103(i)(7)(A) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new clause:

''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE V—SIMPLIFICATION

Subtitle A—Uniform Definition of Child

SEC. 501. UNIFORM DEFINITION OF CHILD, ETC.

Section 152 is amended to read as follows:

''SEC. 152. DEPENDENT DEFINED.

''(a) IN GENERAL.—For purposes of this subtitle, the term 'dependent' means—

''(1) a qualifying child, or

''(2) a qualifying relative.

''(b) EXCEPTIONS.—For purposes of this section—

''(1) DEPENDENTS INELIGIBLE.—If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

''(2) MARRIED DEPENDENTS.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

''(3) CITIZENS OR NATIONALS OF OTHER COUNTRIES.—

''(A) IN GENERAL.—The term 'dependent' does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

''(B) EXCEPTION FOR ADOPTED CHILD.—Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of 'dependent' if—

''(i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

''(ii) the taxpayer is a citizen or national of the United States.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

''(C) who meets the age requirements of paragraph (3), and

''(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins.

''(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

''(A) a child of the taxpayer or a descendant of such a child, or

''(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

''(3) AGE REQUIREMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual—

''(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

''(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

''(B) SPECIAL RULE FOR DISABLED.—In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

''(4) SPECIAL RULE RELATING TO 2 OR MORE CLAIMING QUALIFYING CHILD.—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (e), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

''(i) a parent of the individual, or

''(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

''(B) MORE THAN 1 PARENT CLAIMING QUALIFYING CHILD.—If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

''(i) the parent with whom the child resided for the longest period of time during the taxable year, or

''(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

''(d) QUALIFYING RELATIVE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying relative' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

''(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

''(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

''(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

''(A) A child or a descendant of a child.

''(B) A brother, sister, stepbrother, or stepsister.

''(C) The father or mother, or an ancestor of either.

''(D) A stepfather or stepmother.

''(E) A son or daughter of a brother or sister of the taxpayer.

''(F) A brother or sister of the father or mother of the taxpayer.

''(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

''(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

''(3) SPECIAL RULE RELATING TO MULTIPLE SUPPORT AGREEMENTS.—For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

''(A) no one person contributed over one-half of such support,

''(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

''(C) the taxpayer contributed over 10 percent of such support, and

''(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

''(4) SPECIAL RULE RELATING TO INCOME OF HANDICAPPED DEPENDENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

''(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

''(ii) the income arises solely from activities at such workshop which are incident to such medical care.

''(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term 'sheltered workshop' means a school—

''(i) which provides special instruction or training designed to alleviate the disability of the individual, and

''(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

''(5) SPECIAL RULES FOR SUPPORT.—For purposes of this subsection—

''(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

''(B) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

''(e) SPECIAL RULE FOR DIVORCED PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (c)(4) or (d)(1)(C), if—

''(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

''(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

''(ii) who are separated under a written separation agreement, or

''(iii) who live apart at all times during the last 6 months of the calendar year, and

''(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year,

such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) are met.

''(2) REQUIREMENTS.—For purposes of paragraph (1), the requirements described in this paragraph are met if—

''(A) a decree of divorce or separate maintenance or written separation agreement between the parents applicable to the taxable year beginning in such calendar year provides that—

''(i) the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, or

''(ii) the custodial parent will sign a written declaration (in such manner and form as the Secretary may prescribe) that such parent will not claim such child as a dependent for such taxable year, or

''(B) in the case of such an agreement executed before January 1, 1985, the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of subparagraph (B), amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

''(3) CUSTODIAL PARENT AND NONCUSTODIAL PARENT.—For purposes of this subsection—

''(A) CUSTODIAL PARENT.—The term 'custodial parent' means the parent with whom a child shared the same principal place of abode for the greater portion of the calendar year.

''(B) NONCUSTODIAL PARENT.—The term 'noncustodial parent' means the parent who is not the custodial parent.

''(4) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENTS.—This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) CHILD DEFINED.—

''(A) IN GENERAL.—The term 'child' means an individual who is—

''(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

''(ii) an eligible foster child of the taxpayer.

''(B) ADOPTED CHILD.—In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

''(C) ELIGIBLE FOSTER CHILD.—For purposes of subparagraph (A)(ii), the term 'eligible foster child' means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

''(2) STUDENT DEFINED.—The term 'student' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

''(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

''(3) DETERMINATION OF HOUSEHOLD STATUS.—An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

''(4) BROTHER AND SISTER.—The terms 'brother' and 'sister' include a brother or sister by the half blood.

''(5) SPECIAL SUPPORT TEST IN CASE OF STUDENTS.—For purposes of subsections (c)(1)(D) and (d)(1)(C), in the case of an individual who is—

''(A) a child of the taxpayer, and

''(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

''(6) TREATMENT OF MISSING CHILDREN.—

''(A) IN GENERAL.—Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

''(B) PURPOSES.—Subparagraph (A) shall apply solely for purposes of determining—

''(i) the deduction under section 151(c),

''(ii) the credit under section 24 (relating to child tax credit),

''(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

''(iv) the earned income credit under section 32.

''(C) COMPARABLE TREATMENT OF CERTAIN QUALIFYING RELATIVES.—For purposes of this section, a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

''(D) TERMINATION OF TREATMENT.—Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

''(7) CROSS REFERENCES.—

"For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).".

SEC. 502. MODIFICATIONS OF DEFINITION OF HEAD OF HOUSEHOLD.

(a) HEAD OF HOUSEHOLD.—Clause (i) of section 2(b)(1)(A) is amended to read as follows:

''(i) a qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e)), but not if such child—

''(I) is married at the close of the taxpayer's taxable year, and

''(II) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)(3), or both, or''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(b)(2) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Clauses (i) and (ii) of section 2(b)(3)(B) are amended to read as follows:

''(i) subparagraph (H) of section 152(d)(2), or

''(ii) paragraph (3) of section 152(d).''.

SEC. 503. MODIFICATIONS OF DEPENDENT CARE CREDIT.

(a) IN GENERAL.—Section 21(a)(1) is amended by striking ''In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))'' and inserting ''In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual''.

(b) QUALIFYING INDIVIDUAL.—Paragraph (1) of section 21(b) is amended to read as follows:

''(1) QUALIFYING INDIVIDUAL.—The term 'qualifying individual' means—

''(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

''(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

''(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.''.

(c) CONFORMING AMENDMENT.—Paragraph (1) of section 21(e) is amended to read as follows:

''(1) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.''.

SEC. 504. MODIFICATIONS OF CHILD TAX CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 24(c) is amended to read as follows:

''(1) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.''.

(b) CONFORMING AMENDMENT.—Section 24(c)(2) is amended by striking ''the first sentence of section 152(b)(3)'' and inserting ''subparagraph (A) of section 152(b)(3)''.

SEC. 505. MODIFICATIONS OF EARNED INCOME CREDIT.

(a) QUALIFYING CHILD.—Paragraph (3) of section 32(c) is amended to read as follows:

''(3) QUALIFYING CHILD.—

''(A) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

''(B) MARRIED INDIVIDUAL.—The term 'qualifying child' shall not include an individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

''(C) PLACE OF ABODE.—For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

''(D) IDENTIFICATION REQUIREMENTS.—

''(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

''(ii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 32(c)(1) is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively.

(2) Section 32(c)(4) is amended by striking ''(3)(E)'' and inserting ''(3)(C)''.

(3) Section 32(m) is amended by striking ''subsections (c)(1)(F)'' and inserting ''subsections (c)(1)(E)''.

SEC. 506. MODIFICATIONS OF DEDUCTION FOR PERSONAL EXEMPTION FOR DEPENDENTS.

Subsection (c) of section 151 is amended to read as follows:

''(c) ADDITIONAL EXEMPTION FOR DEPENDENTS.—An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.''.

SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Section 2(a)(1)(B)(i) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(2) Section 21(e)(5) is amended—

(A) by striking ''paragraph (2) or (4) of'' in subparagraph (A), and

(B) by striking ''within the meaning of section 152(e)(1)'' and inserting ''as defined in section 152(e)(3)(A)''.

(3) Section 21(e)(6)(B) is amended by striking ''section 151(c)(3)'' and inserting ''section 152(f)(1)''.

(4) Section 25B(c)(2)(B) is amended by striking ''151(c)(4)'' and inserting ''152(f)(2)''.

(5)(A) Subparagraphs (A) and (B) of section 51(i)(1) are each amended by striking ''paragraphs (1) through (8) of section 152(a)'' both places it appears and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(B) Section 51(i)(1)(C) is amended by striking ''152(a)(9)'' and inserting ''152(d)(2)(H)''.

(6) Section 72(t)(2)(D)(i)(III) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(7) Section 72(t)(7)(A)(iii) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(8) Section 42(i)(3)(D)(ii)(I) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(9) Subsections (b) and (c)(1) of section 105 are amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(10) Section 120(d)(4) is amended by inserting ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

(11) Section 125(e)(1)(D) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(12) Section 129(c)(2) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(13) The first sentence of section 132(h)(2)(B) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(14) Section 153 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(15) Section 170(g)(1) is amended by inserting ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

(16) Section 170(g)(3) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(17) Section 213(a) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(18) The second sentence of section 213(d)(11) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(19) Section 220(d)(2)(A) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(20) Section 221(d)(4) is amended by inserting ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

(21) Section 529(e)(2)(B) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(22) Section 2032A(c)(7)(D) is amended by striking ''section 151(c)(4)'' and inserting ''section 152(f)(2)''.

(23) Section 2057(d)(2)(B) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(24) Section 7701(a)(17) is amended by striking ''152(b)(4), 682,'' and inserting ''682''.

(25) Section 7702B(f)(2)(C)(iii) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(26) Section 7703(b)(1) is amended—

(A) by striking ''151(c)(3)'' and inserting ''152(f)(1)'', and

(B) by striking ''paragraph (2) or (4) of''.

SEC. 508. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after December 31, 2004.

Subtitle B—Simplification Through Elimination of Inoperative Provisions

SEC. 511. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS.

(a) IN GENERAL.—

(1) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—Paragraph (7) of section 1(f) is amended to read as follows:

''(7) SPECIAL RULE FOR CERTAIN BRACKETS.—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''.

(2) CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.—Section 29 is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(3) EARNED INCOME CREDIT.—Paragraph (1) of section 32(b) is amended—

(A) by striking subparagraphs (B) and (C), and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—In the case of taxable years beginning after 1995'' and moving the table 2 ems to the left.

(4) GENERAL BUSINESS CREDITS.—Subsection (d) of section 38 is amended by striking paragraph (3).

(5) CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.—Subsection (d) of section 39 is amended by striking paragraphs (1) through (8) and by redesignating paragraphs (9) and (10) as paragraphs (1) and (2), respectively.

(6) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

(7) ITEMS OF TAX PREFERENCE; DEPLETION.—Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

(8) INTANGIBLE DRILLING COSTS.—

(A) Clause (i) of section 57(a)(2)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''.

(B) Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993)''.

(9) ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—

(A) in subsection (c)(4) by striking ''; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954'', and

(B) in subsection (g)(3) by striking ''January 1, 1954, or'' and '', whichever is later''.

(10) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking ''or (d)''.

(11) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

(12) CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 112 is amended—

(A) by striking ''(after June 24, 1950)'' in paragraph (2), and

(B) striking ''such zone;'' and all that follows in paragraph (3) and inserting ''such zone.''.

(13) PRINCIPAL RESIDENCE.—Section 121(b)(3) is amended—

(A) by striking subparagraph (B); and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—'' and moving the text 2 ems to the left.

(14) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking ''after December 31, 1965,''.

(15) GREAT PLAINS CONSERVATION PROGRAM.—Section 126(a) is amended by striking paragraph (6) and by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(16) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).

(17) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAW.—Section 162(g) is amended by striking the last sentence.

(18) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

(19) HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Paragraph (1) of section 162(l) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer and the taxpayer's spouse and dependents.''.

(20) INTEREST.—

(A) Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) (relating to phase-in of limitation) of subsection (h).

(B) Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively.

(21) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—Section 170 is amended by striking subsection (k).

(22) AMORTIZABLE BOND PREMIUM.—Subparagraph (B) of section 171(b)(1) is amended to read as follows:

''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period of earlier call date, with reference to the amount payable on earlier call date), and''.

(23) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(A) Section 172 is amended—

(i) by striking subparagraph (D) of subsection (b)(1) and by redesignating subparagraphs (E), (F), (G), and (H) as subparagraphs (D), (E), (F), and (G), respectively,

(ii) by striking ''ending after August 2, 1989'' in subsection (b)(1)(D)(i)(II) (as redesignated by clause (i)),

(iii) by striking ''subparagraph (F)'' in subsection (b)(1)(G) (as redesignated by clause (i)) and inserting ''subparagraph (E)'',

(iv) by striking subsection (g), and

(v) by striking subparagraph (F) of subsection (h)(2).

(B) Section 172(h)(4) is amended by striking ''subsection (b)(1)(E)'' each place it appears and inserting ''subsection (b)(1)(D)''.

(C) Section 172(i)(3) is amended by striking ''subsection (b)(1)(G)'' each place it appears and inserting ''subsection (b)(1)(F)''.

(D) Section 172(j) is amended by striking ''subsection (b)(1)(H)'' each place it appears and inserting ''subsection (b)(1)(G)''.

(E) Section 172, as amended by subparagraphs (A) through (D) of this paragraph, is amended—

(i) by redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively,

(ii) by striking ''subsection (h)'' each place it appears and inserting ''subsection (g)'', and

(iii) by striking ''subsection (i)'' each place it appears and inserting ''subsection (h)''.

(24) RESEARCH AND EXPERIMENTAL EXPENDITURES.—Subparagraph (A) of section 174(a)(2) is amended to read as follows:

''(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.''.

(25) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

(26) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:

''(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''.

(27) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—Section 183(e)(1) is amended by striking the last sentence.

(28) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK; AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—

(A) Sections 244 and 247 are hereby repealed and the table of sections for part VIII of subchapter B of chapter 1 is amended by striking the items relating to sections 244 and 247.

(B) Paragraph (5) of section 172(d) is amended to read as follows:

''(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED.—The deductions allowed by section 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''.

(C) Paragraph (1) of section 243(c) is amended to read as follows:

''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''.

(D) Section 243(d) is amended by striking paragraph (4).

(E) Section 246 is amended—

(i) by striking '', 244,'' in subsection (a)(1),

(ii) in subsection (b)(1)—

(I) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears and inserting ''section 243(a)(1),'',

(II) by striking ''244(a),'' the second place it appears therein, and

(III) by striking ''subsection (a) or (b) of section 245, and 247,'' and inserting ''and subsection (a) or (b) of section 245,'', and

(iii) by striking '', 244,'' in subsection (c)(1).

(F) Section 246A is amended by striking '', 244,'' both places it appears in subsections (a) and (e).

(G) Sections 263(g)(2)(B)(iii), 277(a), 301(e)(2), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 815(c)(2)(A)(iii), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

(H) Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

(I) Section 810(c)(2)(B) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

(29) ORGANIZATION EXPENSES.—Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

(30) BOND REPURCHASE PREMIUM.—Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

(31) AMOUNT OF GAIN WHERE LOSS PREVIOUSLY DISALLOWED.—Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

(32) ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 269(a) are each amended by striking ''or acquired on or after October 8, 1940,''.

(33) INTEREST ON INDEBTEDNESS INCURRED BY CORPORATIONS TO ACQUIRE STOCK OR ASSETS OF ANOTHER CORPORATION.—Section 279 is amended—

(A) by striking ''after December 31, 1967,'' in subsection (a)(2),

(B) by striking ''after October 9, 1969,'' in subsection (b),

(C) by striking ''after October 9, 1969, and'' in subsection (d)(5), and

(D) by striking subsection (i) and by redesignating subsection (j) as subsection (i).

(34) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

(35) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.—Section 409 is amended by striking subsections (a), (g), and (q).

(36) FUNDING STANDARDS.—Section 412(m)(4) is amended—

(A) by striking ''the applicable percentage'' in subparagraph (A) and inserting ''25 percent'', and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(37) RETIREE HEALTH ACCOUNTS.—Section 420 is amended—

(A) by striking paragraph (4) in subsection (b) and by redesignating paragraph (5) as paragraph (4), and

(B) by amending paragraph (2) of subsection (c) to read as follows:

''(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).''.

(38) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) is amended by striking ''after December 31, 1963,''.

(39) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended—

(A) by striking ''any farming syndicate (as defined in subsection (c))'' both places it appears in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and

(B) by striking subsection (g).

(40) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—

(A) Paragraph (3) of section 465(c) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''.

(B) Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

(41) NUCLEAR DECOMMISSIONING COSTS.—Section 468A(e)(2) is amended—

(A) by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and

(B) by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(42) PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.—

(A) Section 469 is amended by striking subsection (m).

(B) Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(43) ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.—Section 481(b)(3) is amended by striking subparagraph (C).

(44) EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.—Section 501 is amended by striking subsection (q).

(45) REQUIREMENTS FOR EXEMPTION.—

(A) Section 503(a)(1) is amended to read as follows:

''(1) GENERAL RULE.—An organization described in paragraph (17) or (18) of section 501(c) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.''.

(B) Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''.

(C) Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

(46) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT.—Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

(47) INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.—Section 692(a)(1) is amended by striking ''after June 24, 1950''.

(48) INSURANCE COMPANY TAXABLE INCOME.—

(A) Section 832(e) is amended by striking ''of taxable years beginning after December 31, 1966,''.

(B) Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

(49) TAX ON NONRESIDENT ALIEN INDIVIDUALS.—Subparagraph (B) of section 871(a)(1) is amended to read as follows:

''(B) gains described in subsection (b) or (c) of section 631,''.

(50) PROPERTY ON WHICH LESSEE HAS MADE IMPROVEMENTS.—Section 1019 is amended by striking the last sentence.

(51) INVOLUNTARY CONVERSION.—Section 1033 is amended by striking subsection (j) and by redesignating subsection (k) as subsection (j).

(52) PROPERTY ACQUIRED DURING AFFILIATION.—Section 1051 is repealed and the table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1051.

(53) HOLDING PERIOD OF PROPERTY.—

(A) Paragraph (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''.

(B) Paragraph (7) of section 1223 is amended by striking the last sentence.

(C) Paragraph (9) of section 1223 is repealed.

(54) PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.—Subparagraph (A) of section 1231(c)(2) is amended by striking ''beginning after December 31, 1981''.

(55) SALE OR EXCHANGE OF PATENTS.—Section 1235 is amended—

(A) by striking subsection (c) and by redesignating subsections (d) and (e) as (c) and (d), respectively, and

(B) by striking ''(d)'' in subsection (b) and inserting ''(c)''.

(56) DEALERS IN SECURITIES.—Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

(57) SALE OF PATENTS.—Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

(58) GAIN FROM DISPOSITION OF FARM LAND.—Paragraph (1) of section 1252(a) is amended by striking ''after December 31, 1969,'' both places it appears.

(59) TREATMENT OF AMOUNTS RECEIVED ON RETIREMENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.—Subsection (c) of section 1271 is amended to read as follows:

''(c) SPECIAL RULE FOR CERTAIN OBLIGATIONS WITH RESPECT TO WHICH ORIGINAL ISSUE DISCOUNT NOT CURRENTLY INCLUDIBLE.—

''(1) IN GENERAL.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

''(A) an amount equal to the original issue discount, or

''(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

''(2) SUBSECTION (a)(2)(A) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

''(3) CROSS REFERENCE.—

''For current inclusion of original issue discount, see section 1272.''.

(60) AMOUNT AND METHOD OF ADJUSTMENT.—Section 1314 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(61) ELECTION; REVOCATION; TERMINATION.—Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''.

(62) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''.

(63) HOSPITAL INSURANCE.—Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''.

(64) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

(65) WITHHOLDING OF TAX ON NONRESIDENT ALIENS.—The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''.

(66) AFFILIATED GROUP DEFINED.—Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

(67) DISALLOWANCE OF THE BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.—

(A) Subsection (a) of section 1551 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Section 1551(b) is amended—

(i) by striking ''or (2)'' in paragraph (1), and

(ii) by striking ''(a)(3)'' in paragraph (2) and inserting ''(a)(2)''.

(68) DEFINITION OF WAGES.—Section 3121(b) is amended by striking paragraph (17).

(69) CREDITS AGAINST TAX.—

(A) Paragraph (4) of section 3302(f) is amended by striking ''subsection—'' and all that follows through ''(A) IN GENERAL.—'', by striking subparagraph (B), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving the text of such subparagraphs (as so redesignated) 2 ems to the left.

(B) Paragraph (5) of section 3302(f) is amended by striking subparagraphs (D) and by redesignating subparagraph (E) as subparagraph (D).

(70) DOMESTIC SERVICE EMPLOYMENT TAXES.—Section 3510(b) is amended by striking paragraph (4).

(71) TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Section 4042(b)(2)(A) is amended to read as follows:

''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''.

(72) TRANSPORTATION BY AIR.—Section 4261(e) is amended—

(A) in paragraph (1) by striking subparagraph (C), and

(B) by striking paragraph (5).

(73) TAXES ON FAILURE TO DISTRIBUTE INCOME.—Section 4942 is amended—

(A) by striking subsection (f)(2)(D),

(B) in subsection (g)(2)(A) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'',

(C) in subsection (g) by striking paragraph (4), and

(D) in subsection (i)(2) by striking ''beginning after December 31, 1969, and''.

(74) TAXES ON TAXABLE EXPENDITURES.—Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

(75) RETURNS.—Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''.

(76) INFORMATION RETURNS.—Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

(77) ABATEMENTS.—Section 6404(f) is amended by striking paragraph (3).

(78) FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.—Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

(79) RETIREMENT.—Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

(80) ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF JUDGES.—

(A) Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939'' and by striking ''or pursuant to section 1106(d) of the Internal Revenue Code of 1939''.

(B) Subsection (g) of section 7448 is amended by striking ''or other than pursuant to section 1106 of the Internal Revenue Code of 1939''.

(C) Subsections (g), (j)(1), and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

(81) MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.—Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any nonqualified withdrawal shall be determined''.

(82) VALUATION TABLES.—Paragraph (3) of section 7520(c) is amended—

(A) by striking ''Not later than December 31, 1989, the'' and inserting ''The'', and

(B) by striking ''thereafter'' in the last sentence thereof.

(83) ADMINISTRATION AND COLLECTION OF TAXES IN POSSESSIONS.—Section 7651 is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(84) DEFINITION OF EMPLOYEE.—(A) Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as otherwise provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of enactment of this Act.

(2) SAVINGS PROVISION.—If—

(A) any provision amended or repealed by subsection (a) applied to—

(i) any transaction occurring before the date of the enactment of this Act,

(ii) any property acquired before such date of enactment, or

(iii) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(B) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by subsection (a)) affect the liability for tax for periods ending after such date of enactment,

nothing in the amendments made by subsection (a) shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

TITLE VI—REVENUE PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 601. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction, or

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 602. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue

Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 603. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 604. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 605. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

"SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.".

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 606. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 607. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 608. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

"SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.".

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 609. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 610. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 611. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 612. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 613. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO TAX-MOTIVATED TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 614. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

PART II—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 621. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 622. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL INCOME TAX RETURN OF A CORPORATION.

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in place processes and procedures to ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to the Federal annual tax return of a corporation with respect to income for taxable years ending after the date of the enactment of this Act.

SEC. 623. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

''(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 624. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 625. INCREASE IN CRIMINAL MONETARY PENALTY FOR INDIVIDUALS TO THE AMOUNT OF THE TAX AT ISSUE.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6203(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

SEC. 626. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

PART III—EXTENSION OF IRS USER FEES

SEC. 631. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

IRS FREE FILE PROGRAM

Mr. ALLEN. Mr. President, I commend the chairman and ranking member of the Finance Committee, Senators GRASSLEY and BAUCUS, for their work on the Tax Administration Good Government Act. The legislation provides taxpayer safeguards, streamlines tax administration, and simplifies the tax code. I do have some concern with one provision in the bill. Specifically, the bill also includes a provision on the IRS Free File Program. The Free File Program is the result of a public-private partnership agreement between the IRS and the Free File Alliance, LLC, a group of tax software companies managed by the Council for the Electronic Revenue Communication Advancement, CERCA. It is important to continue to promote these types of public-private partnerships and it is my hope that we can work together on this provision as we move to conference with the House of Representatives.

Mr. GRASSLEY. I thank the Senator from Virginia. The IRS Free File Program is a direct result of the goal that Congress set for the IRS to have 80 percent of returns filed electronically by 2007. The partnership agreement calls for the Free File Alliance to provide free tax preparation and filing to at least 60 percent of all taxpayers or approximately 78 million individuals who file an individual tax return. Each participating software company has its own eligibility requirements. The eligibility requirements ensure that lower income, disadvantaged and underserved taxpayers benefit from the free file program with the Free File Alliance, LLC. The provision in the bill was intended to ensure that the taxpayers participating in the Free File Program were affirmatively consenting to solicitation for other products or services. I look forward to working with him to ensure that we continue to promote such public-private partnerships.

Mr. BAUCUS. I agree with Chairman GRASSLEY. It is our intent with the Free File provision to protect the integrity of our voluntary tax system by providing lower income, disadvantaged and under-served taxpayers the ability to meet their filing obligation without subjecting themselves to unwanted marketing. I also commit to work with Senator ALLEN as we conference with the House.

Mr. ALLEN. I thank the chairman and ranking member.

CONTINUING CARE FACILITIES

Mr. GRAHAM of Florida. Mr. President, I want to thank the chairman and ranking member of the Finance Committee, Senators GRASSLEY and BAUCUS, for including a provision that I supported as part of the Tax Administration Good Government Act to level the playing field for residents of qualified continuing care retirement communities.

Continuing care retirement communities, or CCRCs, are the oldest form of seniors housing in America, dating back to the late 1800s—offering a variety of living arrangements and services to accommodate residents of all levels of physical ability and health. The goal of a CCRC is to accommodate changing lifestyle preferences and health care needs. In general, CCRCs make independent living, assisted living, and skilled nursing available all on one campus. The CCRC approach offers residents the pyschological and financial security of knowing that, should they require increased levels of care, it is readily available at one location. As a private pay option, CCRCs also play an important role in the Nation's long-term care delivery system because very few, if any, CCRC residents will ever require Medicaid funding for their long-term care.

Mr. GRASSLEY. I thank the Senator from Florida for his comments. This is a provision that I have also supported. The provision included in the bill will go a long way for those seniors who live in the affected CCRCs. I also want to clarify one point with Senator BAUCUS. It is my understanding that the purpose of the amendment is to bring the tax treatment of those CCRCs described in section 7872(g) into alignment with the treatment that has historically been afforded to those CCRCs that are not described in section 7872(g). In other words, there is no intent to alter the treatment that the IRS has historically provided for CCRCs that are not described in section 7872(g). I am committed to working with Senator GRAHAM as we move this legislation forward.

Mr. BAUCUS. I agree with the chairman. There is no intent to alter the treatment that the IRS has historically provided for CCRCs that are not described in section 7872(g). This is a critical point that could affect a large number of seniors. We do not want there to be any misunderstanding on this issue since the immediate consequences could be significant—with large numbers of seniors potentially having to pay additional taxes. I also know that Senator MIKULSKI has expressed an interest in this provision. I give my commitment to both Senators GRAHAM and MIKULSKI to work with them on this provision as we go to conference with the House.

Mr. GRAHAM of Florida. I thank the chairman and ranking member for clarifying the intent of this provision.

Mr. FRIST. Mr. President, I ask unanimous consent that the Grassley-Baucus technical amendment, which is at the desk, be adopted; that the committee-reported substitute, as amended, be agreed to; and that the bill be read the third time.

The amendment (No. 3218) was agreed to.

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

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

Mr. FRIST. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 1528, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1528) to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

Mr. FRIST. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the text of S. 882, as amended be inserted; that H.R. 1528, as amended, be read the third time and passed; that the motion to reconsider be laid upon the table; and that S. 882 be returned to the calendar, all without intervening action or debate.

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

The bill (H. R. 1528), as amended, was read the third time and passed, as follows:

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

Mr. GRASSLEY. Mr. President, today the Senate has approved the Tax Administration Good Government Act. This legislation is the first legislation addressing tax administration since the IRS Restructuring and Reform Act of 1998.

The legislation contains five major components. First, it provides additional safeguards for taxpayers. Second, the legislation significantly simplifies the current interest and penalty regimes. Third, the act also includes the proposals passed out of the Finance Committee on April 2, 2003 and included in a bill introduced by Senators Hatch and Breaux to modernize the United States Tax Court.

Fourth, our legislation also includes several provisions, some of which were requested by the Treasury Department and the Joint Committee on Taxation, to strike an appropriate balance in protecting taxpayer confidentiality through disclosure reforms. Finally, the legislation takes an important step toward simplification of the Tax Code through the elimination of obsolete provisions and unifying the definition of child within the Tax Code.

We have worked closely with the Treasury Department, the Internal Revenue Service, the National Taxpayer Advocate, and the Joint Committee on Taxation to develop this package of proposals to promote good government in the administration of our Tax Code.

Congress's responsibility for the tax system does not stop after we pass tax law changes. We have an oversight responsibility to ensure that taxpayer rights are protected, that our tax laws are not administered counter to congressional intent, that the judicial body with primary jurisdiction over the tax laws has the tools necessary to provide independent review of controversies between taxpayers and the Internal Revenue Service, and to take steps to simplify the Tax Code whenever possible.

We are pleased to say that today, the Senate has taken a big step in that direction.

MEASURES READ THE FIRST TIME—H.R. 2728 and S. 2448

Mr. FRIST. Mr. President, I understand there are two bills at the desk, and I ask that they be read the first time, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will read the titles of the bills for the first time, en bloc.

The legislative clerk read as follows:

A bill (H.R. 2728) to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration; and to amend the Paperwork Reduction Act and titles 5 and 31, United States Code, to reform Federal paperwork and regulatory processes.

A bill (S. 2448) to coordinate rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with other Federal laws.

Mr. FRIST. Mr. President, I now ask for their second reading, and in order to place the bills on the calendar under rule XIV, I object to further proceedings to these bills en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will receive their second reading on the next legislative day.

ORDERS FOR THURSDAY, MAY 20, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Thursday, May 20. I further ask that following the prayer and 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, the Senate then begin a period of morning business for up to 60 minutes with the majority leader or his designee in control of the first 30 minutes and the Democratic leader or his designee in control of the final 30 minutes; provided that following morning business the Senate resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill.

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

PROGRAM

Mr. FRIST. Tomorrow, following morning business, the Senate will resume consideration of the Department of Defense authorization bill. We made good progress on that bill today, disposing of 16 amendments. Senators WARNER and LEVIN will continue working through amendments tomorrow. Rollcall votes are expected on amendments to the bill throughout the day tomorrow, and Senators will be notified when the first vote is scheduled.

I also want to alert all Senators that the fiscal year 2005 budget resolution conference report may become available, and we may consider that conference report before the week concludes. Votes will occur over the next 2 days and Members should plan accordingly.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:21 p.m., adjourned until Thursday, May 20, 2004, at 10 a.m.