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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. ISAKSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 6, 2004.

I hereby appoint the Honorable JOHNNY ISAKSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend John J. Ryan, Pastor, St. Brendan Roman Catholic Church, Ormond Beach, Florida, offered the following prayer:

Almighty and Eternal God, from all time and through eternity You guide those You have created in every endeavor.

You place Your own hopes and dreams in the hearts of men and women, so that people of every race, language, and way of life might advance in the ways of peace and justice.

As we navigate the seas of life, guard us, defend us, and be with us. Give us clear direction.

Grant that Your spirit of prudence and wisdom fill our hearts and minds to accomplish Your works and lead us safely to the shores of goodness and justice.

Gracious God, we thank You for every blessing we enjoy, for every goodness we know.

As You have led us over the waters of the ages, lead us to that freedom which does not end and is perfected in You who art our refuge, our strength, our help in ages past, and our hope for years to come. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Illinois (Mr. SHIMKUS) come forward and lead the House in the Pledge of Allegiance.

Mr. SHIMKUS 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.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4175. An act to increase, effective as of December 1, 2004, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested.

S. 2484. An act to amend title 38, United States Code, to simplify and improve pay provisions for physicians and dentists and to authorize alternate work schedules and executive pay for nurses, and for other purposes.

S. 2895. An act to authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights in honor of breast cancer awareness month.

S. 2896. An act to modify and extend certain privatization requirements of the Communications Satellite Act of 1962.

WELCOMING THE REVEREND JOHN J. RYAN

(Mr. MICA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICA. Mr. Speaker, this morning, it is my distinct pleasure and really and truly an honor to welcome father John J. Ryan to the United States House of Representatives.

Father Ryan is the pastor of St. Brendan Roman Catholic Church in Ormond Beach, Florida, which is part of my district. He is a member of the presbyterate of the Diocese of Orlando and has served as a priest for 30 years.

Originally from New Jersey, Father Ryan has spent the majority of his priesthood ministering in the Orlando diocese.

Father Ryan has been a forerunner in the civic and ecumenical communities. In 2001, he gathered over 2,000 people of various faiths to mark the first anniversary of September 11.

In this service, he assembled Protestant, Jewish, Muslim, Catholic, and Orthodox religious leaders at his parish as well as representatives of every part of the civic community, from mayors, police chiefs, fire chiefs and every branch of the military service.

Father Ryan is no stranger to bringing together people of every race and every religion to share their common bond as members of the human society. He embodies the perfect blend of civic pride and religious faith.

Mr. Speaker, the Congress of the United States is privileged and honored today by the visit of a humble and great man, Father John J. Ryan of Ormond Beach, Florida.

ENSURING FAIR AND FREE ELECTIONS IN BELARUS

(Mr. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Printed on recycled paper.

Mr. SHIMKUS. Mr. Speaker, in October, we will have fair and free elections in Afghanistan. Ten million Afghans are registered to vote, one-half being women. When they go to the polls. There will be threats, intimidation and violence, but the Afghans will go.

Compare that to other elections in October held in the European country of Belarus. Candidates have been intimidated, but the people will still go to the polls. The problem is, the dictator will count the votes and the ballots.

If the international community can help ensure fair and free elections in Afghanistan and Iraq, surely they can help enforce fair and free elections in the Nation of Belarus. I call upon them to do so, and I hope they will ensure fair and free elections in Belarus.

CONGRATULATING SENATOR JOHN EDWARDS FOR SUCCESSFUL DEBATE

(Mr. ETHERIDGE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Speaker, I rise this morning to congratulate my friend, Senator JOHN EDWARDS, for his outstanding performance in last night's debate. Once again, he has done us proud.

JOHN EDWARDS grew up the son of a mill worker in rural North Carolina. He understands the challenges that ordinary people face in these tough economic times. Simply put, he gets it when it comes to the problems, challenges, aspirations and dreams of hard-working families. That is why he will make an outstanding Vice President.

During last night's debate, JOHN EDWARDS clearly stated why the Bush-Cheney administration's stubborn refusal to admit mistakes is so wrong for America. The Bush-Cheney record of failed policies, broken promises, and tired excuses is a strong change in our national leadership. JOHN EDWARDS articulated that case very strongly last night.

Mr. Speaker, JOHN EDWARDS and JOHN KERRY have a better plan to strengthen middle-class families, to create good jobs, provide targeted tax relief for middle-class families and invest in jobs for tomorrow for the broader future of America. We need new leadership in America. JOHN EDWARDS demonstrated last night that he and JOHN KERRY are ready to take our country in a new and better direction.

KERRY DOES NOT GET IT ON IRAQ

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, on the one hand, Mr. KERRY calls Iraq a mistake. On the other hand, he says our soldiers are not dying for a mistake. He has failed time and again to make sense of his flip-flops. And while he looked good in the debate last week, he sounded like the same old candidate with 57 varieties of stances on Iraq. His call for a timetable to get troops out of Iraq sends a message that terrorists can outlast us. It is a fancy way to spin the fact that he wants to retreat.

His repeated statements that Iraq is a ''quagmire,'' ''the wrong war in the wrong place at the wrong time,'' repels allies; it does not rally them to our cause. And, talking about real coalitions is a fancy way to spin the fact that, under his watch, other nations would dictate the deployment of our military, and it insults our coalition partners and the Iraqi forces who are risking their lives every day for freedom.

JOHN KERRY just does not get it.

ADMINISTRATION MUST ADMIT MISTAKES

(Mr. EMANUEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, here are a few headlines from the last 24 hours: ''Iraqi Arms Threat Was Waning,'' the definitive government report saying there was a diminishing threat from Iraq and its weapons of mass destruction; ''France Was Ready To Send Troops to Iraq,'' 15,000, but did not because of the relationship with President Bush; ''Bremmer Criticizes Troop Levels,'' Paul Bremmer now says we never had enough troops on the ground; ''White House Embraced Disputed Arms Intelligence,'' the White House claimed Iraq was buying aluminum tubes to facilitate uranium enrichment even though their own experts told them otherwise; ''Funds To Build Iraq Are Drifting Away From Target,'' only 27 cents on the dollar are going to rebuild Iraq.

This does not even include what Secretary of Defense Rumsfeld acknowledged yesterday, that there was no relationship between Iraq and al Qaeda.

Mr. Speaker, their house of cards that was the case for going to war and how to prosecute this war have collapsed. In going to war, this administration allowed ideology to trump reality. Iraq was not an imminent threat, there was no impending mushroom cloud. With the costs and casualties, candor would be a welcome addition to this White House.

You cannot fix a problem if you do not acknowledge that you have one.

PRESIDENT BUSH HAS A RECORD OF LEADERSHIP

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, last night, Americans saw the choice of DICK CHENEY and JOHN EDWARDS. It is being debated now who prevailed.

Where people know JOHN EDWARDS best, his and my home, birth State of South Carolina and his home State of North Carolina, the people are overwhelmingly supporting DICK CHENEY to continue his service with President Bush to best protect American families in the war on terrorism.

Senator KERRY has a 20-year record in the Senate of voting against every major weapons system that won the Cold War and that our troops are using today. Senator KERRY has proposed budget cuts in intelligence even after the first World Trade Center bombing. He voted against the first Gulf War; he voted for the current war in Iraq and then against the funding to give our troops the body armor needed to fight the war. This is not the kind of record Americans expect in a commander in chief.

President Bush and Vice President CHENEY have a strong and clear record of leading our Nation in the war on terror. President Bush has shown he will take the fight to the terrorists wherever they are, protecting American families from future terror attacks here at home.

In conclusion, may God bless our troops. We will never forget September 11.

NOW IS NOT THE TIME TO CUT VETERANS' BENEFITS

(Mr. STRICKLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STRICKLAND. Mr. Speaker, I have a message for America's veterans and the families who love them.

As reported in Sunday's Washington Post, Staff Sergeant Gene Westbrook, 35, of Lawton, Oklahoma, was deployed to Iraq in January as a drill sergeant, sent to train Iraqi Army recruits. While on duty on April 28, south of Sadr City in Baghdad, he was hit by a mortar shell, and the shrapnel severed his spine. He is now paralyzed from the chest down, has limited movement in his right arm and battles constant infections. His wife takes care of him full-time.

''I love the military,'' said Staff Sergeant Westbrook. ''That was my life. But I do not believe they are taking care of me now.''

He has received no disability benefits because his paperwork is missing. He is supporting his wife and three children on his regular military pay of $2,800 a month as he awaits a ruling on whether he will receive $6,500 from the VA for his disability.

At the same time, President Bush's budget for 2005 calls for cutting the Department of Veterans' Affairs staff that handles disability claims. What is the President thinking, cutting the budget for this vital function while our disabled servicemen wait for justice?

HONORING DARRELL WALTRIP

(Mrs. BLACKBURN asked and was given permission to address the House

for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, today I rise to honor one of my constituents, someone that many of my colleagues may know, Darrell Waltrip. My colleagues might know him by his 84 racing victories, third best victory in NASCAR circuit or from his newest career in broadcasting. In middle Tennessee, we also know that he is a successful businessman.

But to those suffering with Multiple Sclerosis, he is more; he is a hero.

This year, Darrell is being honored by the Mid South Chapter of the National MS Society with the MS Hope Award for his outstanding dedication to helping end this devastating disease.

Darrell has given of his time and of his heart to educate the public on what we can do to help eradicate MS, and his support of the Mid South Chapter has been to expand the advocacy and research.

Today, I want to join those honoring Darrell Waltrip and thank him for his continuing fight against MS.

REPUBLICAN RHETORIC DOES NOT MATCH REALITY

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, well, the Republican rhetoric about the economy does not match the reality on this issue either. New figures show U.S. companies announced layoffs of more than 100,000 people last month.

If that is not bad enough, the pace of new job postings plunged in September to a mere 16,000. This is the President's economic equivalent of Mission Accomplished. Over the third quarter, job layoffs topped a quarter of a million workers. That is 20 percent worse than the last quarter, and they call it progress. The September figure for layoffs was the largest number in 8 months, and they call it progress.

They cannot create a job, so they create a sound bite. They do the same thing in Iraq every day. Things are getting better, they explain, while the rest of America looks at the nightly news and wonders what in the world these people are talking about. Every night, they deny what is before their eyes.

They have not done the job. The record is clear, and so is the outcome. In 27 days, the American people will give the President and the Vice President bus fare out of town.

□ 1015

HONORING HAROLD ZINKIN

(Mr. RADANOVICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RADANOVICH. Mr. Speaker, I rise today to recognize Mr. Harold Zinkin of Fresno, California, posthumously for his service to his community and generous good will. Mr. Zinkin recently passed away on September 22, 2004.

Harold Zinkin was born in San Francisco, California, in 1922. As the son of Russian immigrants, this first-generation American lived a life that was nothing short of achieving the American Dream.

As a young man, Mr. Zinkin enlisted in the U.S. Navy in response to the attack on Pearl Harbor. Later he became a champion bodybuilder and was one of the patriarchs of California's fitness movement that rose out of the famed Muscle Beach. Mr. Zinkin's vision for the future of health and wellness came to fruition through his creation of revolutionary fitness equipment called the Universal Gym Machine. He was also instrumental in creating one of the most dynamic and successful shopping and entertainment complexes throughout California's Central Valley.

Mr. Speaker, I rise today to recognize Harold Zinkin for his tremendous service to his community, California's Central Valley and worldwide.

FAILING ECONOMIC HEALTH OF OUR NATION

(Ms. SOLIS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, as Americans head to the polls in 4 weeks, we should ask ourselves, Are we better off now than we were 4 years ago?

The answer lies in the facts, and the facts do not lie. Eight million people are looking for work and 1.4 million people lost their health insurance last year; 4.3 million people have slipped into poverty since President Bush took office, and a projected 10-year $5.6 trillion budget surplus has turned into a $422 billion annual deficit.

Families in my district are all too aware of the sad state of our economy. Unemployment they say is at its lowest at 5.4 percent; but unemployment in my district, in East Los Angeles and the San Gabriel Valley in Los Angeles County, is well above the norm. Just look at the schedule here. East Los Angeles, South El Monte, 9.8 percent, double-digit unemployment and it has been that way for the last 3½ years.

We know in my district that it is time for a change in leadership. We want jobs here. We want investments in America. We want to lift those boats.

150TH ANNIVERSARY OF THE REPUBLICAN PARTY

(Mr. COX asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COX. Mr. Speaker, this year is the 150th anniversary of the founding of the Republican Party. Over a century and a half, from the abolition of slavery, to the establishments of women's right to vote, to freeing millions of people in the Soviet Union, Afghanistan and Iraq, the Republican Party has been the most effective political organization in the history of the world in advancing the cause of freedom.

The right of American women to vote is a uniquely Republican accomplishment advanced by Republicans, opposed by Democrats. All of the leading suffragists, including Lucretia Mott, Elizabeth Cady Stanton, and Susan B. Anthony were Republican. The first woman elected to this House was Republican.

Today marks the birth of Mary Louise Smith in 1914, elected to be the first woman to chair the Republican National Committee. Each day of the year the Republican Freedom Calendar, prepared by the Republican Policy Committee, records an important achievement, an important milestone in the Republican Party's history of advancing the civil rights of every American. The calendar is available at policy.house.gov on the Internet.

LARGE CIVIL AIRCRAFT AGREEMENT

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, this morning the United States filed a World Trade Organization dispute settlement case against the European Union regarding billions of dollars in unfair subsidies provided to Airbus by European governments. The U.S. has also exercised its rights to immediately terminate the 1992 U.S.-EU agreement on large civil aircraft. That agreement placed limits on certain government support, including limiting it to one-third of the costs of developing a new character aircraft.

The time has come for the American Government to recognize the damage that has occurred to our economy and to take firm action to curtail what I believe is both unfair and illegal foreign competition. These subsidies from four European governments, which include aircraft launch assistance, capital injections, debt forgiveness, have enabled Airbus to develop and range market airliners well below cost. Unless this practice is checked, I am afraid it will threaten to drive the Boeing Company, Airbus' only remaining worldwide competitor and our largest net exporter, out of the commercial airline manufacturing business altogether.

Over the last few years Airbus has grown to dominate the large commercial aircraft industry, out-delivering Boeing for the first time in history in 2003. I want to support Ambassador Zellig's action. He has courageously filed this case on behalf of our government.

ARE WE BETTER OFF

(Ms. BERKLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. BERKLEY. Mr. Speaker, are we better off today than we were 4 years ago? If you live in Nevada, the answer is no. The number of Nevadans living in poverty has increased by 11,000. The family income in Nevada has dropped by $1,511; 82,000 Nevadans lost their health insurance. There are now 400,000 Nevadans who live every day without health insurance. They pray they do not get sick. Those who are lucky enough to have health insurance saw their premiums go up by an average of 3,229. What working family can afford that?

Gas prices in Nevada are the highest in the Nation; 26,717 Nevadans filed bankruptcy in 2003. That is a 48 percent increase since Bush became President. Nevada has the strongest economy in the United States. So if people are suffering in the State of Nevada, can you just imagine what is going on in the rest of the country.

After 4 years it is time for new leadership in the White House who will fight for all Nevadans and who will fight for you.

BAD MEMORY

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, last night Vice President CHENEY was let out of his bunker for the night, and it seems all that time in an undisclosed location has confused him a bit about the facts. Last night he said he had never publicly stated that there was a connection between al Qaeda and Iraq. Does he forget his interview with Tim Russert last year in which he said just that? Does he also forget now it is a common statement in his political stump speeches where he tries to invoke fear in Americans?

I think he has determined his record with Bush is so bad that the only thing he can do is strike fear in the American people.

Vice President CHENEY also said last night that he had never met Senator EDWARDS before. That is simply not true. Just turn on any news outlet today and you will see the proof, pictures of CHENEY and EDWARDS standing side by side at a prayer breakfast last year. I suspect as the day goes on we will see more and more of these pictures.

Mr. Speaker, Vice President CHENEY and President Bush cannot lead this country if they continue to mislead the American people.

THE RIGHT THING TO DO

(Mr. GEORGE MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, last night Vice President CHENEY said he was proud of the record in Iraq, and this is exactly what he said: ''We did in Iraq what was exactly the right thing to do, and I recommend it all over again, I would.''

And yet in today's Washington Post we learned that the most definitive accounts of Iraq's arms programs will show that Saddam Hussein possessed a diminishing threat at the time the United States invaded and did not possess or have concrete plans to develop nuclear, chemical, or biological weapons.

This investigation found that the state of Hussein's weapon development program and knowledge was less advanced in 2003 when the war began than it was in 1998 when the international inspectors left Iraq. The fact of the matter is over 1,000 Americans have died in this war; thousands and thousands of Americans have been wounded; thousands and thousands of Iraqis have been killed and wounded, and they have been killed or wounded in a war of choice because Iraq was not an imminent threat to the United States. But this administration chose, in spite of all of the evidence to go to war, to put our young people at risk and to lose their lives because they wanted to manipulate the evidence. They wanted to manipulate the war on terror, and they wanted to frighten this Nation.

Mr. Vice President, if you had to do it all over again, I hope you would not.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ISAKSON). The Chair would remind Members that remarks should be addressed to the Chair and not to the Vice President.

AID FOR HAITI

(Ms. LEE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. LEE. Mr. Speaker, I rise to discuss very briefly the devastation of Tropical Storm Jeanne on Haiti. The lack of infrastructure and our failed United States policies quite frankly helped contribute to leaving the Haitian people vulnerable to the devastation of Tropical Storm Jeanne which took the lives of over 2,000 Haitians. In Haiti's flood-torn cities, children sleep on tin roofs because flood waters have not subsided; gun shots are heard in darkness as thieves and thugs continue to steal from the people and cheat them of their chance for protection and peace. Men and women dig mass graves scrambling to identify the bodies of lost loved ones. Children are not going to school. Women do not have food for their families.

With so many causalities and so many sick, so many still missing and much despair, what can we do? What can the greatest superpower, the wealthiest country in the world do for our neighbors next door? We must provide a real commitment to help Haitians. We must provide a way to help with the basic services of food and shelter as well as the restoration of democracy. We must support $500 million to build the region, to take a more comprehensive and democratic approach to our policies toward Haiti.

FLORIDA VOTER SUPPRESSION

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, as the time is nearing, as we have listened to the candidates for office of President and Vice President of the United States, we are reminded that this may be in fact the most important election in our history. It may begin to change the course of history for this Nation and begin to put us on the right course.

So today I rise, Mr. Speaker, to remind Americans that every vote is precious. Why again in the State of Florida has voter suppression risen again as has been raised by my colleagues from Florida, particularly the gentleman from Florida (Mr. HASTINGS), the gentleman from Florida (Mr. MEEK), and the gentlewoman from Florida (Ms. BROWN).

Again we have the State of Florida attacking individuals who are trying to vote and to register to vote. Now we find out in the State of Florida that even after thousands have registered to vote, what do you have but the government suggesting that those registration cards will be deemed illegal and will be deemed where the voters will not be able to vote. Why? Because somebody did not check a box, an unnecessary box, a box that the law does not say that they have to check.

I do not understand, Mr. Speaker, why again we have Florida in the center of the eye of the storm, unfortunately, the eye of the storm of suppressing voters in the United States of America. We are all going to be in Florida. We are all going to make sure that people are able to vote, and we are all going to make sure that this is an election that is fair. Our lives depend on it.

MENTAL HEALTH AWARENESS WEEK

(Mr. KENNEDY of Rhode Island asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KENNEDY of Rhode Island. Mr. Speaker, this week is Mental Health Awareness Week and still the mental health parity legislation supported by 249 representatives, 70 Senators and 369 national organizations is bottled up.

The leadership of this House, which refuses to bring up this popular legislation for a vote, is sentencing millions of Americans to joblessness and underemployment. Mental illnesses are treatable and individuals with mental illnesses are frequently able to hold down good jobs as productive members of society, but only if they are treated.

As the Chicago Tribune reported several years ago, employees who are depressed are twice as likely to take time off for health reasons as employees who are not depressed and are seven times more likely to be less productive on the job.

President Bush's New Freedom Commission on Mental Health found a shocking 90 percent unemployment rate among individuals with serious mental illnesses, while also finding that most of them could work with just modest supports.

The American Dream is not just for those lucky enough to live free of disease and disability. During this mental health awareness week, I call on this House to finally at long last pass mental health parity.

□ 1030

DISASTER RELIEF

(Mr. HASTINGS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HASTINGS of Florida. Mr. Speaker, later today we will take up the Emergency Supplemental Appropriations Act for the year 2005. It is a help, but it is simply not enough. From today's newspapers, we learn that the four hurricanes which struck over 6 weeks have wiped out thousands of jobs and billions of dollars' worth of property. Economists estimate that that is the case.

The hurricanes caused parts of 10 eastern States from Florida to Vermont to be declared Federal disaster areas. The storms destroyed or seriously damaged many hotels, restaurants, stores, factories and other businesses while temporarily closing seaports, harbors, theme parks and other tourist destinations. Insurance payments will be as much as $23 billion.

I call on the House of Representatives to get past this set of disasters and realize that there will be others, and to establish in this Congress a disaster relief fund and a separate jurisdiction dealing specifically with disaster relief from drought to fires, to storms, to earthquakes and whatever may occur in our Nation.

IRAQI ARMS THREAT

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, today's Washington Post reports that at the time this administration brought us to war in Iraq, Saddam Hussein posed not the gathering threat that President Bush and Vice President CHENEY continue to claim he was, but rather, a diminishing one.

The findings of the chief U.S. weapons inspector in Iraq are but one more example of a President and a Vice President intent on misleading the American people into war and blind to the realities of Iraq today. This comes one day after the startling admission by the former head of the Coalition Provisional Authority in Iraq, Paul Bremer, that we did not have enough troops on the ground after the invasion to guard sensitive areas like weapons stockpiles. Today, those very weapons are being used against our troops by militants and by terrorists.

At every step of the way, determining the threat level posed by Saddam, how much the war would cost, how many casualties America would bear, George Bush and DICK CHENEY have been consistent, consistently wrong. As we saw last night and last Thursday in the debates, George Bush and DICK CHENEY are incapable of fixing Iraq because they refuse to see the mess that they have created there.

They refuse to see the mess that they have created in the U.S. economy.

The American people? They see it every single day.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ISAKSON). The Chair must remind all Members that remarks in debate may not engage in personalities toward the President and the Vice President or the acknowledged candidates for those offices. Policies may be addressed in critical terms, but personal references of an offensive or accusatory nature are not proper.

READY FOR CHANGE

(Mr. DAVIS of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, I must confess that I am not surprised that the Vice President did not know that he knew Senator EDWARDS, because it seems to me that there are a lot of things that they know but do not say.

They did not know that there were no weapons of mass destruction in Iraq, but we went to war anyway. They did not know that trickle-down would not solve the Nation's economic problems. They promote it anyway. They did not know that senior citizens need a real prescription drug program, but they sham it anyway.

They may not know that the American people are ready for change, but they are, and we shall see in a little bit.

PROVIDING FOR CONSIDERATION OF H.R. 5107, JUSTICE FOR ALL ACT OF 2004

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 823 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 823

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 5107) to protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Sensenbrenner of Wisconsin or his designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for twenty minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, this morning the Rules Committee met and granted a modified closed rule for H.R. 5107, the Justice for All Act. The measure is a combination of a House-passed bill, H.R. 3214, expanding DNA testing to catch more criminals and to allow wrongly convicted people a chance to prove their innocence, and a Senate-passed bill, S. 2329, that improves victims' rights.

I am also very pleased that the gentleman from Wisconsin (Mr. SENSENBRENNER) included a manager's amendment to address Members' concerns and the Department of Justice, as well as victims' rights groups' concerns. H.R. 3214 passed the House in November, 2003, by a 357–67 margin. S. 2329 passed the Senate in April 2004 on a 96–1 vote.

Regarding the crimes victims portion of this bill, the legislation seeks to remedy the apparent disparity between

the great number of rights and protections afforded to a person accused of a crime, but the relatively few rights and remedies for victims. The bill amplifies the existing rights for victims and sets forth an explicit enforcement mechanism. Additionally, H.R. 5107 provides funding for legal counsel for victims to assist them in the process and to ensure that these rights are enforced.

On the DNA side of this bill, it seeks to position DNA testing so it can finally reach its enormous potential.

Unfortunately, the current Federal and State DNA collection and analysis system suffers from a variety of problems. In many cases public crime laboratories are overwhelmed by backlogs of unanalyzed DNA samples, samples that could be used to solve violent crimes if the States had the funds to eliminate this backlog.

In my home State of North Carolina, the number of unprocessed DNA samples is 7,000 and the number of unprocessed DNA rape kits is estimated to be 6,000. North Carolina authorities say that the processing and entering of the DNA backlog could solve hundreds of crimes.

This legislation will authorize a significant increase in resources to better use DNA in solving crimes, taking dangerous people off the streets and sparing many innocent Americans from further crimes. To that end, I urge my colleagues to support the rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I thank the gentlewoman from North Carolina for yielding me this time, and I yield myself such time as I may consume.

I rise in strong support of the underlying legislation. I commend our colleagues on the Committee on the Judiciary for their excellent bipartisan work. Perhaps this should be a model to all of us here in the House of Representatives.

Mr. Speaker, the underlying bill makes DNA technology available to our criminal justice system in order to enhance its efficiency and certainty in exonerating the innocent as well as identifying and convicting the guilty.

News stories praising the successful use of DNA to solve crimes are plentiful. To give just an example, consider the following: After 14 years on Florida's death row, Frank Lee Smith died of cancer on January 30, 2000, before he was exonerated of rape and murder. An autopsy revealed that the victim had been raped and sodomized. Through shaky eyewitness descriptions, the police put together a composite sketch that set off Frank Lee Smith's arrest on April 29, 1985. The prosecution relied on the identification of Smith by the victim's mother and Smith's criminal history. The jury unanimously recommended the death penalty.

Mr. Speaker, only after Smith's death was a blood sample from him obtained by the State prosecutor's office which was then tested against a semen sample taken from the victim. The samples were sent to the FBI laboratory, which reported that Frank Lee Smith was excluded as the depositor of the semen. On December 15, 2000, 11 months after his death and 14 years after his 1986 conviction, Frank Lee Smith was exonerated based on exculpatory DNA testing results. These results not only cleared Smith of the crime, but also identified Eddie Lee Mosley, a convicted rapist and murderer, as the true perpetrator.

The case of Frank Lee Smith is not unique. Since 1976, 111 people in 25 States have been released after spending years on death row for crimes they did not commit. DNA testing was responsible for exonerating 12 of the people freed from death row and another 126 who were wrongfully convicted of serious crimes. In at least 34 of these cases, the same tests that exonerated an innocent person led to the apprehension of the real perpetrator.

Despite DNA's enormous potential, the current Federal and State DNA collection and analysis system suffers from a variety of problems. In many instances, public crime laboratories are overwhelmed by backlogs of unanalyzed DNA samples, as pointed out by my colleague and friend from North Carolina (Mrs. MYRICK). In addition, many of the laboratories are ill-equipped to handle the increasing flow of DNA samples and evidence.

Furthermore, the problems of backlogs and the lack of up-to-date technology result in significant delays in the administration of justice. For example, some estimates indicate that DNA evidence from at least 300,000 rape crime scenes have been collected but never analyzed in a crime lab.

As you can imagine, Mr. Speaker, the cases of those exonerated by DNA testing have revealed disturbing fissures and trends in our criminal justice system. They confirm that our criminal justice system is fallible. Judges, juries, police, defense attorneys and prosecutors are all human and all make mistakes.

But we have the means at our disposal to minimize this. The underlying legislation could have an immediate and direct effect, and I urge my colleagues to support its passage. With our action today, many crimes can be solved, many guilty people can be taken off the streets, and many victims can be spared from further crimes.

Mr. Speaker, I ask my colleagues to vote for this rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Illinois (Mr. LAHOOD), the original author of the House bill who has been working on this issue for a long, long time.

(Mr. LAHOOD asked and was given permission to revise and extend his remarks.)

Mr. LAHOOD. I thank the gentlewoman from North Carolina for yielding me this time.

Mr. Speaker, I have been a part of a group of people that have worked on this bill. Primarily my friend from Massachusetts (Mr. DELAHUNT) and I some 5 years ago started working on this bill.

This is a very good bill. I urge Members to support the rule and to support the bill.

□ 1045

We have been down this path a few times before in the House, and we are trying to find a way to get our friends in the other body to come along with us. But I got involved in this as a proponent of the death penalty and somebody who supports the death penalty, but also as a result of a group of students at Northwestern University several years ago, who did a study of those sitting on death row and found that of those who were on death row that had been given the death sentence, 12 of them were actually innocent and were released by the governor of the State of Illinois because they were innocent, which means that there were 12 people out on the street who had actually committed the crimes.

This bill allows for the ability of people who have the responsibility for prosecuting these cases to have 100 percent certainty, through the use of DNA testing, through the use of providing that competent counsel is provided to defendants, people that really know how to deal with capital cases. And it is a very important way to really fix a flawed criminal justice system, a system that has allowed for innocent people to sit on death row and guilty people to be out on the street.

It is a very good bill, and I want to really congratulate the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the Committee on the Judiciary, for his willingness to look at this bill and to do some things that he felt were important; and also the gentleman from Massachusetts (Mr. DELAHUNT) for hanging in there with us on this.

I think we have a chance to pass this this year. And it would be a very good fix, to fix a flawed system in our country and really give a sense of opportunity to people that innocent people are not going to be convicted, and guilty people are going to be found and tracked down and locked up and, in some instances, be given the death penalty for serious crimes.

I thank the gentlewoman for yielding me this time, and I look forward to the House passing this bill today.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me, first of all, add my appreciation to the cosponsors of this legislation, particularly the gentleman

from Illinois and the gentleman from Massachusetts. Americans cannot imagine how important this legislation is. And as I do that, let me recite some of the elements of the bill that are very important and to be able to congratulate them on that.

The bill would increase the authorized funding levels for the DNA analysis backlog elimination program to $151 million per year for the next 5 years. This will help eliminate the large backlog of DNA evidence that has not been analyzed and provide resources to remedy the lack of training, equipment, technology, and standards for handling DNA and other forensic evidence.

This bill also authorizes funding for training for law enforcement, correctional court and medical personnel on the use of DNA evidence, and authorizes grant programs to reduce other forensic science backlog, research, new DNA technology, and promotes the use of DNA technology to identify missing persons and provides funds for the FBI and the administration of DNA programs.

I wanted to list that because this is an act of love and respect for justice. It includes respect for the rights of the States who protect the injured and the victims. At the same time, it has the approval and support of the Innocence Project, which has worked with many of us around the Nation, but particularly, Mr. Speaker, in the State of Texas.

Let me tell the Members why this legislation is so crucial, and particularly for States like mine.

Over the last 2 years we have had a complete collapse of the DNA laboratory in the State of Texas, but let me specifically cite Harris County. Unfortunately, unlike the two legislators who have cosponsored this legislation, in Texas, of course, we have not had the kind of reasonable response by our district attorney and our lab is still in collapse.

This funding and this sort of guide will help local jurisdictions, including State governments and county governments who have the responsibility to prosecute on behalf of the victims, to get it right. We have not been able to get it right. And, frankly, in not getting it right, we have seen the 12 that have been on the streets in Illinois and the many victims in the State of Texas.

For example, Josiah Sutton was an individual whose DNA had not been appropriately reviewed, and, therefore, he was convicted and sentenced to many years for rape he did not do. This legislation helps to bring that into focus and to be able to suggest that we can handle justice for the victims, but as well, justice for the unfortunately accused.

Let me also say what this DNA legislation will do. It will provide the standards that are necessary and the guidelines that prosecutors need to adhere to. In our State, Senator Rodney Ellis has called for a moratorium of any executions, particularly coming out of Harris County, because we have a faulty DNA. The tragedy, of course, is that it has not been listened to.

I hope with the successful passage of this legislation we will be able to send a loud message. I would have wanted, however, a fuller open rule on this legislation, but my sensitivity to the importance of it would suggest that even without the open rule, we should move forward.

But let me suggest that there are many other aspects of DNA that can be used effectively. My legislation that has been enthusiastically embraced by John Walsh of ''America's Most Wanted'' had to do with providing a DNA bank for child predators. We know that over the years this House has been in a flurry around the incidences of abducted children, where children have been abducted. The tragedy that occurred in Utah with respect to Ms. Smart, I had her father testify before our committee dealing with issues on child abduction.

And let me just say that having a DNA bank that banks those who have been convicted of acts against children, violent acts, sexual acts against children, would also help our law enforcement across the Nation be able to both find the culprit and also relieve the innocent of the burden of being convicted falsely. We know in that case one of the individuals that was incarcerated ultimately died and happened not to be the particular perpetrator in that case.

But let me just say that I am hoping that the legislation will find legs as we might move into the next Congress.

But I do want to stand and support this legislation, Justice for All Act of 2004, and say to my constituents, and particularly the district attorney of Harris County, it is time to wake up. It is time to recognize new technology. It is time to embrace this legislation as it helps our local jurisdiction. And I might say that at the passage of this legislation today, I hope my district attorney, District Attorney Rosenthal, will recognize the importance of a moratorium on executions as they did in Illinois.

I ask my colleagues to support the rule and to support this legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4850, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2005

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 822 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 822

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 4850) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2005, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore (Mr. ISAKSON). The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, this is a standard rule for consideration of an appropriations conference report, and H. Res. 822 provides for the consideration of the conference reports for H.R. 4850, the District of Columbia Appropriations Act of 2005. The rule waives all points of order against the conference report and against its consideration. It also provides that the conference report shall be considered as read.

Mr. Speaker, the House Committee on Appropriation continues to work hard to complete the work on the remaining appropriations bills in order to fund the responsibilities of the Federal Government. It has passed 12 of 13 regular appropriations bills and continues to work with the House and Senate leadership and the Senate Appropriations Committee to complete the appropriations process.

While the 108th Congress has passed a continuing resolution funding the government through November 20, I am pleased that the gentleman from New Jersey (Mr. FRELINGHUYSEN) and the District of Columbia Subcommittee of the Committee on Appropriations today presents the House with another individual appropriations conference report to send to the President.

Mr. Speaker, I believe that the details of a bill should principally be discussed during a general debate on this legislation. However, I did want to note that the fiscal year 2005 D.C. Appropriations bill will provide funding for the new Bioterrorism and Forensics Lab and will provide full funding for the school improvement program, including $13 million for public school improvements, $13 million for charter schools, and $14 million for opportunity scholarships to promote academic achievement and school choice.

I support these efforts to assist the District of Columbia students whose opportunities for success and growth are undermined simply because they reside in one of the least effective school districts in America.

Mr. Speaker, the Committee on Rules has reported a good rule for consideration of this conference report, and I urge my colleagues to support it so that we may proceed with the general debate and consideration of this bipartisan legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume, and I thank the gentleman from Georgia (Mr. LINDER) for yielding me the customary time.

Mr. Speaker, this rule is typical of that for most conference reports, and I will not oppose it.

Mr. Speaker, there is no perfect legislation and certainly not when it comes to funding matters. The underlying conference report providing appropriations for the District of Columbia in fiscal year 2005 includes a variety of provisions that are controversial and detrimental to the District's residents and, frankly, the country as a whole.

I do not have to tell my colleagues about the uniqueness of the District of Columbia as a Federal city. It is the only place in the Nation where constitutionally Congress can exercise micromanagement at the highest and lowest of levels.

Taking into consideration the fact that the District of Columbia has no voting representation in Congress, we should be mindful of this privileged duty and careful not to put our parochial agendas on the table when considering this conference report.

As the gentleman from Georgia mentioned, the report approves the expenditure of a total of $8.3 billion in local funds for the District and directly appropriates $560 million for various District programs and projects. It includes $25.6 million for a tuition assistance program for college-bound students, $3 million for improvements to the Anacostia waterfront area, $6 million for a new public school library initiative, and $5 million to improve foster care in the District.

While there are many quality programs funded by the conference report, such as the ones I just mentioned, the report also includes legislative riders that are a smorgasbord of controversy. The report prohibits the use of funds for abortions, registering same-sex couples, and for the distribution of clean needles and syringes. None of these prohibitions were sought by the District, and they represent nothing more than the ideological impositions of the majority.

Furthermore, deep down inside the conference report is what the majority has dubbed a three-pronged school choice program. This program is heralded by school voucher advocates as a way to improve academic performance while promoting school choice. The reality is, however, the approach is a direct cut in Congress' funding commitment to the District's public schools.

□ 1100

That, Mr. Speaker, is an embarrassment to this institution.

Our education system will never improve if we continue to divert our attention away from improving public schools, the schools that are free of cost and guaranteed to every child in America. Our public schools will never improve if we continue to underfund the No Child Left Behind Act. If the majority wants to point fingers at who is to fault for failures in our education system, then it ought to stop pointing fingers at the District of Columbia and start pointing them at all of our districts that have failing schools.

In less than 3 years after its passage, the No Child Left Behind Act has been underfunded by President Bush and Congressional Republicans by more than $27 billion. Let me repeat that. In less than 3 years after its passage, the No Child Left Behind Act has been underfunded by President Bush and Congressional Republicans by more than $27 billion.

If we want to have a real discussion about education, then let's have one. But let us be honest with the American people about what we are doing to the entire Nation's education system. Let us start telling the American people the truth and stop using the District as a petri dish of ideological shortcomings when considering the needs and lives of the residents of the Nation's Capital.

It is high time that we as lawmakers in this great body stop playing political chess games with our responsibility to this process. We should allow the people of Washington, D.C., to govern themselves, and they should have a voting privilege in the House of Representatives.

Funding for the education of the Nation's children and overall healthy well-being of its citizens should be our primary focus and goal. The D.C. appropriations bill is not the stage to act out our experimental projects that will not necessarily prove beneficial in the end.

We must be mindful of the District's citizens that we have been given charge over. They are silenced in this process by the Constitution, and we must be responsible in our actions on their behalf.

I urge my colleagues to consider this responsibility when voting on the underlying conference report.

Mr. HASTINGS of Florida. Mr. Speaker, I am privileged to yield 7 minutes to my good friend, the gentlewoman from the District of Columbia (Ms. NORTON), the non-voting Delegate that should be voting like all of us, especially on this subject, who on behalf of this community has pursued outstanding legislation.

Ms. NORTON. Mr. Speaker, I thank the gentleman for yielding me time. I thank the gentleman for his graciousness in respecting the independence of the people of the District of Columbia, citizens of the United States entitled to the same rights that all other Americans have.

I appreciate that the Committee on Rules, its chairman, its ranking member, Members who come forward today with this bill, have brought forward a conference report and a rule that enables the District of Columbia to get its own money out, and the money that is due it from the Federal Government, on time.

I think that we should be apologizing to the American people that, at a time when all but two of our appropriations are not out, as we get ready to go home, we are having to spend time on the budget of a local jurisdiction. It must be hard to make people back home understand what we are doing, working on the taxpayer-raised budget of the District of Columbia and its Federal funds, rather than on the large Federal appropriations that await conference reports and the President's signature.

At the same time, I am grateful for the timeliness of this conference report. Of the 13 appropriations bills, only two, Defense and D.C., will be signed by the President when we leave to go home at the end of this week. In a real sense, this turns on its head the practice in recent years and, certainly, since the Republican majority has been in control.

D.C., irrelevant, literally irrelevant, to Members of the House and Senate, because almost all of the money is raised by our own local residents and taxpayers, D.C., the smallest, has traditionally been the most troublesome of the appropriations; the last out, the appropriation that caused more Members to come to the floor with amendments. Amendments that had to do with the District of Columbia? Absolutely not. Amendments that were of special interest to that Member but of no relevance to the District of Columbia.

The opposite has been the case this year, and it is because of the leadership of the appropriators and of the authorizers. There are no new riders. Three were threatened, but the appropriators and the authorizers worked together so that those riders did not come forward to be voted on on this floor. It is not that these Members are omnipotent, it is that, when leaders exercise leadership and discourage extraneous material, particularly on the appropriation of a local jurisdiction, an independent jurisdiction, their leadership can and this year has proved to be critical.

At the same time, I must take strong exception to the riders that remain; not new riders, but riders that remain. They are particularly inexcusable.

First, the needle-exchange rider, which makes D.C. alone in the United States of America. Hundreds of jurisdictions use their own money to pay for the exchange of dirty needles for clean needles, in accordance with all of the scientific evidence, and, I may say, all of the great scientific organizations, official and private, that say you save lives when you do not allow dirty needles to be passed around so that you spread HIV-AIDS.

So I should thank the Congress of the United States in the name of the people of the District of Columbia that, because of the needle-exchange admonition and bar in our appropriation, we have the highest HIV-AIDS rate in the country.

The interference with needle exchange, of course, is very different from other interference, because it costs lives. It is why we have so many men, women and children who otherwise would not be anywhere close to the AIDS epidemic with AIDS today. That calamity is laid at the feet of this Congress and essentially at the feet of this House, because the Senate asked that the District be able to spend its own local money for needle exchange. It was the House that refused to let the conference report come forward if, in fact, that was included.

There are, of course, other old riders in this bill. The old rider that says all the rest of you in the United States of America can spend your money for abortions for poor women, but not the residents of the District of Columbia. They are American citizens, but we are not about to treat them as first-class citizens. Remember, they are second-class citizens. So they can't spend their own money for abortions for their own poor women.

Perhaps as a matter of ordinary democracy, the most shameful rider says that the District can't spend its own money to lobby for its own rights. This House, not the Senate, the Senate has said, we are not on that boat, let them spend their own money if they want to spend their own money to get full and equal rights in the House and in the Senate, and we think that is their right and prerogative as Americans, but the House said, ''Oh, no, that is not for the District. In my district, we better be able to spend our own money to lobby for anything we want to. Not in the Nation's Capital.''

This is a time of war, this is a time of great and urgent matters in our country. This is not the time when we ought to be considering this appropriation at all. At the same time, I am grateful that, if it had to be here, that before we went home this appropriation was out of Congress; that I am not here in November, that I am not here in December, trying to get my own money out of this Congress.

In past years, the House has been critical of the management of the District of Columbia without conceding that not allowing the District to spend its own money on time has wrapped the District in knots as it tries to balance on last year's budget while waiting for the Congress to release its own money.

The appropriators, the gentleman from New Jersey (Mr. FRELINGHUYSEN), the gentleman from Pennsylvania (Mr. FATTAH), our authorizer, the gentleman from Virginia (Mr. TOM DAVIS), have gone very far in helping us to meet this burden. I appreciate that the Committee on Rules has taken taking us to the next step and making us one of two appropriations to clear the Congress before we clear out of here.

Mr. HASTINGS of Florida. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5107.

The SPEAKER pro tempore (Mr. ISAKSON). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

JUSTICE FOR ALL ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 823, I call up the bill (H.R. 5107), to protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 823, the bill is considered read for amendment.

The text of H.R. 5107 is as follows:

H.R. 5107

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 ''Justice for All Act of 2004''.

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

Sec. 1. Short title; table of contents.

TITLE I—SCOTT CAMBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

Sec. 101. Short title.
Sec. 102. Crime victims' rights.
Sec. 103. Increased resources for enforcement of crime victims' rights.
Sec. 104. Reports.

TITLE II—DEBBIE SMITH ACT OF 2004

Sec. 201. Short title.
Sec. 202. Debbie Smith DNA Backlog Grant Program.
Sec. 203. Expansion of Combined DNA Index System.
Sec. 204. Tolling of statute of limitations.
Sec. 205. Legal assistance for victims of violence.
Sec. 206. Ensuring private laboratory assistance in eliminating DNA backlog.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

Sec. 301. Short title.
Sec. 302. Ensuring public crime laboratory compliance with Federal standards.
Sec. 303. DNA training and education for law enforcement, correctional personnel, and court officers.
Sec. 304. Sexual assault forensic exam program grants.
Sec. 305. DNA research and development.
Sec. 306. National Forensic Science Commission.
Sec. 307. FBI DNA programs.
Sec. 308. DNA identification of missing persons.
Sec. 309. Enhanced criminal penalties for unauthorized disclosure or use of DNA information.
Sec. 310. Tribal coalition grants.
Sec. 311. Expansion of Paul Coverdell Forensic Sciences Improvement Grant Program.
Sec. 312. Report to Congress.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

Sec. 401. Short title.

Subtitle A—Exonerating the innocent through DNA testing

Sec. 411. Federal post-conviction DNA testing.
Sec. 412. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.
Sec. 413. Incentive grants to States to ensure consideration of claims of actual innocence.

Subtitle B—Improving the quality of representation in State capital cases

Sec. 421. Capital representation improvement grants.
Sec. 422. Capital prosecution improvement grants.
Sec. 423. Applications.
Sec. 424. State reports.
Sec. 425. Evaluations by Inspector General and administrative remedies.
Sec. 426. Authorization of appropriations.

Subtitle C—Compensation for the wrongfully convicted

Sec. 431. Increased compensation in Federal cases for the wrongfully convicted.
Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

TITLE I—SCOTT CAMBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act''.

SEC. 102. CRIME VICTIMS' RIGHTS.

(a) AMENDMENT TO TITLE 18.—Part II of title 18, United States Code, is amended by adding at the end the following:

''CHAPTER 237—CRIME VICTIMS' RIGHTS

''Sec.
''3771. Crime victims' rights.

''§ 3771. Crime victims' rights

''(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

''(1) The right to be reasonably protected from the accused.

''(2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.

''(3) The right not to be excluded from any such public court proceeding, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at that proceeding.

''(4) The right to be reasonably heard at any public proceeding involving release, plea, or sentencing.

''(5) The reasonable right to confer with the attorney for the Government in the case.

''(6) The right to full and timely restitution as provided in law.

''(7) The right to proceedings free from unreasonable delay.

''(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

''(b) RIGHTS AFFORDED.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before denying a crime victim the right described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

''(c) BEST EFFORTS TO ACCORD RIGHTS.—

''(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

''(2) ADVICE OF ATTORNEY.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

''(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

''(d) ENFORCEMENT AND LIMITATIONS.—

''(1) RIGHTS.—The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

''(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

''(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide such motion forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five day, or affect the defendant's right to a speedy trial, for purposes of enforcing this chapter.

''(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

''(5) LIMITATION ON RELIEF.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial, or to reopen a plea or a sentence, except in the case of restitution as provided in title 18.

''(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

''(e) DEFINITIONS.—For the purposes of this chapter, the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

''(f) PROCEDURES TO PROMOTE COMPLIANCE.—

''(1) REGULATIONS.—Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

''(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

''(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

''(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

''(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

''(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.''.

(b) TABLE OF CHAPTERS.—The table of chapters for part II of title 18, United States Code, is amended by inserting at the end the following:

''237. Crime victims' rights ..... 3771''.

(c) REPEAL.—Section 502 of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10606) is repealed.

SEC. 103. INCREASED RESOURCES FOR ENFORCEMENT OF CRIME VICTIMS' RIGHTS.

(a) CRIME VICTIMS LEGAL ASSISTANCE GRANTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404C the following:

''SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.

''(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims' rights as provided in law.

''(b) PROHIBITION.—Grant amounts under this section may not be used to bring a cause of action for damages.

''(c) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d) of the Victims of Crime Act of 1984, there are authorized to be appropriated to carry out this title—

(1) $2,000,000 for fiscal year 2005 and $5,000,000 for each of fiscal years 2006, 2007, 2008, and 2009 to United States Attorneys Offices for Victim/Witnesses Assistance Programs;

(2) $2,000,000 for fiscal year 2005 and $5,000,000 in each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for enhancement of the Victim Notification System;

(3) $300,000 in fiscal year 2005 and $500,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for staff to administer the appropriation for the support of organizations as designated under paragraph (4);

(4) $7,000,000 for fiscal year 2005 and $11,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code; and

(5) $5,000,000 for fiscal year 2005 and $7,000,000 for each of fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of—

(A) training and technical assistance to States and tribal jurisdictions to craft state-of-the-art victims' rights laws; and

(B) training and technical assistance to States and tribal jurisdictions to design a variety of compliance systems, which shall include an evaluation component.

(c) INCREASED RESOURCES TO DEVELOP STATE-OF-THE-ART SYSTEMS FOR NOTIFYING CRIME VICTIMS OF IMPORTANT DATES AND DEVELOPMENTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404D the following:

''SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.

''(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal

proceedings at issue in a timely and efficient manner, provided that the jurisdiction has laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code.

''(b) INTEGRATION OF SYSTEMS.—Systems developed and implemented under this section may be integrated with existing case management systems operated by the recipient of the grant.

''(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d), there are authorized to be appropriated to carry out this section—

''(1) $5,000,000 for fiscal year 2005; and

''(2) $5,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009.

''(d) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation.''.

SEC. 104. REPORTS.

(a) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached.

(b) GOVERNMENT ACCOUNTABILITY OFFICE.—

(1) STUDY.—The Comptroller General shall conduct a study that evaluates the effect and efficacy of the implementation of the amendments made by this title on the treatment of crime victims in the Federal system.

(2) REPORT.—Not later than 4 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to the appropriate committees a report containing the results of the study conducted under subsection (a).

TITLE II—DEBBIE SMITH ACT OF 2004

SEC. 201. SHORT TITLE.

This title may be cited as the ''Debbie Smith Act of 2004''.

SEC. 202. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

(a) DESIGNATION OF PROGRAM; ELIGIBILITY OF LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) by amending the heading to read as follows:

''SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.'';

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or units of local government'' after ''eligible States''; and

(ii) by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (2), by inserting before the period at the end the following: '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect''; and

(C) in paragraph (3), by striking ''within the State'';

(3) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or unit of local government'' after ''State'' both places that term appears; and

(ii) by inserting '', as required by the Attorney General'' after ''application shall'';

(B) in paragraph (1), by inserting ''or unit of local government'' after ''State'';

(C) in paragraph (3), by inserting ''or unit of local government'' after ''State'' the first place that term appears;

(D) in paragraph (4)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking ''and'' at the end;

(E) in paragraph (5)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''The plan'' and inserting ''A plan pursuant to subsection (b)(1)'';

(ii) in subparagraph (A), by striking ''within the State''; and

(iii) in subparagraph (B), by striking ''within the State''; and

(B) in paragraph (2)(A), by inserting ''and units of local government'' after ''States'';

(5) in subsection (e)—

(A) in paragraph (1), by inserting ''or local government'' after ''State'' both places that term appears; and

(B) in paragraph (2), by inserting ''or unit of local government'' after ''State'';

(6) in subsection (f), in the matter preceding paragraph (1), by inserting ''or unit of local government'' after ''State'';

(7) in subsection (g)—

(A) in paragraph (1), by inserting ''or unit of local government'' after ''State''; and

(B) in paragraph (2), by inserting ''or units of local government'' after ''States''; and

(8) in subsection (h), by inserting ''or unit of local government'' after ''State'' both places that term appears.

(b) REAUTHORIZATION AND EXPANSION OF PROGRAM.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting ''(1) or'' before ''(2)''; and

(B) by inserting at the end the following:

''(4) To collect DNA samples specified in paragraph (1).

''(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.'';

(2) in subsection (b), as amended by this section, by inserting at the end the following:

''(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).'';

(3) by amending subsection (c) to read as follows:

''(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

''(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

''(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

''(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

''(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

''(ii) the population in the jurisdiction; and

''(iii) the number of part 1 violent crimes in the jurisdiction.

''(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

''(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

''(A) For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(E) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).'';

(4) in subsection (g)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.'';

(5) in subsection (j), by striking paragraphs (1) and (2) and inserting the following:

''(1) $151,000,000 for fiscal year 2005;

''(2) $151,000,000 for fiscal year 2006;

''(3) $151,000,000 for fiscal year 2007;

''(4) $151,000,000 for fiscal year 2008; and

''(5) $151,000,000 for fiscal year 2009.''; and

(6) by adding at the end the following:

''(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

''(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

''(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

''(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

''(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

''(C) to support future capacity building efforts; and

''(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally

recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

''(1) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.''.

SEC. 203. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking ''of persons convicted of crimes;'' and inserting the following: ''of—

''(A) persons convicted of crimes;

''(B) persons who have been indicted or who have waived indictment for a crime; and

''(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from arrestees who have not been indicted and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the Combined DNA Index System;''; and

(2) in subsection (d)(2)—

(A) by striking ''if the responsible agency'' and inserting ''if—

''(i) the responsible agency'';

(B) by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.''.

(b) FELONS CONVICTED OF FEDERAL CRIMES.—Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

''(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

''(1) Any felony.

''(2) Any offense under chapter 109A of title 18, United States Code.

''(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

''(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).''.

(c) MILITARY OFFENSES.—Section 1565(d) of title 10, United States Code, is amended to read as follows:

''(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

''(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

''(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).''.

(d) KEYBOARD SEARCHES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132), as amended by subsection (a), is further amended by adding at the end the following new subsection:

''(e) AUTHORITY FOR KEYBOARD SEARCHES.—

''(1) IN GENERAL.—The Director shall ensure that any person who is authorized to access the index described in subsection (a) for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'keyboard search' means a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.

''(3) NO PREEMPTION.—This subsection shall not be construed to preempt State law.''.

SEC. 204. TOLLING OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3297. Cases involving DNA evidence

''In a case in which DNA testing implicates an identified person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3297. Cases involving DNA evidence.''.

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section if the applicable limitation period has not yet expired.

SEC. 205. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

Section 1201 of the Violence Against Women Act of 2000 (42 U.S.C. 3796gg–6) is amended—

(1) in subsection (a), by inserting ''dating violence,'' after ''domestic violence,'';

(2) in subsection (b)—

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

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

''(1) DATING VIOLENCE.—The term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of—

''(A) the length of the relationship;

''(B) the type of relationship; and

''(C) the frequency of interaction between the persons involved in the relationship.''; and

(C) in paragraph (3), as redesignated by subparagraph (A), by inserting ''dating violence,'' after ''domestic violence,'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting '', dating violence,'' after ''between domestic violence''; and

(ii) by inserting ''dating violence,'' after ''victims of domestic violence,'';

(B) in paragraph (2), by inserting ''dating violence,'' after ''domestic violence,''; and

(C) in paragraph (3), by inserting ''dating violence,'' after ''domestic violence,'';

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', dating violence,'' after ''domestic violence'';

(B) in paragraph (2), by inserting '', dating violence,'' after ''domestic violence'';

(C) in paragraph (3), by inserting '', dating violence,'' after ''domestic violence''; and

(D) in paragraph (4), by inserting ''dating violence,'' after ''domestic violence,'';

(5) in subsection (e), by inserting ''dating violence,'' after ''domestic violence,''; and

(6) in subsection (f)(2)(A), by inserting ''dating violence,'' after ''domestic violence,''.

SEC. 206. ENSURING PRIVATE LABORATORY ASSISTANCE IN ELIMINATING DNA BACKLOG.

Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended to read as follows:

''(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

''(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services.

''(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

''(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).''.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

SEC. 301. SHORT TITLE.

This title may be cited as the ''DNA Sexual Assault Justice Act of 2004''.

SEC. 302. ENSURING PUBLIC CRIME LABORATORY COMPLIANCE WITH FEDERAL STANDARDS.

Section 210304(b)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14132(b)(2)) is amended to read as follows:

''(2) prepared by laboratories that—

''(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

''(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and''.

SEC. 303. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence.

(b) ELIGIBLE ENTITY.—For purposes of subsection (a), an eligible entity is an organization consisting of, comprised of, or representing—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $12,500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) ELIGIBLE ENTITY.—For purposes of this section, the term ''eligible entity'' includes—

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs;

(D) State sexual assault coalitions;

(E) medical personnel, including doctors, medical examiners, coroners, and nurses, involved in treating victims of sexual assault; and

(F) victim service providers involved in treating victims of sexual assault.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 305. DNA RESEARCH AND DEVELOPMENT.

(a) IMPROVING DNA TECHNOLOGY.—The Attorney General shall make grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) DEMONSTRATION PROJECTS.—The Attorney General shall make grants to appropriate entities under which research is carried out through demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 306. NATIONAL FORENSIC SCIENCE COMMISSION.

(a) APPOINTMENT.—The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under subsection (b).

(b) RESPONSIBILITIES.—The Commission shall—

(1) assess the present and future resource needs of the forensic science community;

(2) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(4) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(5) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(6) examine additional issues pertaining to forensic science as requested by the Attorney General;

(7) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(8) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in paragraph (7) to ensure—

(A) the appropriate use and dissemination of DNA information;

(B) the accuracy, security, and confidentiality of DNA information;

(C) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(D) that any other necessary measures are taken to protect privacy; and

(9) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in paragraphs (1) through (8).

(c) PERSONNEL; PROCEDURES.—The Attorney General shall—

(1) designate the Chair of the Commission from among its members;

(2) designate any necessary staff to assist in carrying out the functions of the Commission; and

(3) establish procedures and guidelines for the operations of the Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 307. FBI DNA PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Bureau of Investigation $42,100,000 for each of fiscal years 2005 through 2009 to carry out the DNA programs and activities described under subsection (b).

(b) PROGRAMS AND ACTIVITIES.—The Federal Bureau of Investigation may use any amounts appropriated pursuant to subsection (a) for—

(1) nuclear DNA analysis;

(2) mitochondrial DNA analysis;

(3) regional mitochondrial DNA laboratories;

(4) the Combined DNA Index System;

(5) the Federal Convicted Offender DNA Program; and

(6) DNA research and development.

SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.

(a) IN GENERAL.—The Attorney General shall make grants to States and units of local government to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 309. ENHANCED CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE OF DNA INFORMATION.

Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to read as follows:

''(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $100,000. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.''.

SEC. 310. TRIBAL COALITION GRANTS.

(a) IN GENERAL.—Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

''(d) TRIBAL COALITION GRANTS.—

''(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

''(A) increasing awareness of domestic violence and sexual assault against Indian women;

''(B) enhancing the response to violence against Indian women at the tribal, Federal, and State levels; and

''(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.

''(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—

''(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against Indian women; and

''(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.

''(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).''.

(b) TECHNICAL AMENDMENT.—Effective as of November 2, 2002, and as if included therein as enacted, Public Law 107–273 (116 Stat. 1789) is amended in section 402(2) by striking ''sections 2006 through 2011'' and inserting ''sections 2007 through 2011''.

(c) AMOUNTS.—Section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (as redesignated by section 402(2) of Public Law 107–273, as amended by subsection (b)) is amended by amending subsection (b)(4) (42 U.S.C. 3796gg–1(b)(4)) to read as follows:

''(4) 1/54 shall be available for grants under section 2001(d);''.

SEC. 311. EXPANSION OF PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANT PROGRAM.

(a) FORENSIC BACKLOG ELIMINATION GRANTS.—Section 2804 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797m) is amended—

(1) in subsection (a)—

(A) by striking ''shall use the grant to carry out'' and inserting ''shall use the grant to do any one or more of the following:

''(1) To carry out''; and

(B) by adding at the end the following:

''(2) To eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

''(3) To train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.'';

(2) in subsection (b), by striking ''under this part'' and inserting ''for the purpose set forth in subsection (a)(1)''; and

(3) by adding at the end the following:

''(e) BACKLOG DEFINED.—For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—

''(1) has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility; and

''(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.''.

(b) EXTERNAL AUDITS.—Section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797k) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.''.

(c) THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(24) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(24)) is amended—

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

(2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(G) $20,000,000 for fiscal year 2007;

''(H) $20,000,000 for fiscal year 2008; and

''(I) $20,000,000 for fiscal year 2009.''.

(d) TECHNICAL AMENDMENT.—Section 1001(a) of such Act, as amended by subsection (c), is further amended by realigning paragraphs (24) and (25) so as to be flush with the left margin.

SEC. 312. REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the implementation of this Act and the amendments made by this Act.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the progress made by Federal, State, and local entities in—

(A) collecting and entering DNA samples from offenders convicted of qualifying offenses for inclusion in the Combined DNA Index System (referred to in this subsection as ''CODIS'');

(B) analyzing samples from crime scenes, including evidence collected from sexual assaults and other serious violent crimes, and entering such DNA analyses in CODIS; and

(C) increasing the capacity of forensic laboratories to conduct DNA analyses;

(2) the priorities and plan for awarding grants among eligible States and units of local government to ensure that the purposes of this Act are carried out;

(3) the distribution of grant amounts under this Act among eligible States and local governments, and whether the distribution of such funds has served the purposes of the Debbie Smith DNA Backlog Grant Program;

(4) grants awarded and the use of such grants by eligible entities for DNA training and education programs for law enforcement, correctional personnel, court officers, medical personnel, victim service providers, and other personnel authorized under sections 303 and 304;

(5) grants awarded and the use of such grants by eligible entities to conduct DNA research and development programs to improve forensic DNA technology, and implement demonstration projects under section 305;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 306;

(7) the use of funds by the Federal Bureau of Investigation under section 307;

(8) grants awarded and the use of such grants by eligible entities to promote the use of forensic DNA technology to identify missing persons and unidentified human remains under section 308;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under the amendments made by section 311;

(10) State compliance with the requirements set forth in section 413; and

(11) any other matters considered relevant by the Attorney General.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

SEC. 401. SHORT TITLE.

This title may be cited as the ''Innocence Protection Act of 2004''.

Subtitle A—Exonerating the Innocent Through DNA Testing

SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

(1) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

''CHAPTER 228A—POST-CONVICTION DNA TESTING

''Sec.

''3600. DNA testing.

''3600A. Preservation of biological evidence.

''§ 3600. DNA testing

''(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the 'applicant'), the court that entered the judgment of conviction shall order DNA testing of specific evidence if—

''(1) the applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

''(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

''(B) another Federal or State offense, if—

''(i)(I) such offense was legally necessary to make the applicant eligible for a sentence as a career offender under section 3559(e) or an armed career offender under section 924(e), and exoneration of such offense would entitle the applicant to a reduced sentence; or

''(II) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and

''(ii) in the case of a State offense—

''(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

''(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense;

''(2) the specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant's assertion under paragraph (1);

''(3) the specific evidence to be tested—

''(A) was not previously subjected to DNA testing and the applicant did not knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

''(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing;

''(4) the specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing;

''(5) the proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices;

''(6) the applicant identifies a theory of defense that—

''(A) is not inconsistent with an affirmative defense presented at trial; and

''(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1);

''(7) if the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial;

''(8) the proposed DNA testing of the specific evidence—

''(A) would produce new material evidence to support the theory of defense referenced in paragraph (6); and

''(B) assuming the DNA test result excludes the applicant, would raise a reasonable probability that the applicant did not commit the offense;

''(9) the applicant certifies that the applicant will provide a DNA sample for purposes of comparison; and

''(10) the applicant's motion is filed for the purpose of demonstrating the applicant's actual innocence of the Federal or State offense, and not to delay the execution of the sentence or the administration of justice.

''(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

''(1) NOTICE.—Upon the receipt of a motion filed under subsection (a), the court shall—

''(A) notify the Government; and

''(B) allow the Government a reasonable time period to respond to the motion.

''(2) PRESERVATION ORDER.—To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

''(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A(a)(2)(B).

''(c) TESTING PROCEDURES.—

''(1) IN GENERAL.—The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

''(2) EXCEPTION.—Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

''(3) COSTS.—The costs of any DNA testing ordered under this section shall be paid—

''(A) by the applicant; or

''(B) in the case of an applicant who is indigent, by the Government.

''(d) TIME LIMITATION IN CAPITAL CASES.—In any case in which the applicant is sentenced to death—

''(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

''(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.

''(e) REPORTING OF TEST RESULTS.—

''(1) IN GENERAL.—The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

''(2) NDIS.—The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as 'NDIS').

''(3) RETENTION OF DNA SAMPLE.—

''(A) ENTRY INTO NDIS.—If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

''(B) MATCH WITH OTHER OFFENSE.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

''(C) NO MATCH.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

''(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

''(1) INCONCLUSIVE RESULTS.—If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

''(2) INCULPATORY RESULTS.—If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—

''(A) deny the applicant relief; and

''(B) on motion of the Government—

''(i) make a determination whether the applicant's assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

''(ii) assess against the applicant the cost of any DNA testing carried out under this section;

''(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

''(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

''(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

''(3) SENTENCE.—In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

''(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

''(1) IN GENERAL.—Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

''(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by a preponderance of the evidence that a new trial would result in an acquittal of—

''(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

''(B) in the case of a motion for resentencing, another Federal or State offense, if—

''(i) such offense was legally necessary to make the applicant eligible for a sentence as a career offender under section 3559(e) or an armed career offender under section 924(e), and exoneration of such offense would entitle the applicant to a reduced sentence; or

''(ii) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

''(h) OTHER LAWS UNAFFECTED.—

''(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

''(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

''(3) APPLICATION NOT A MOTION.—An application under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the application or any other motion is a second or successive motion under section 2255.

''§ 3600A. Preservation of biological evidence

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

''(b) DEFINED TERM.—For purposes of this section, the term 'biological evidence' means—

''(1) a sexual assault forensic examination kit; or

''(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

''(c) APPLICABILITY.—Subsection (a) shall not apply if—

''(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

''(2) the defendant knowingly and voluntarily waived the right to request DNA testing of such evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

''(3) the defendant is notified after conviction that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice; or

''(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

''(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.

''(d) OTHER PRESERVATION REQUIREMENT.—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

''(e) REGULATIONS.—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

''(f) CRIMINAL PENALTY.—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

''(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

''228A. Post-conviction DNA testing .. 3600''.

(b) SYSTEM FOR REPORTING MOTIONS.—

(1) ESTABLISHMENT.—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

(2) OPERATION.—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report to Congress that contains—

(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this Act;

(B) whether DNA testing was ordered pursuant to such a motion;

(C) whether the applicant obtained relief on the basis of DNA test results; and

(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

(4) ADDITIONAL INFORMATION.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this Act, and any recommendations the Attorney General may have relating to future legislative action concerning that section.

(c) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

SEC. 412. KIRK BLOODSWORTH POST-CONVICTION DNA TESTING GRANT PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(c) STATE DEFINED.—For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.

For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 307, and 412 shall be reserved for grants to eligible entities that—

(1) meet the requirements under section 303, 305, 307, or 412, as appropriate; and

(2) demonstrate that the State in which the eligible entity operates—

(A) provides post-conviction DNA testing of specified evidence—

(i) under a State statute enacted before the date of enactment of this Act (or extended or renewed after such date), to any person convicted after trial and under a sentence of imprisonment or death for a State offense, in a manner that ensures a meaningful process for resolving a claim of actual innocence; or

(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to any person under a sentence of imprisonment or death for a State offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense—

(i) under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if—

(I) all jurisdictions within the State comply with this requirement; and

(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.

Subtitle B—Improving the Quality of Representation in State Capital Cases

SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.

(b) DEFINED TERM.—In this section, the term ''legal representation'' means legal counsel and investigative, expert, and other services necessary for competent representation.

(c) USE OF FUNDS.—Grants awarded under subsection (a)—

(1) shall be used to establish, implement, or improve an effective system for providing competent legal representation to—

(A) indigents charged with an offense subject to capital punishment;

(B) indigents who have been sentenced to death and who seek appellate or collateral relief in State court; and

(C) indigents who have been sentenced to death and who seek review in the Supreme Court of the United States; and

(2) shall not be used to fund, directly or indirectly, representation in specific capital cases.

(d) EFFECTIVE SYSTEM.—As used in subsection (c)(1), an effective system for providing competent legal representation is a system that—

(1) invests the responsibility for appointing qualified attorneys to represent indigents in capital cases—

(A) in a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases;

(B) in an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital representation; or

(C) pursuant to a statutory procedure enacted before the date of the enactment of this Act under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity; and

(2) requires the program described in paragraph (1)(A), the entity described in paragraph (1)(B), or an appropriate entity designated pursuant to the statutory procedure described in paragraph (1)(C), as applicable, to—

(A) establish qualifications for attorneys who may be appointed to represent indigents in capital cases;

(B) establish and maintain a roster of qualified attorneys;

(C) except in the case of a selection committee or similar entity described in paragraph (1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E) monitor the performance of attorneys who are appointed and their attendance at training programs, and remove from the roster attorneys who fail to deliver effective representation or who fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; and

(F) ensure funding for the full cost of competent legal representation by the defense team and outside experts selected by counsel, who shall be compensated—

(i) in the case of a State that employs a statutory procedure described in paragraph (1)(C), in accordance with the requirements of that statutory procedure; and

(ii) in all other cases, as follows:

(I) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

(II) Appointed attorneys shall be compensated for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(III) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(IV) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of enhancing the ability of prosecutors to effectively represent the public in State capital cases.

(b) USE OF FUNDS.—

(1) PERMITTED USES.—Grants awarded under subsection (a) shall be used for one or more of the following:

(A) To design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases.

(B) To develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases.

(C) To assess the performance of State and local prosecutors who litigate State capital cases, provided that such assessment shall not include participation by the assessor in the trial of any specific capital case.

(D) To identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases.

(E) To establish a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate.

(F) To provide support and assistance to the families of murder victims.

(2) PROHIBITED USE.—Grants awarded under subsection (a) shall not be used to fund, directly or indirectly, the prosecution of specific capital cases.

SEC. 423. APPLICATIONS.

(a) IN GENERAL.—The Attorney General shall establish a process through which a State may apply for a grant under this subtitle.

(b) APPLICATION.—

(1) IN GENERAL.—A State desiring a grant under this subtitle shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall contain—

(A) a certification by an appropriate officer of the State that the State authorizes capital punishment under its laws and conducts, or will conduct, prosecutions in which capital punishment is sought;

(B) a description of the communities to be served by the grant, including the nature of existing capital defender services and capital prosecution programs within such communities;

(C) a long-term statewide strategy and detailed implementation plan that—

(i) reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations; and

(ii) establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes;

(D) in the case of a State that employs a statutory procedure described in section 421(d)(1)(C), a certification by an appropriate officer of the State that the State is in substantial compliance with the requirements of the applicable State statute; and

(E) assurances that Federal funds received under this subtitle shall be—

(i) used to supplement and not supplant non-Federal funds that would otherwise be available for activities funded under this subtitle; and

(ii) allocated in accordance with section 426(b).

SEC. 424. STATE REPORTS.

(a) IN GENERAL.—Each State receiving funds under this subtitle shall submit an annual report to the Attorney General that—

(1) identifies the activities carried out with such funds; and

(2) explains how each activity complies with the terms and conditions of the grant.

(b) CAPITAL REPRESENTATION IMPROVEMENT GRANTS.—With respect to the funds provided under section 421, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) an explanation of the means by which the State—

(A) invests the responsibility for identifying and appointing qualified attorneys to represent indigents in capital cases in a program described in section 421(d)(1)(A), an entity described in section 421(d)(1)(B), or selection committee or similar entity described in section 421(d)(1)(C); and

(B) requires such program, entity, or selection committee or similar entity, or other appropriate entity designated pursuant to the statutory procedure described in section 421(d)(1)(C), to—

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 421(d)(2)(A);

(ii) establish and maintain a roster of qualified attorneys in accordance with section 421(d)(2)(B);

(iii) assign attorneys from the roster in accordance with section 421(d)(2)(C);

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 421(d)(2)(D);

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs, in accordance with section 421(d)(2)(E); and

(vi) ensure funding for the full cost of competent legal representation by the defense team and outside experts selected by counsel, in accordance with section 421(d)(2)(F), including a statement setting forth—

(I) if the State employs a public defender program under section 421(d)(1)(A), the salaries received by the attorneys employed by such program and the salaries received by attorneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 421(d)(1)(B), the hourly fees received by such attorneys for actual time and service and the basis on which the hourly rate was calculated;

(III) the amounts paid to non-attorney members of the defense team, and the basis on which such amounts were determined; and

(IV) the amounts for which attorney and non-attorney members of the defense team were reimbursed for reasonable incidental expenses;

(3) in the case of a State that employs a statutory procedure described in section 421(d)(1)(C), an assessment of the extent to which the State is in compliance with the requirements of the applicable State statute; and

(4) a statement confirming that the funds have not been used to fund representation in specific capital cases or to supplant non-Federal funds.

(c) CAPITAL PROSECUTION IMPROVEMENT GRANTS.—With respect to the funds provided under section 422, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) a description of the means by which the State has—

(A) designed and established training programs for State and local prosecutors to ensure effective representation in State capital cases in accordance with section 422(b)(1)(A);

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(B);

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(C);

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 422(b)(1)(D);

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 422(b)(1)(E); and

(F) provided support and assistance to the families of murder victims; and

(3) a statement confirming that the funds have not been used to fund the prosecution of specific capital cases or to supplant non-Federal funds.

(d) PUBLIC DISCLOSURE OF ANNUAL STATE REPORTS.—The annual reports to the Attorney General submitted by any State under this section shall be made available to the public.

SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND ADMINISTRATIVE REMEDIES.

(a) EVALUATION BY INSPECTOR GENERAL.—

(1) IN GENERAL.—As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this title, the Inspector General of the Department of Justice (in this section referred to as the ''Inspector General'') shall—

(A) after affording an opportunity for any person to provide comments on a report submitted under section 424, submit to Congress and to the Attorney General a report evaluating the compliance by the State with the terms and conditions of the grant; and

(B) if the Inspector General concludes that the State is not in compliance with the terms and conditions of the grant, specify any deficiencies and make recommendations for corrective action.

(2) PRIORITY.—In conducting evaluations under this subsection, the Inspector General shall give priority to States that the Inspector General determines, based on information submitted by the State and other comments provided by any other person, to be at the highest risk of noncompliance.

(3) DETERMINATION FOR STATUTORY PROCEDURE STATES.—For each State that employs a statutory procedure described in section 421(d)(1)(C), the Inspector General shall submit to Congress and to the Attorney General, not later than the end of the first fiscal year for which such State receives funds, after affording an opportunity for any person to provide comments on a certification submitted under section 423(b)(2)(D), a determination as to whether the State is in substantial compliance with the requirements of the applicable State statute.

(b) ADMINISTRATIVE REVIEW.—

(1) COMMENT.—Upon receiving the report under subsection (a)(1) or the determination under subsection (a)(3), the Attorney General shall provide the State with an opportunity to comment regarding the findings and conclusions of the report or the determination.

(2) CORRECTIVE ACTION PLAN.—If the Attorney General, after reviewing the report under subsection (a)(1) or the determination under subsection (a)(3), determines that a State is not in compliance with the terms and conditions of the grant, the Attorney General shall consult with the appropriate State authorities to enter into a plan for corrective action. If the State does not agree to a plan for corrective action that has been approved by the Attorney General within 90 days after the submission of the report under subsection (a)(1) or the determination under subsection (a)(3), the Attorney General shall, within 30 days, direct the State to take corrective action to bring the State into compliance.

(3) REPORT TO CONGRESS.—Not later than 90 days after the earlier of the implementation of a corrective action plan or a directive to implement such a plan under paragraph (2), the Attorney General shall submit a report to Congress as to whether the State has taken corrective action and is in compliance with the terms and conditions of the grant.

(c) PENALTIES FOR NONCOMPLIANCE.—If the State fails to take the prescribed corrective action under subsection (b) and is not in compliance with the terms and conditions of the grant, the Attorney General shall discontinue all further funding under sections 421 and 422 and require the State to return the funds granted under such sections for that fiscal year. Nothing in this paragraph shall prevent a State which has been subject to penalties for noncompliance from reapplying for a grant under this subtitle in another fiscal year.

(d) PERIODIC REPORTS.—During the grant period, the Inspector General shall periodically review the compliance of each State with the terms and conditions of the grant.

(e) ADMINISTRATIVE COSTS.—Not less than 2.5 percent of the funds appropriated to carry out this subtitle for each of fiscal years 2005 through 2009 shall be made available to the Inspector General for purposes of carrying out this section. Such sums shall remain available until expended.

(f) SPECIAL RULE FOR ''STATUTORY PROCEDURE'' STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STATUTORY PROCEDURES.—

(1) IN GENERAL.—In the case of a State that employs a statutory procedure described in section 421(d)(1)(C), if the Inspector General submits a determination under subsection (a)(3) that the State is not in substantial compliance with the requirements of the applicable State statute, then for the period beginning with the date on which that determination was submitted and ending on the date on which the Inspector General determines that the State is in substantial compliance with the requirements of that statute, the funds awarded under this subtitle shall be allocated solely for the uses described in section 421.

(2) RULE OF CONSTRUCTION.—The requirements of this subsection apply in addition to, and not instead of, the other requirements of this section.

SEC. 426. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR GRANTS.—There are authorized to be appropriated $100,000,000 for each of fiscal years 2005 through 2009 to carry out this subtitle.

(b) RESTRICTION ON USE OF FUNDS TO ENSURE EQUAL ALLOCATION.—Each State receiving a grant under this subtitle shall allocate the funds equally between the uses described in section 421 and the uses described in section 422, except as provided in section 425(f).

Subtitle C—Compensation for the Wrongfully Convicted

SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES FOR THE WRONGFULLY CONVICTED.

Section 2513(e) of title 28, United States Code, is amended by striking ''exceed the sum of $5,000'' and inserting ''exceed $100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff''.

SEC. 432. SENSE OF CONGRESS REGARDING COMPENSATION IN STATE DEATH PENALTY CASES.

It is the sense of Congress that States should provide reasonable compensation to any person found to have been unjustly convicted of an offense against the State and sentenced to death.

The SPEAKER pro tempore. After one hour of debate on the bill, it shall be in order to consider the amendment printed in House Report 108–737 if offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) or his designee, which shall be considered read and shall be debatable for 20 minutes, equally divided and controlled by the proponent and an opponent.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 5107, the Justice for All Act of 2004. This bill is called ''justice for all'' because it will enhance the rights and protections of all persons who are involved in the criminal justice system.

It does this through two different but complimentary mechanisms. First, a new set of statutory victims' rights that are both enforceable in a court of law and supported by fully-funded victims-assistance programs; and, two, a comprehensive DNA bill that seeks to ensure that the true offender is caught and convicted of the crime.

Victims of crime have long complained that theirs are the forgotten voices in the criminal justice system. For example, Roberta Roper, whose daughter Stephanie was kidnapped, brutally raped, tortured and murdered in 1982, testified before the Subcommittee on the Constitution that, unlike her daughter's killers, she had no right to be informed, no rights to attend the trial and no rights to be heard before sentencing.

□ 1115

Her experience, and that of many others like her, have led victims' rights advocates to push for a victims' rights statute to counterbalance the rights provided to the accused under the Constitution.

The victims' rights portion of this bill originated with S. 2329, which passed the Senate on April 22, 2004, by a vote of 96 to 1. Like S. 2329, this bill contains eight enumerated rights for the victim, including the right to be reasonably protected from the accused, the right to timely notice of public court proceedings involving the crime, the right not to be excluded from such public court proceedings, the right to be reasonably heard at those proceedings, the reasonable right to confer with the prosecutor, the right to restitution, the right to proceedings free from unreasonable delay and the right to be treated with fairness and respect.

Each of these rights is enforceable by both the prosecutor and the crime victim. The crime victim and the prosecutor may assert the crime victim's right and, if necessary, seek a stay of any proceedings in which the victim's rights are being denied. The government or the crime victim can then seek a writ of mandamus from the appropriate Court of Appeals to ensure that the crime victim's rights are protected.

In addition, the Justice for All Act contains important provisions to ensure that the criminal justice system will continue to operate in an efficient manner and that there will be an appropriate level of finality to all proceedings.

Finally, this legislation will provide funds for victims' assistance programs at both the Federal and State level. Of particular importance are funds to support programs that provide legal counsel for crime victims. These funds will help to develop a body of laws to protect the rights of victims in the Federal courts. The National Crime Victim Law Institute is but one example of an organization that provides the type of legal counsel envisioned by the bill.

The bill is not identical to the Senate-passed bill, but it is close. Since Senate passage, the committee has worked with many interested parties on these issues. That process resulted in H.R. 5107 which, as introduced, addressed many of the concerns raised by S. 2329. However, at the Committee on the Judiciary's markup, I stated that we will continue to work on this bill until we have the best bill possible. After several more weeks of negotiations, I believe that the manager's amendment, which I will offer in a bit, moves even further in the right direction and now represents that best possible bill.

The second important element of the Justice for All Act contained in titles II through IV pertains to the use of DNA technology. These provisions come from H.R. 3214 which passed the House by a vote of 357 to 67 on November 5, 2003, but continues to await action in the Senate. The DNA portion of the Justice for All Act as introduced was identical to the version of H.R. 3214 passed by the House last November.

Titles II through IV of the Justice for All Act seek to resolve another problem that victims face, the frustration and depression over the length of time it takes to track down and apprehend the attacker. DNA samples can help to quickly apprehend offenders and solve crimes if law enforcement agencies have access to the most up-to-date testing capabilities. Additionally, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. DNA can identify criminals with incredible accuracy when biological evidence exists, and DNA can be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes.

The current Federal and State DNA collection and analysis system needs improvement. The Justice for All Act will provide the necessary funding to ensure these critical programs have access to the necessary equipment and training. It will provide funds to eliminate the backlog of DNA samples in need of testing and provide greater access to potentially exculpatory evidence to those who may have been wrongfully convicted of a crime.

However, as we did with the victims' rights portion of the bill, we have continued to work with all parties to address concerns relating to the DNA testing portions of the bill. Those changes, which are reflected in the manager's amendment, greatly improve the bill, and I will describe them in greater detail when the amendment comes up.

As I mentioned earlier, this bill has been the process of lengthy negotiations among many different parties. Most of the parties have worked to get this result, and I think they now believe that this is a good product. Unfortunately, however, the Department of Justice was unable to come to this conclusion. I, and the other cosponsors of this legislation, bent over backwards to satisfy their concerns. No matter how much we bent, nothing would satisfy them. As chairman of the committee with the authorizing jurisdiction over the department, I am very disappointed with its position on this bill. This bill contains many, many good things for the department, and its absolute obstinence despite many, many efforts to compromise is completely unreasonable.

This reminds me of the debate over the breakup of the Immigration and Naturalization Service in 2002, a clearly dysfunctional agency that needed reform. Out of blind bureaucratic inertia, the department opposed that much-needed legislation until the very last moment. In short, Mr. Speaker, I sincerely hope that the department will come to its senses, throw off its blinders and endorse this good and important legislation.

I would finally like to thank those who did cooperate in this process. The chairman of the Subcommittee on the Constitution, the gentleman from Ohio (Mr. CHABOT) has been a tireless advocate for victims' rights, as well as the gentleman from Michigan (Ranking

Member CONYERS), the gentleman from Massachusetts (Mr. DELAHUNT), the gentleman from Wisconsin (Mr. GREEN), the gentleman from Illinois (Mr. LAHOOD), the gentlewoman from New York (Mrs. MALONEY), and all of the other important cosponsors for this important bill.

In addition, I want to thank my own staff, Katy Crooks, and general counsel, Philip Kiko, Jay Apperson, and Stewart Jeffries, as well as staffers of the gentleman from Massachusetts (Mr. DELAHUNT), Mark Agrast and Christine Leonard. This would not have happened without their tireless work. I urge my colleagues to support this very good bill.

Mr. Speaker, I reserve the balance of my time.

Mr. DELAHUNT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER) just indicated, this is really the culmination of an extraordinary bipartisan effort towards a common goal. I would echo his kudos for so many Members on both sides of the aisle, as well as staff. My colleague, the gentleman from Illinois (Mr. LAHOOD) who has been here from the beginning; this has been an odyssey, if you will, of some 4 or 5 years. On our side of the aisle, I want to make particular note of the efforts of the gentleman from New York (Mr. WEINER), the gentleman from California (Mr. SCHIFF), the gentleman from Virginia (Mr. SCOTT), the gentlewoman from New York (Mrs. MALONEY) and, of course, my friend who I serve with on the Committee on the Judiciary, my colleague, the gentleman from Wisconsin (Mr. GREEN). But it has to be stated that without the efforts of the distinguished chairman of the committee, the gentleman from Wisconsin (Mr. SENSENBRENNER), we would not be here today. It is really that simple, and I want to acknowledge his Herculean efforts.

This comprehensive legislation seeks to repair, if you will, the two sides of injustice when mistakes happen. I encourage my colleagues, Mr. Speaker, to consider today that the victims of the criminal justice system do not always look alike; they just get caught in this system in different ways. Think of victims like Debbie Smith of Virginia for whom title II of this bill is named. As she has said, and these are her words, ''It gives no comfort to the victims and their families to know that the wrong person is behind bars and the real perpetrator is free to walk the streets'' and commit that crime again.

Debbie Smith is a courageous advocate who has done so much to help her fellow survivors of sexual assault. Yet, it took 6 years for the DNA evidence to be tested in her case, evidence that ultimately led to the capture of that rapist. Only then was she free from what she has called an ''emotional prison.''

And there are other categories of victims in America today, individuals charged with false accusations and imprisoned based on wrongful convictions. Like my friend, Kirk Bloodsworth of Maryland, the first death row inmate to be exonerated by DNA testing after 10 years on death row. Kirk had to convince his lawyer to get the test. DNA established Kirk's innocence, and it also led to the identification and conviction of the real perpetrator, the real murderer, within this past year.

Debbie Smith and Kirk Bloodsworth are both among the innocent whom we seek to protect, Mr. Speaker. Think of the human costs when an innocent person is executed or spends long years in jail. Imagine the scars of a victim who waits years to know the identity of their assailant. Mr. Speaker, we are not talking about hypothetical scenarios here; we are talking about real people, ordinary Americans facing the most extreme miscarriages of justice.

Just this past week in Michigan, a murder case was thrown out of court after DNA evidence demonstrated that the defendant was innocent. Almost every week there is a news story about the use of DNA evidence to exonerate the innocent. Earlier this year in Texas, DNA exonerated Josiah Sutton. During Mr. Sutton's trial, he asked for a DNA test, but his attorney told him that he did not have enough money to obtain it. Mr. Sutton was convicted on charges of rape and sentenced to 25 years in prison.

Four and a half years into that sentence, Mr. Sutton benefited from a moment of serendipity, pure chance, if you will. Listening to the radio, his mother heard about an investigation into DNA testing problems at a Houston crime lab. She called reporters, who agreed to investigate. A UCLA professor conducted an analysis of the DNA evidence and concluded there was no basis for Mr. Sutton's conviction. Since then, he has been fully exonerated, and the crime lab has been shut down.

Well, this bill would help the States protect victims. This comprehensive legislation, as the chairman indicated, contains four titles. I will not review them now; the chairman has done a more than adequate job. It also includes the original bill that was filed by myself and the gentleman from Illinois (Mr. LAHOOD) entitled the Innocence Protection Act. And here, in the final hours of this legislative session, the version of the Innocence Protection Act that is included in this bill, it is not all that we wanted, but it is an important step forward, and as I just enumerated by pointing just to two different cases, it is long overdue.

Mr. Speaker, the criminal justice system is about the search for the truth, and like all human enterprises, it is fallible. Judges and jurors and police, eye witnesses, defense counsel and prosecutors are all human beings and all make mistakes. I served as a prosecutor for some 20 years. I made mistakes, and those mistakes are etched forever in my mind.

But we have the means now at our disposal to minimize the possibility of error, and especially where lives are at stake, we have no choice, we have no option, we must take advantage of them. Because this bill at its core is about restoring public confidence in the integrity of the American justice system, that system, which really does set us apart, sets our democracy apart among the family of nations, that makes us the viable, healthy democracy that we are.

So I would encourage my colleagues to accept the manager's amendment, to pass this bill, and, hopefully, in the course of the next several days, there will be an awakening, if you will, elsewhere in this city, and the bill should be signed before too long, because our system is at stake.

Mr. Speaker, I reserve the balance of my time.

□ 1130

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the original author of the Innocents Protection Act, the gentleman from Illinois (Mr. LAHOOD).

(Mr. LAHOOD asked and was given permission to revise and extend his remarks.)

Mr. LAHOOD. Mr. Speaker, I offer my thanks to the chairman of the committee for hanging in there with us and being so persistent about this important piece of legislation. My thanks to the gentleman from Massachusetts (Mr. DELAHUNT) for also hanging in there with us 5 years ago when he and I collaborated on this and introduced this bill. I think we had an idea it would take this long, but I think we are getting close. And if we can persuade the other body that this is the right approach and a good bill, I think we will have come a long way over the last 5 years to perfect a bill.

I really thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER). He really has helped us perfect this idea that there has to be 100 percent certainty in capital cases and in death penalty cases.

As a proponent of capital punishment, I believe very strongly that it can be a deterrent, but there has to be 100 percent certainty; and that is really what one of the titles the Innocents Protection Act's title of this bill really allows for and provides for. We could not be here today without really the leadership of the chairman. So I am grateful to him.

When we look in the eyes of people like Kirk Bloodsworth and Debbie Smith and to be able to tell them that we are getting close to solving some very serious problems and really trying to get to perfection in a flawed system. I am very proud of the students at the Northwestern University in Chicago for the work that they did that really highlighted the flaw in this system after a study where they looked at all death penalty cases in Illinois.

And as a result of their study, 12 people were released from death row because it was found that they were innocent. And at that point I think we all realized that there were 12 people on the street that were guilty of the crimes that were free people. And that kind of initiative and that kind of study really emboldened us to move ahead with this legislation. We could not have done it without them.

We could not have done it without the determination of people like Kirk Bloodsworth and Debbie Smith and the chairman and the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. Speaker, I have prepared remarks that really go into more detail, but I just wanted to be here today to say thanks to all those who have had the determination to make this happen. I ask all Members to support this bill.

Mr. Speaker, I rise today as a supporter of the death penalty, and supporter of this bill. In the 106th and 107th Congresses, I sponsored the Innocence Protection Act with Mr. DELAHUNT, which is now included as section 3 in the Justice For All Act.

I am a proponent of the death penalty, as a deterrent to violent crime, and this bill provides the materials necessary to repair our flawed system. I believe that those of us that support the death penalty have a responsibility to ensure it is applied fairly. As a just society, we must condemn the guilty, exonerate the innocent, and protect all Americans' fundamental right to truth. It is my belief that this legislation allows us to save the death penalty, to know that we are utilizing it in instances where we are confident of wrongdoing.

Mr. Speaker, we cannot afford one more innocent life to be lost due to inexperienced counsel, or unprocessed DNA kits. We must permit inmates access to post-conviction DNA testing to establish innocence and compensate those who have served time for crimes they did not commit.

In order to continue to rightfully punish our guilty, we must establish minimum standards of competency for counsel in capital cases. As long as innocent Americans are on death row, the guilty remain on our streets. This legislation would increase public confidence in our Nation's judicial system as it relates to the death penalty. Individuals have spent years on death row for crimes they did not commit.

A death sentence is the ultimate punishment. Its absolute finality commands that we be 100 percent certain of an individual's guilt. In protecting the innocent, we also make sure the guilty do not go free.

I applaud the chairman for his determination in crafting this bipartisan piece of legislation that assures fundamental accuracy and fairness in our judicial system.

Mr. DELAHUNT. Mr. Speaker, I yield 3½ minutes to the gentleman from California (Mr. SCHIFF), a distinguished colleague and prominent member of the House Committee on the Judiciary.

Mr. SCHIFF. Mr. Speaker, as a cosponsor of the Advancing Justice Through DNA Technology Act of 2003, which passed overwhelmingly in the House in November 2003, I rise in strong support of the bill on the floor today, the Justice For All Act, which I am also proud to be an original cosponsor of.

At the outset I want to compliment my colleague, the gentleman from Massachusetts (Mr. DELAHUNT). From the very beginning we spoke about this bill, two former prosecutors, and while I had been focused mainly on the power of DNA to solve unsolved crimes, to go after violent felons who still walk the streets, my good friend, the gentleman from Massachusetts (Mr. DELAHUNT), made the equally compelling point that DNA evidence has the power to exonerate those charged with the most serious crimes, to exonerate those on death row even; as has been proved the case, not merely calling into question evidence in an original trial, but rather proving conclusively the innocence of people who faced the ultimate penalty.

The DNA database improvements in this bill will help solve countless crimes and also exonerate innocent individuals wrongly imprisoned.

As a former prosecutor, I have witnessed the powerful force that DNA profiles have in solving crimes. The FBI's DNA database contains around 2 million DNA profiles and has yielded thousands of matches in criminal investigations, but thousands of additional matches can and should be made. For this reason I worked on legislation last year to increase the effectiveness of DNA databases. This legislation was aimed at replicating on a nationwide basis the tremendous State successes in solving crimes using DNA.

States have taken the lead in expanding DNA and crime-solving efforts. For example, in Virginia those efforts have yielded tremendous results with forensics officials making over a thousand cold hits, finally providing resolution to a great number of unsolved crimes. The legislation before us today makes important changes in Federal law in order to replicate these tremendous successes on a nationwide basis. These additional tools will provide additional database searching capabilities for Federal, State and local law enforcement agencies, helping to solve thousands of cold cases including unsolved murders and unsolved rape cases.

In addition, the authorization of much needed funding to eliminate the current backlog of unanalyzed DNA samples in the Nation's crime labs and the important Innocents Protection Provision will help ensure that inmates have access to DNA testing to establish their innocence.

I am pleased the House of Representatives is poised to approve these changes in a bipartisan fashion, and I hope this legislation will be approved by the Congress as a whole and quickly enacted into law.

In conclusion, I want to again thank my colleague, the gentleman from Massachusetts (Mr. DELAHUNT), for his pioneering efforts on the Innocents Protection Act for bringing really to this body an awareness of the power of DNA to exonerate those who have been wrongly convicted of the most devastating cases facing the ultimate penalty. We could not have more important work before this body.

I want to compliment the commitment of the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his superlative leadership in this legislation, without which we would not be here on the floor today.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I want to commend the chairman and thank him for his leadership, particularly the aspect of the bill which promotes and supports victims of crime.

Providing crime victims with dignity and respect through an established and enforceable set of rights ensures that justice is not reserved only for the accused but extends to those who have personally been affected by the crimes. And after all, we have thousands and thousands of people in this country that are affected in an adverse way by crime every single year.

The proposal before us today, the Justice For All Act, H.R. 5107, draws heavily from the Crime Victim's Rights legislation providing victims with substantive enforceable rights such as the right to be present during proceedings and the right to confront assailants at those proceedings and the right to be notified about the release or escape of the perpetrator from custody.

I would like to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) also for including in the bill protections that DNA testing can afford families who may have members missing or their remains unidentified.

I want to particularly thank and recognize the courageous person in the greater Cincinnati area, that is Deborah Culberson, who lost her daughter, Keri, to a terrible murder, and the perpetrator is behind bars, but they have not been able to locate or identify her daughter's remains. And she has stepped forward and she has been just a very forceful person behind making sure that we have a DNA database which families who have lost loved ones may be able to identify and, therefore, provide at least some closure to that family. It is a terrible tragedy.

This may not directly benefit her, but it may benefit others in the future who face these tragedies in their own families.

There is no question that the rights afforded by H.R. 5107 are a positive step toward making certain justice is served not only for the accused but for the innocent victims. I would strongly encourage very strong bipartisan support for this legislation. It is important legislation. Some of it is a first step and many of us think we may in the future be able to go further. But I think this is a very positive step. I want to once

again thank and recognize the gentleman from Wisconsin (Mr. SENSENBRENNER) for his leadership on this.

Mr. DELAHUNT. Mr. Speaker, I yield 3½ minutes to the gentleman from New York (Mr. WEINER), a member of the committee who has championed a particular title in this bill and who has brought to the attention of the Committee on the Judiciary the need to do something about testing for rape kits.

Mr. WEINER. Mr. Speaker, it is remarkable that in DNA people see this issue through many different prisms, all of them positive. For those of us in this Chamber who are concerned about law enforcement, DNA is truly a miracle. It is better than a fingerprint. It is better than a video tape. It is better than an eye witness. It is better than a lie detector. With DNA we can find out who did a crime, and as other speakers have spoken to here, we can also find out who did not do it.

But the prism I look at this issue through was formed early in my congressional career. The prism I look at DNA through is a series of cardboard boxes all stacked in a refrigerated warehouse in Long Island City. That is where I found rape kits that were evidence for crime scenes, completely anonymous except for the numbers written on the side of these cardboard boxes, 16,000 of them in early 1999 when I was first elected, all collected at crime scenes in New York City, all that had not been analyzed, all that had not been processed, all representing a victim that was awaiting justice.

That backlog is heartrending. That backlog does not represent a simple number on the box. That backlog represent an individual, an individual crime. And the mystery was that it was not being stored in that refrigerated warehouse because of any bureaucratic problem. It was not being stored there because of any legal loggerhead. It came down to one thing: money.

In 1999 I was proud to introduce in this House for the first time an authorization for congressional funding to help cities and states dig out of their backlog. With former Congressman Gilman and former Congressman McCollum we passed for the first time the Backlog Elimination Act. Because of that law, now localities across this country have been able to reduce their backlogs. They have not been eliminated. Also authorized in that law was a study that we learned the problem was not just in New York City; it was in small-town sheriffs' offices all around this country, in suburbs, in communities large and small.

The analysis of those rape kits did not just provide statistics; it provided hits on cold cases. In New York City alone 154 cold cases that had been put on the shelf literally and figuratively were solved. They got leads in more than 200 other cases.

Let us remember the nature of sexual assault. Experts tell us again and again that it is a recidivist crime. Someone that we are able to catch once and take off the street could conceivably not only solve several crimes but prevent several more from happening.

Last year the gentleman from Wisconsin (Mr. GREEN) and I tried to ramp up this issue one more time. And we realized that we had in partnership the gentleman from Massachusetts (Mr. DELAHUNT), the gentleman from Illinois (Mr. LAHOOD), who also saw DNA testing as an enormous opportunity. I believe we have crafted under the guidance of the gentleman from Wisconsin (Mr. SENSENBRENNER), frankly, a bill that in anyone's prism would be seen as positive. There is no reason even in this moment of pitch partisanship in this House and in the other body, even in this time there is no reason why we should sit any longer on this legislation.

I would urge in the strongest possible terms that we pass this legislation. We have passed in similar ways out of the committee and on this floor before. We have unified this House behind the issue of using DNA to bring justice to those who did crimes, justice to those who did not do crimes, and justice to those victims of crimes and their families.

I would urge in the strongest terms possible that we not allow election-year politics to stop the other body from doing justice by this legislation. I urge passage of H.R. 5107.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. GREEN).

Mr. GREEN of Wisconsin. Mr. Speaker, let me begin by joining my voice with others in saluting the chairman. Without his tireless efforts, quite simply we would not be here today, and also, of course, the gentlewoman from New York (Mrs. MALONEY), the gentleman from Massachusetts (Mr. DELAHUNT), the gentleman from Illinois (Mr. LAHOOD), the gentleman from Ohio (Mr. CHABOT), and the gentleman from New York (Mr. WEINER). Their ideas have made this bill so much better, so much stronger and we are all in their debt.

Mr. Speaker, over 300,000 women and 92,000 men are raped each year in this country, the United States. Those numbers represent lives destroyed and families shattered. Today we fight back. We will put an end to headlines like this one from CNN dated June 29, 2004: ''A suspected serial rapist on the street while his DNA sat in the police crime lab for years.''

□ 1145

The rapist in that case reported assaulting upwards of 50 women since 1988, and yet his DNA sat untested for 2½ years in an Ohio crime lab. I wish I could tell my colleagues that that case was unique. Hardly.

There are thousands and thousands and thousands of untested crime scene DNA kits collecting dust on shelves. That means that there are likely innocent Americans wrongly sitting behind bars, and even more likely, guilty Americans still walking the streets. How can we not act and act today?

This bill will help. This bill will save lives.

Title II of the bill, the Debbie Smith Act, will provide grants to State and local authorities to get rid of their backlogs, to train more experts, to ensure better handling and processing of evidence.

In fact, some estimate that it could quickly lead to solving as many as 66,000 open rape and murder cases. That is 66,000 victims and their families who would finally have a little justice and, perhaps, just perhaps, a little peace of mind.

How can we not act on this measure? How can we not offer this lifeline to victims and their families? How can we not act to prevent future crimes by tracking down those who have already attacked and will most certainly attack again?

This is good work. It is important work. I urge my colleagues' support. Let us get this done.

Mr. DELAHUNT. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. NADLER), one of the leaders on the Democratic side on the House Committee on the Judiciary.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding me time.

I rise in support of the Advancing Justice Through DNA Act. Although the science of DNA analysis has vastly improved our ability to identify the guilty and to exonerate the innocent, neither our laws nor the resources we have made available have allowed our criminal justice system to make full use of that technology. This legislation would go a long way toward correcting that terrible gap.

I want to congratulate, in particular, the gentleman from Massachusetts (Mr. DELAHUNT) who introduced the Innocence Protection Act several years ago and has worked tirelessly on this matter ever since. We all owe him a great debt of gratitude. No one whose innocence can be proved by DNA evidence should languish in prison because of procedural or financial obstacles to the use of that DNA evidence, and no one whose guilt can be proved by DNA evidence should remain unconvicted and free to menace others because of procedural or financial obstacles to the use of that DNA evidence.

It is imperative, in connection with one of the titles of this bill, that we eliminate the shameful backlog of untested rape kits, and this bill will go a long way towards that goal. I have worked with NOW, RAINN and Lifetime Television to raise awareness of this issue and to build consensus for decisive action. Together, we have pushed, prodded and demanded that Federal funding be provided to test these kits quickly. Today, we are one step closer to that goal.

I am pleased that this bill includes a provision very similar to the Rape Kit DNA Analysis Backlog Elimination

Act, which I introduced in March of 2002. That legislation would have provided $250 million to eliminate the rape kit backlog. I am also pleased that, like my bill and like the bill introduced by the gentleman from New York (Mr. WEINER) and the gentlewoman from New York (Mrs. MALONEY), this legislation adds funding specifically for rape kits.

But we are not there yet. These programs still need to be funded, and I am hopeful that we will not simply authorize funding for these programs, as this bill does and as I hope the Senate will go along with, but I am hopeful that we will also actually appropriate the money we are today acknowledging is needed to do the job right.

This issue is too important to ignore. Police departments must have the resources they need to solve crimes and put criminals behind bars.

This legislation represents a serious effort to combat crime, to locate and apprehend rapists, to use powerful evidence to put them in prison, and in the larger sense, it also represents a serious effort to take out of prison people who do not belong there in light of the capability of DNA evidence to prove their innocence.

We have adopted similar legislation before. I urge its adoption now, and I hope the Senate will go along.

I thank the gentleman for yielding me time.

Mr. DELAHUNT. Mr. Speaker, I yield 4½ minutes to the gentlewoman from New York (Mrs. MALONEY), who also has been a champion in terms of protecting the victims of rape and making an effort to secure the apprehension of those who perpetrated that particularly heinous crime.

Mrs. MALONEY. Mr. Speaker, I thank the gentleman for yielding me time and for his leadership on so many important issues before this body.

Mr. Speaker, I rise in strong support of the Justice for All Act, and I would like to commend the truly heroic leadership of the gentleman from Wisconsin (Chairman SENSENBRENNER), the gentleman from Michigan (Ranking Member CONYERS) and the efforts of many, the gentleman from New York (Mr. NADLER), the gentleman from New York (Mr. WEINER), the gentleman from Illinois (Mr. LAHOOD) and especially the gentleman from Massachusetts (Mr. DELAHUNT) for his tireless work on the Innocence Protection Act and for my colleague, the gentleman from Wisconsin (Mr. GREEN), who has worked selflessly on passing the Debbie Smith Act for many, many years.

This marks the second time this bill has passed this body this year, and I do not understand why both bodies cannot come together to pass the same legislation, which so many people support in a bipartisan manner, that will lock up the guilty and free the innocent. The longer we delay, the longer the victims of sexual assault and rape must wait to see their attackers put in prison.

This bill includes provisions to protect the rights of crime victims, as well as legislation, the Advancing Justice Through DNA Technology Act, which includes the Debbie Smith Act and the Innocence Protection Act; and the House overwhelmingly passed, last year, both of these to improve the use of DNA technology in prosecuting criminals.

DNA is accurate, it never forgets, it cannot be intimidated by a prosecutor; and we have to put this technology to use in convicting criminals and freeing the innocent.

In the 105th Congress, I offered legislation to provide funding to process the backlog of DNA evidence in rape cases. After holding a hearing, along with former Representative Steve Horn, with a courageous rape survivor, Debbie Smith, she recounted how in 1989 she was dragged from her kitchen and raped in her backyard while her husband was asleep upstairs. She lived in fear for years because the rapist said that he would come back and kill her. Then she finally learned after 6 years that, through DNA processing, they had found a cold hit identifying her assailant, who had been jailed 6 months after her assault for another crime, but for 6 long years she literally lived in agony.

It was because of Debbie Smith's story that I introduced the Debbie Smith Act, which would help combat the epidemic of violence against women in the United States, where a sexual assault occurs every 2 minutes.

We know that DNA processing techniques could serve as a conclusive proof in countless other rape cases, and many of us were outraged when we learned that there were hundreds of thousands of backlogged rape kits collecting dust across this country, but they did not have adequate support for the crime labs and adequate government funding to process them.

The bill would accomplish several critical objectives in Title II of the bill, the Debbie Smith Act, which includes providing funding to process the backlog of DNA evidence, setting national standards for DNA evidence collection, creating a national DNA file in the FBI for rapists and criminals who cross State lines, and providing grant money for a sexual assault forensic examiner program. The police tell us if they have the evidence from the same program, it almost always leads to a conviction. It also provides funding to train law enforcement authorities on the collection and handling of DNA evidence.

I want to say that the dismal reality in this country is that only 6 percent, according to the FBI, only 6 percent of women who have been raped will ever see their attacker spend a day in jail. Yet we know that each unprocessed DNA kit represents a life like Debbie Smith's, and it represents a rapist which the FBI tells us will attack, on the average, eight times. By processing this evidence, we may be able not only to convict rapists, but to prevent them from harming other men and women in our country.

So this is tremendously important legislation, and the gentleman from Massachusetts (Mr. DELAHUNT) and the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Illinois (Mr. LAHOOD) have talked about other aspects of it. We should all join in passing it. I hope that every Member of this body will join in supporting this important effort.

May I add that Lifetime Television started a national petition in support of this bill. Many, many organizations, RAINN and others, have worked tirelessly with this body to pass it. We thank them, too.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Speaker, I thank the gentleman for yielding me time.

I just want to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for such hard work on this bill and for making the changes that they have made to it to make it a better bill. I also want to commend the gentleman from Massachusetts (Mr. DELAHUNT) for his untiring work on this issue over so many years, and certainly we need something like this bill. We need to make sure that those who are innocent have their day in court, all they need in court.

I do have some concerns about this bill. I feel compelled to note them. There are still some problematic areas here.

For example, H.R. 5107 contains a provision permitting post-conviction DNA testing of convicts who have pleaded guilty. Even though those convicts may have not even requested DNA testing that was available at the time of their trial, this will permit defendants to reopen cases, to retraumatize victims and waste resources, even if there is no reason to think that testing will change the outcome of the case.

The bill also contains a 5-year limitation on the duration of its proposed post-conviction DNA testing remedy, but it also contains a large loophole. A convicted inmate may seek new testing more than 5 years after the conviction if they can prove that it is in the interest of justice. This is an opportunity to flout the time limits and will undoubtedly attract lawyers to do so. There is no reason to permit this testing past the 5-year mark. To do so simply invites abuse and retraumatizes victims.

A person who is actually innocent, think about it, they have every reason to seek relief promptly, to request an available test immediately. Those who seek to delay that are simply looking to hide something. They are looking to delay until it is impossible for the government to retry the case. Think about it. Years later, if we have a case where eyewitness and other testimony might conflict or actually supplement or add to DNA testing there, it is impossible to retry a case 20 years later because witnesses may be gone, other evidence may be gone. So we need to make sure

that the remedies are sought early, not later.

With that, I hope that these other concerns are addressed with the other body so that we can have a good bill on this subject.

Mr. DELAHUNT. Mr. Speaker, I yield 2½ minutes to the gentleman from Illinois (Mr. RUSH), my friend, who has championed justice throughout his career. And I would point out that it was in Illinois, through the efforts of some students at the Northwestern School of Journalism that first brought this to the attention of the country, and that a former governor in Illinois, George Ryan, had the courage to raise this issue, to make it a national issue and to bring it to the attention of those who are concerned about the search for truth.

Mr. RUSH. Mr. Speaker, I rise in support of the bill, H.R. 5107.

Mr. Speaker, I want to congratulate the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the full committee, and I certainly want to congratulate and commend the gentleman from Massachusetts (Mr. DELAHUNT).

□ 1200

The gentleman's tireless work, his dedicated work over the many years has certainly borne fruit in this legislation, and I want to extend my congratulations to all those who have played such a vital role in bringing this legislation to the floor here this morning.

Mr. Speaker, the legislation that we are considering provides grants, approximately $2 billion over 5 years, to States and local governments for DNA testing. This bill would help eliminate the backlog in the testing of DNA samples from criminal defendants and inmates, including those from rape kits. It would also enhance access to DNA analysis by inmates and improve the quality of legal representation in State capital cases. But, Mr. Speaker, more importantly, this bill will also provide victims of crimes with new rights, such as the right to a reasonable, accurate and timely notice of any public court proceeding involving the crime of or the release or the escape of the accused, so vital, so necessary for the victims of crime in our country today. It would also allow victims to be reasonably heard at any public proceeding involving the release, plea or sentencing of the accused.

Mr. Speaker, as it has been stated time and time again, something is wrong with our criminal justice system here in America. I believe that the criminal justice system here in America is broken. Time and time again we have seen innocent people spend years on death row for crimes that they did not commit.

Mr. Speaker, we can all agree that a death sentence is the ultimate punishment in the criminal justice system, and the imposition of such a sentence warrants absolute certainty, a 100 percent certainty that the person accused is guilty of the crime committed. That said, Mr. Speaker, all safeguards should be utilized, including DNA testing, before capital sentences are imposed.

Mr. Speaker, the gentleman from Massachusetts (Mr. DELAHUNT) and others have alluded to the actions of our State, our Governor, and, Mr. Speaker, I am proud to stand in support of this legislation. I think it is a testimony to his courage that the Congress is now considering this bill.

Mr. DELAHUNT. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), my friend and colleague and a leader on the Committee on the Judiciary.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I wish to offer my sincere applause to the gentleman from Massachusetts (Mr. DELAHUNT) and the gentleman from Illinois (Mr. LAHOOD). I know the work they have done and the effective work our chairman has done. The gentleman from Wisconsin (Mr. SENSENBRENNER) has done a very effective job, along with the gentleman from Michigan (Mr. CONYERS).

I mentioned in the rule the very important elements, and I want to again refer very quickly to those important elements of this legislation and to the legislation that I introduced, H.R.89, Save Our Children: Stop the Violent Predators Against Children DNA act of 2003. This legislation that we will be passing, and I hope we can work it out with the Senate, will lay the groundwork for legislation that will help enhance victims' rights and bring about justice.

I happen to represent an organization that I have worked with over a number of years, called Justice For All, a victims' rights organization, and this is a good day for them because it does have elements of protecting or respecting victims. As the co-chair and founder of the Congressional Children's Caucus, I have deeply been impacted by the negative violent acts against our children, and I believe the legislation I coauthored will be a wonderful complement to this.

We realize the important role that archived DNA evidence played in the case of Elizabeth Smart who was kidnapped from her bedroom at knifepoint in 2002 by Mitchell, 50, and his wife, Wanda Barzee. So we realize this can be an important component to this legislation.

We also know this legislation will be helpful to the DNA labs around the country. I have mentioned the Houston judicial system, which convicted Josiah Sutton in 1998 of the rape of a woman whose body was dumped in a Fort Bend County field. The court eventually granted him bail in March after an independent lab determined that he was sentenced to 25 years in prison for a rape he did not commit, but he stayed in prison for a very long period of time.

This DNA bill will help get us back on track for the victims and the innocent. Attorney Neufeld remarked that the most important question for the people of Houston and the people of Texas is what went wrong that allowed this young man to be convicted for a crime he did not commit?

Now, Mr. Speaker, let me indicate that I happen to think that the 5-year provision on filing a motion could be extended, but I am grateful that lawyers can show that, if there is compelling evidence or show that there is an added reason to go beyond the 5 years, that they will have it. I would have preferred a straight 10-year period, because, Mr. Speaker, I can assure you that people incarcerated do not have the resources, do not hear about it, do not know, and there are not all these lawyers running around to represent incarcerated persons. This balance is for the victims' families and the tragedy that comes about.

And the last thing I will say is that I hope we look at the standards so that we can be assured of the victims' rights but also the protection of this bill. Again, this is a blow against injustice. This is a strike for justice and fairness as relates to those incarcerated unfairly or charged unfairly and for our victims. And I ask my colleagues to support this legislation.

Mr. Speaker, I rise in support of this important legislation that is the result of much work and bi-partisan collaboration. Our work on this legislation, H.R. 5107, the Justice For All Act of 2004 will have far-reaching implications for victims of violent or sexual crimes, suspected perpetrators of these crimes, and individuals who have been wrongfully implicated for the commission of these crimes. Therefore, it is vital that we have good faith collaboration among our colleagues in passing it through this body and on the Floor of the Committee of the Whole.

While I am a co-sponsor of this legislation, as I was of one of its components, H.R. 3214, the Advancing Justice Through DNA Technology Act, I hope that I am able to work with my colleagues to incorporate important provisions of legislation that I introduced, H.R. 89, the "Save Our Children: Stop the Violent Predators Against Children DNA Act of 2003" into this legislation as we move to debate before the Committee of the Whole.

As co-founder and chair of the Congressional Children's Caucus, I am deeply committed to doing everything possible to ensure the safety of our children and the expeditious capture of predators that seek to do them harm. The thrust of my legislation is to create a DNA database of child sexual offenders, to supplement the database currently maintained by each of the 50 States, so that we can better protect America's children from these criminals.

I introduced this legislation, in part, as a result of the important role that property-kept and archived DNA evidence played in the case of Elizabeth Smart, who was kidnapped from her bedroom at knifepoint in 2002 by Mitchell, 50, and his wife Wanda Barzee, 58. The safe return of Elizabeth Smart has shown

us that the involvement of DNA evidence can help prevent what otherwise might have been a tragic ending.

The technological tool that this legislation employs must be improved because it plays such a key role in streamlining and expediting our criminal justice system. Our law enforcement agencies are becoming increasingly more reliant upon the analysis of deoxyribonucleic acid (DNA) to verify or rule out the identity of a suspect or a charged individual in processing criminal cases. The more reliant we become, the more our individual rights are at stake. We must, however, significantly raise the bar of our technology and the standards of review for DNA and ballistics crime lab accreditation to minimize mistakes that cost people years of their lives.

Provided that our bipartisan coalition is fortunate enough to pass this legislation today, as I stated before, I hope to engage with my colleagues to fashion the inclusion of provisions of my legislation in the bill as transmitted to the Committee of the Whole.

On July 7, I offered an amendment to H.R. 4754, the Commerce, Justice, and State Department Appropriations bill. The Jackson-Lee amendment called for a $10 million increase of the Community Oriented Policing Services (COPS) program that deals with DNA analysis and sought to minimize the margin of error that threatens individual liberties and rights.

CRIME LAB ACCREDITATION

The certification of our crime labs for conformance to our accepted standards is done by groups such as the American Society of Crime Laboratory Directors (ASCLD). The accreditation process is part of a laboratory's quality assurance program that should also include proficiency testing, continuing education and other programs to help the laboratory give better overall service to the criminal justice system. Certification and accreditation are done via a process of self-evaluation led by individual crime laboratory directors.

Our labs are not functioning at optimum levels, and this sub-par performance translates to the miscarriage of justice and prosecution of innocent people. Improvement of lab performance begins with tighter employment policies for the lab staff. For example, the ASCLD's Credential Review Committee has a DNA Advisory Board and codified standards for its technical staff. The following was taken from its website:

> DNA Advisory Board Standard 5.2.1.1 provides a mechanism for waiving the educational requirements for current technical leaders/technical managers who do not meet the degree requirements of section 5.2.1 but who otherwise qualify based on knowledge and experience. Consequently, ASCLD has established this procedure for obtaining a waiver.
>
> One waiver is available per laboratory if the current technical leader/technical manager does not meet the degree requirements of DAB Standard 5.2.1. Waivers are available only to current technical leaders/technical managers. Waivers are permanent and portable for the recipient individual. A laboratory may request a second waiver if the first recipient leaves the employ of the laboratory.

Although experience is quite important in selecting staff, formal education and increased resources are vital when it comes to technical performance and the legal implications of that performance. I hope that the State and local grant programs found in sections 204, 206, 304, 308, and 412 will help cities like Houston vastly improve the standards of its DNA/ballistics lab accreditation.

TEXAS LAW AND CRIME LAB ACCREDITATION

In 2001, Texas passed a law formalizing a process for post-conviction access to DNA testing. The Texas Court of Criminal Appeals, however, has not applied the law as it was designed to work and has denied access to testing in a number of cases.

The Texas House passed a bill in April of last year requiring crime laboratories that test DNA to meet accreditation standards, a law designed to prevent future scandals like the one that recently plagued the Houston Police Department.

The Houston Judicial System convicted Josiah Sutton in 1998 for the rape of a woman whose body was dumped in a Fort Bend County field. But the Court eventually granted him bail in March after an independent lab determined that he was sentenced to 25 years in prison for a rape he didn't commit. An audit and an ongoing series of retesting of DNA samples by the Texas Department of Public Safety and a crime lab professional from Tarrant County revealed potential contamination problems at the subject lab as well as poor working conditions and inadequate training.

Attorney Neufeld remarked that:

> [t]he most important question for the people of Houston and the people of Texas is, ''What went wrong that allowed this young man to be convicted for a crime he didn't commit?''
>
> And it is absolutely clear that what you have going on is a system of malpractice by the Houston crime laboratory that allows its criminalists to distort and conceal evidence.

What I fear about the dangers of poor training and placement of checks may be summed up by what Neufeld added:

> One of the biggest problems of . . . [crime labs] is that they [are] much more concerned with being a servant to the police and prosecutors than they [are] to science . . . [a]nd if people want to pursue a career in science, the word science has to come before law enforcement.

The objectivity that is required to make forensic science effective must be divorced from the latitude exercised by some of our law enforcement personnel. Therefore, we must include adequate technology and resources to prevent injustice and the ruination of young lives like the young Houston man, Josiah Sutton.

Furthermore, other problems with DNA testing in criminal cases affect the inmate directly. The discretion with which the decision whether to use DNA testing leaves room for inconsistent adjudication and differential treatment of convicted persons. Statutory guidelines regarding when to order the test would exclude some cases that might not meet the standards but still might deserve testing. Moreover, some inmates who seek exoneration may request executive clemency. In addition to requiring very difficult measures to achieve justice, some argue that the tests administered are inadequate because they do not provide specific, clear, and fair procedures for inmates to bring claim of innocence.

In addition to negligent handling or unskilled analysis of DNA evidence, the backlog of cases causes our criminal justice system to crumble despite the level of sophistication of our technology. Houston police have turned over about 525 case files involving DNA testing to the Harris County district attorney's office, which has said that at least 25 cases warrant re-testing, including those of seven people on death row. The numbers will grow significantly as more files are collected and analyzed, according to the assistant district attorney supervising the project.

The Fort Worth police crime lab's serology/DNA unit has been criticized recently for a backlog that was slowing down court cases. The unit's performance suffers from understaffing and overworking.

My concern as to the practice of using these DNA tests is that the inmates' civil liberties and rights to due process are continually placed into jeopardy because of a lack of resources. Furthermore, our staffing and personnel problems threaten to undermine the benefits of technology.

Mr. Speaker, with this legislation, I hope that the problems that I have enumerated can be mitigated and addressed. I support this legislation and ask that my colleagues do the same.

Mr. DELAHUNT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the issue raised by the gentleman from Arizona (Mr. FLAKE) was one of the most vexatious issues in the negotiations that are leading up to the manager's amendment, which I will offer shortly. And the most difficult of the issues that the manager's amendment deals with relates to the time limit for seeking post-conviction DNA testing.

On one side there were a group of people who wanted to have no time limit at all, and a motion could be made at any time as long as the defendant was still alive and in jail. On the other side, there were people who wanted to have a hard and fast limit, and the shorter the limitation possible they were in favor of. Those people said that defendants would simply game the system waiting until the witnesses had died and the DNA had evaporated and, consequently, there would not be enough evidence to conduct a retrial.

The compromise that was worked out, I think, is a fair one. For the first 5 years after conviction, there is a rebuttable presumption in favor of the test. After 5 years, there is a rebuttable presumption against the test, but the defendant can get a motion granted if the court finds that the applicant was incompetent at trial, there is newly discovered DNA evidence, or that denial of the motion to retest would result in manifest injustice or for good cause shown.

So, for the first 5 years, the burden is on the prosecution to show that the test should not be granted. After 5 years, the burden effectively is on the defendant to show that the test should be granted for the reasons that I have enumerated.

I believe that takes care of the concerns that the gentleman from Arizona (Mr. FLAKE) has expressed, and I would

urge adoption of the manager's amendment and overwhelming support of the bill.

Mr. Speaker, I ask unanimous consent that a letter from the National District Attorneys Association expressing support for the manager's amendment to H.R. 5107 be included in the RECORD.

NATIONAL DISTRICT ATTORNEYS ASSOCIATION,
Alexandria, VA, October 6, 2004.

Hon. JIM SENSENBRENNER,
Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

Hon. JOHN CONYERS Jr.,
Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER AND CONGRESSMAN CONYERS: As President of the National District Attorneys Association I want to express my support for the Managers Amendment that I understand has been offered to H.R. 5107 the ''Justice For All Act.''

The Amendment has addressed our major concerns with the ''Advancing Justice Through DNA Technology Act.'' The clear indication that Capital Resource Centers are not to be funded through federal funds is important as is the stipulation that the funding is to be used for training counsel in capital cases.

While the compromise standard for new trials does not reach our criteria of a ''preponderance'' it is a marked improvement over prior efforts.

The importance of DNA to our system of criminal justice cannot be over emphasized and the problems that our laboratories and courts are encountering are in our daily headlines. ''The Justice For All Act'' provides the resources desperately needed by the states to overcome serious impediments to the effective use of DNA to seek justice and truth in our criminal justice system.

Sincerely,

PAUL F. WALSH Jr.,
District Attorney, Bristol County, MA,
President, National District Attorneys Association.

Ms. PRYCE of Ohio. Mr. Speaker, as a woman, a former prosecutor and judge, and Federal representative for Ohio's 15th district, I rise today in support of H.R. 5107, the Justice For All Act.

Sadly, for far too many women, the grief of rape and other forms of sexual assault is compounded by the lack of apprehension, prosecution and conviction of the perpetrator. As my community has recently witnessed first hand with the arrest of accused serial rapist Robert Patton, Jr. in the Columbus area, linking DNA obtained at rape scenes to the DNA of felons already convicted of crimes through the FBI's combined DNA Index System is often the best change we have to close a painful chapter in the lives of women who have been the victims of rape and sexual assault. It is also the best chance to put rapists behind bars before they have a chance to repeat their crimes.

Last year, the Federal government provided $100 million to speed up the processing of untested DNA through the Department of Justice and the DNA Index System. And recently, the House passed legislation to increase this amount by over 75 percent to $176 million—mirroring the President's budget request.

Funding is critical, but it is only part of the solution. Making needed improvements to the way the system operates is also essential.

That's why I signed on as an original cosponsor and plan to vote for the Justice for All Act today. This legislation will not only increase the amount of funding available for DNA analysis, but it will also lift some of the barriers that currently stand in the way of ensuring DNA technology is used effectively and efficiently. Specifically, it will focus on eliminating the backlog of DNA samples collected from crime scenes and convicted offenders and improving the DNA testing capacity of federal, state, and local crime laboratories. These two initiatives will have a direct effect on crime fighting in my state of Ohio, which has an extensive backlog of DNA samples that need to be tested.

I pledge to continue to work with my colleagues to further identify the gaps in our system and push for, and implement, effective solutions. And I call upon our partners at the state and local level to do the same. Together, with the support of law enforcement and the citizens in our community, we can put into place a speedier and fairer justice system for victims of rape and sexual assault, always keeping in mind our ultimate goal of preventing these heinous crimes in the first place.

Mr. ROYCE. Mr. Speaker, I am pleased that the Crime Victims' Rights Act was included in H.R. 5107, the Justice for All Act. I have long been an advocate of victim's rights. I am the author of the first State anti-stalking law in the country. At the Federal level, I introduced the Interstate Stalking Punishment and Prevention Act, which was signed into law, making it a felony to cross State lines to stalk someone.

As a State senator, I worked to establish rights for crime victims in California's state constitution as author and campaign co-chair of Proposition 115, the Crime Victims/Speedy Trial Initiative. I have been working for the passage of a Federal victims' rights bill for quite sometime. I introduced a victim's rights bill in the House and cosponsored the Chabot bill, included in H.R. 5107.

Because victims' rights vary from State to State, a Federal law would help ensure that all victims have at least a minimum level of rights in the criminal justice process. Our legal system must properly protect the rights of the accused and it should provide similar protection for the rights of victims. The bill establishes enhanced rights and protections for all victims of crime and spells out how these rights are to be enforced. In addition, the bill helps States implement and enforce victim's rights laws and retain their full power to protect victims in the ways most appropriate to local concerns and local needs.

This bill is a positive step forward for crime victims' rights and I look forward to it becoming law.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the bill has expired.

AMENDMENT OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The SPEAKER pro tempore (Mr. TERRY). The Clerk will designate the amendment:

The text of the amendment is as follows:

Amendment offered by Mr. SENSENBRENNER:

Page 2, after line 7, in the item in the table of contents relating to TITLE I, strike ''CAMBELL'' and insert ''CAMPBELL''.

Page 3, line 1, strike ''CAMBELL'' and insert ''CAMPBELL''.

Page 4, line 12, insert after ''proceeding'' the following: '', or any parole proceeding,''.

Page 4, line 16, insert after ''the court'' the following: '', after receiving clear and convincing evidence,''.

Page 4, line 18, strike ''affected'' and insert ''altered''.

Page 4, line 21, insert after ''proceeding'' the following: ''in the district court''.

Page 4, lines 21–22, strike ''or sentencing'' and insert '', sentencing, or any parole proceeding''.

Page 5, line 10, strike ''Before'' and all that follows through ''the right'' on line 11 and inserting ''Before making a determination''.

Page 7, line 2, strike ''such motion'' and insert ''any motion asserting a victim's right''.

Page 7, line 12, strike ''day,'' and all that follows through ''trial,'' and insert ''days''.

Page 7, line 13, insert after the period the following: ''If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.''.

Page 7, line 20, strike '', or'' and all that follows through the end of line 22 and insert ''. A victim may make a motion to re-open a plea or sentence only if—

''(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

''(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

''(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.''.

Page 15, strike line 4 and all that follows through the end of the bill (titles II, III, and IV) and insert the following new titles:

TITLE II—DEBBIE SMITH ACT OF 2004

SEC. 201. SHORT TITLE.

This title may be cited as the ''Debbie Smith Act of 2004''.

SEC. 202. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

(a) DESIGNATION OF PROGRAM; ELIGIBILITY OF LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) by amending the heading to read as follows:

''SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.'';

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or units of local government'' after ''eligible States''; and

(ii) by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (2), by inserting before the period at the end the following: '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect''; and

(C) in paragraph (3), by striking ''within the State'';

(3) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or unit of local government'' after ''State'' both places that term appears; and

(ii) by inserting '', as required by the Attorney General'' after ''application shall'';

(B) in paragraph (1), by inserting ''or unit of local government'' after ''State'';

(C) in paragraph (3), by inserting ''or unit of local government'' after ''State'' the first place that term appears;

(D) in paragraph (4)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking ''and'' at the end;

(E) in paragraph (5)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''The plan'' and inserting ''A plan pursuant to subsection (b)(1)'';

(ii) in subparagraph (A), by striking ''within the State''; and

(iii) in subparagraph (B), by striking ''within the State''; and

(B) in paragraph (2)(A), by inserting ''and units of local government'' after ''States'';

(5) in subsection (e)—

(A) in paragraph (1), by inserting ''or local government'' after ''State'' both places that term appears; and

(B) in paragraph (2), by inserting ''or unit of local government'' after ''State'';

(6) in subsection (f), in the matter preceding paragraph (1), by inserting ''or unit of local government'' after ''State'';

(7) in subsection (g)—

(A) in paragraph (1), by inserting ''or unit of local government'' after ''State''; and

(B) in paragraph (2), by inserting ''or units of local government'' after ''States''; and

(8) in subsection (h), by inserting ''or unit of local government'' after ''State'' both places that term appears.

(b) REAUTHORIZATION AND EXPANSION OF PROGRAM.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting ''(1) or'' before ''(2)''; and

(B) by inserting at the end the following:

''(4) To collect DNA samples specified in paragraph (1).

''(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.'';

(2) in subsection (b), as amended by this section, by inserting at the end the following:

''(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).'';

(3) by amending subsection (c) to read as follows:

''(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

''(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

''(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

''(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

''(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

''(ii) the population in the jurisdiction; and

''(iii) the number of part 1 violent crimes in the jurisdiction.

''(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

''(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

''(A) For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(E) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).'';

(4) in subsection (g)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.'';

(5) in subsection (j), by striking paragraphs (1) and (2) and inserting the following:

''(1) $151,000,000 for fiscal year 2005;

''(2) $151,000,000 for fiscal year 2006;

''(3) $151,000,000 for fiscal year 2007;

''(4) $151,000,000 for fiscal year 2008; and

''(5) $151,000,000 for fiscal year 2009.''; and

(6) by adding at the end the following:

''(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

''(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

''(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

''(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

''(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

''(C) to support future capacity building efforts; and

''(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

''(l) USE OF FUNDS FOR OTHER FORENSIC SCIENCES.—The Attorney General may award a grant under this section to a State or unit of local government to alleviate a backlog of cases with respect to a forensic science other than DNA analysis if the State or unit of local government—

''(1) certifies to the Attorney General that in such State or unit—

''(A) all of the purposes set forth in subsection (a) have been met;

''(B) a significant backlog of casework is not waiting for DNA analysis; and

''(C) there is no need for significant laboratory equipment, supplies, or additional personnel for timely DNA processing of casework or offender samples; and

''(2) demonstrates to the Attorney General that such State or unit requires assistance in alleviating a backlog of cases involving a forensic science other than DNA analysis.

''(m) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.''.

SEC. 203. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking ''of persons convicted of crimes;'' and inserting the following: ''of—

''(A) persons convicted of crimes;

''(B) persons who have been charged in an indictment or information with a crime; and

''(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from arrestees who have not been charged in an indictment or information with a crime, and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System;''; and

(2) in subsection (d)(2)—

(A) by striking ''if the responsible agency'' and inserting ''if—

''(i) the responsible agency'';

(B) by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.''.

(b) FELONS CONVICTED OF FEDERAL CRIMES.—Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

''(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

''(1) Any felony.

''(2) Any offense under chapter 109A of title 18, United States Code.

''(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

''(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).''.

(c) MILITARY OFFENSES.—Section 1565(d) of title 10, United States Code, is amended to read as follows:

''(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

''(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

''(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).''.

(d) KEYBOARD SEARCHES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132), as amended by subsection (a), is further amended by adding at the end the following new subsection:

''(e) AUTHORITY FOR KEYBOARD SEARCHES.—

''(1) IN GENERAL.—The Director shall ensure that any person who is authorized to access the index described in subsection (a) for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'keyboard search' means a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.

''(3) NO PREEMPTION.—This subsection shall not be construed to preempt State law.''

(e) INCREASED PENALTIES FOR MISUSE OF DNA ANALYSES.—(1) Section 210305(c)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14133(c)(2)) is amended by striking ''$100,000'' and inserting ''$250,000, or imprisoned for a period of not more than one year, or both''.

(2) Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended by striking ''$100,000'' and inserting ''$250,000, or imprisoned for a period of not more than one year, or both''.

(f) REPORT TO CONGRESS.—If the Department of Justice plans to modify or supplement the core genetic markers needed for compatibility with the CODIS system, it shall notify the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives in writing not later than 180 days before any change is made and explain the reasons for such change.

SEC. 204. TOLLING OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3297. Cases involving DNA evidence

''In a case in which DNA testing implicates an identified person in the commission of a felony, except for a felony offense under chapter 109A, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3297. Cases involving DNA evidence.''.

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section if the applicable limitation period has not yet expired.

SEC. 205. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

Section 1201 of the Violence Against Women Act of 2000 (42 U.S.C. 3796gg–6) is amended—

(1) in subsection (a), by inserting ''dating violence,'' after ''domestic violence,'';

(2) in subsection (b)—

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

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

''(1) DATING VIOLENCE.—The term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of—

''(A) the length of the relationship;

''(B) the type of relationship; and

''(C) the frequency of interaction between the persons involved in the relationship.''; and

(C) in paragraph (3), as redesignated by subparagraph (A), by inserting ''dating violence,'' after ''domestic violence,'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting '', dating violence,'' after ''between domestic violence''; and

(ii) by inserting ''dating violence,'' after ''victims of domestic violence,'';

(B) in paragraph (2), by inserting ''dating violence,'' after ''domestic violence,''; and

(C) in paragraph (3), by inserting ''dating violence,'' after ''domestic violence,'';

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', dating violence,'' after ''domestic violence'';

(B) in paragraph (2), by inserting '', dating violence,'' after ''domestic violence'';

(C) in paragraph (3), by inserting '', dating violence,'' after ''domestic violence''; and

(D) in paragraph (4), by inserting ''dating violence,'' after ''domestic violence,'';

(5) in subsection (e), by inserting ''dating violence,'' after ''domestic violence,''; and

(6) in subsection (f)(2)(A), by inserting ''dating violence,'' after ''domestic violence,''.

SEC. 206. ENSURING PRIVATE LABORATORY ASSISTANCE IN ELIMINATING DNA BACKLOG.

Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended to read as follows:

''(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

''(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

''(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a nonprofit or for-profit basis, by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

''(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).''.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

SEC. 301. SHORT TITLE.

This title may be cited as the ''DNA Sexual Assault Justice Act of 2004''.

SEC. 302. ENSURING PUBLIC CRIME LABORATORY COMPLIANCE WITH FEDERAL STANDARDS.

Section 210304(b)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14132(b)(2)) is amended to read as follows:

''(2) prepared by laboratories that—

''(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

''(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and''.

SEC. 303. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

(a) IN GENERAL.—The Attorney General shall make grants to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $12,500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) ELIGIBLE ENTITY.—For purposes of this section, the term ''eligible entity'' includes—

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs;

(D) State sexual assault coalitions;

(E) medical personnel, including doctors, medical examiners, coroners, and nurses, involved in treating victims of sexual assault; and

(F) victim service providers involved in treating victims of sexual assault.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 305. DNA RESEARCH AND DEVELOPMENT.

(a) IMPROVING DNA TECHNOLOGY.—The Attorney General shall make grants for research and development to improve forensic

DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) DEMONSTRATION PROJECTS.—The Attorney General shall make grants to appropriate entities under which research is carried out through demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 306. NATIONAL FORENSIC SCIENCE COMMISSION.

(a) APPOINTMENT.—The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under subsection (b).

(b) RESPONSIBILITIES.—The Commission shall—

(1) assess the present and future resource needs of the forensic science community;

(2) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(4) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(5) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(6) examine additional issues pertaining to forensic science as requested by the Attorney General;

(7) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(8) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in paragraph (7) to ensure—

(A) the appropriate use and dissemination of DNA information;

(B) the accuracy, security, and confidentiality of DNA information;

(C) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(D) that any other necessary measures are taken to protect privacy; and

(9) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in paragraphs (1) through (8).

(c) PERSONNEL; PROCEDURES.—The Attorney General shall—

(1) designate the Chair of the Commission from among its members;

(2) designate any necessary staff to assist in carrying out the functions of the Commission; and

(3) establish procedures and guidelines for the operations of the Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 307. FBI DNA PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Bureau of Investigation $42,100,000 for each of fiscal years 2005 through 2009 to carry out the DNA programs and activities described under subsection (b).

(b) PROGRAMS AND ACTIVITIES.—The Federal Bureau of Investigation may use any amounts appropriated pursuant to subsection (a) for—

(1) nuclear DNA analysis;

(2) mitochondrial DNA analysis;

(3) regional mitochondrial DNA laboratories;

(4) the Combined DNA Index System;

(5) the Federal Convicted Offender DNA Program; and

(6) DNA research and development.

SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.

(a) IN GENERAL.—The Attorney General shall make grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) REQUIREMENT.—Each State or unit of local government that receives funding under this section shall be required to submit the DNA profiles of such missing persons and unidentified human remains to the National Missing Persons DNA Database of the Federal Bureau of Investigation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 309. ENHANCED CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE OF DNA INFORMATION.

Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to read as follows:

''(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $250,000, or imprisoned for a period of not more than one year. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.''.

SEC. 310. TRIBAL COALITION GRANTS.

(a) IN GENERAL.—Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

''(d) TRIBAL COALITION GRANTS.—

''(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

''(A) increasing awareness of domestic violence and sexual assault against American Indian and Alaska Native women;

''(B) enhancing the response to violence against American Indian and Alaska Native women at the tribal, Federal, and State levels; and

''(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to American Indian women victimized by domestic and sexual violence.

''(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—

''(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against American Indian and Alaska Native women; and

''(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against American Indian and Alaska Native women.

''(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).''.

(b) TECHNICAL AMENDMENT.—Effective as of November 2, 2002, and as if included therein as enacted, Public Law 107–273 (116 Stat. 1789) is amended in section 402(2) by striking ''sections 2006 through 2011'' and inserting ''sections 2007 through 2011''.

(c) AMOUNTS.—Section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (as redesignated by section 402(2) of Public Law 107–273, as amended by subsection (b)) is amended by amending subsection (b)(4) (42 U.S.C. 3796gg–1(b)(4)) to read as follows:

''(4) 1/54 shall be available for grants under section 2001(d);''.

SEC. 311. EXPANSION OF PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANT PROGRAM.

(a) FORENSIC BACKLOG ELIMINATION GRANTS.—Section 2804 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797m) is amended—

(1) in subsection (a)—

(A) by striking ''shall use the grant to carry out'' and inserting ''shall use the grant to do any one or more of the following:

''(1) To carry out''; and

(B) by adding at the end the following:

''(2) To eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

''(3) To train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.'';

(2) in subsection (b), by striking ''under this part'' and inserting ''for the purpose set forth in subsection (a)(1)''; and

(3) by adding at the end the following:

''(e) BACKLOG DEFINED.—For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—

''(1) has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility; and

''(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.''.

(b) EXTERNAL AUDITS.—Section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797k) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.''.

(c) THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(24) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(24)) is amended—

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

(2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(G) $20,000,000 for fiscal year 2007;

''(H) $20,000,000 for fiscal year 2008; and

''(I) $20,000,000 for fiscal year 2009.''.

(d) TECHNICAL AMENDMENT.—Section 1001(a) of such Act, as amended by subsection (c), is further amended by realigning paragraphs (24) and (25) so as to be flush with the left margin.

SEC. 312. REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the implementation of this title and the amendments made by this title.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the progress made by Federal, State, and local entities in—

(A) collecting and entering DNA samples from offenders convicted of qualifying offenses for inclusion in the Combined DNA Index System (referred to in this subsection as ''CODIS'');

(B) analyzing samples from crime scenes, including evidence collected from sexual assaults and other serious violent crimes, and entering such DNA analyses in CODIS; and

(C) increasing the capacity of forensic laboratories to conduct DNA analyses;

(2) the priorities and plan for awarding grants among eligible States and units of local government to ensure that the purposes of this title are carried out;

(3) the distribution of grant amounts under this title among eligible States and local governments, and whether the distribution of such funds has served the purposes of the Debbie Smith DNA Backlog Grant Program;

(4) grants awarded and the use of such grants by eligible entities for DNA training and education programs for law enforcement, correctional personnel, court officers, medical personnel, victim service providers, and other personnel authorized under sections 303 and 304;

(5) grants awarded and the use of such grants by eligible entities to conduct DNA research and development programs to improve forensic DNA technology, and implement demonstration projects under section 305;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 306;

(7) the use of funds by the Federal Bureau of Investigation under section 307;

(8) grants awarded and the use of such grants by eligible entities to promote the use of forensic DNA technology to identify missing persons and unidentified human remains under section 308;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under the amendments made by section 202;

(10) State compliance with the requirements set forth in section 313; and

(11) any other matters considered relevant by the Attorney General.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

SEC. 401. SHORT TITLE.

This title may be cited as the ''Innocence Protection Act of 2004''.

Subtitle A—Exonerating the Innocent Through DNA Testing

SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

(1) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

''CHAPTER 228A—POST-CONVICTION DNA TESTING

''Sec.

''3600. DNA testing.

''3600A. Preservation of biological evidence.

''§ 3600. DNA testing

''(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the 'applicant'), the court that entered the judgment of conviction shall order DNA testing of specific evidence if the court finds that all of the following apply:

''(1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

''(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

''(B) another Federal or State offense, if—

''(i) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and

''(ii) in the case of a State offense—

''(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

''(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense.

''(2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

''(3) The specific evidence to be tested—

''(A) was not previously subjected to DNA testing and the applicant did not—

''(i) knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

''(ii) knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or

''(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.

''(4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.

''(5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.

''(6) The applicant identifies a theory of defense that—

''(A) is not inconsistent with an affirmative defense presented at trial; and

''(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

''(7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.

''(8) The proposed DNA testing of the specific evidence may produce new material evidence that would—

''(A) support the theory of defense referenced in paragraph (6); and

''(B) raise a reasonable probability that the applicant did not commit the offense.

''(9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.

''(10) The motion is made in a timely fashion, subject to the following conditions:

''(A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 or within 36 months of conviction, whichever comes later. Such presumption may be rebutted upon a showing—

''(i) that the applicant's motion for a DNA test is based solely upon information used in a previously denied motion; or

''(ii) of clear and convincing evidence that applicant's filing is done solely to cause delay or harass.

''(B) There shall be a rebuttable presumption against timeliness for any motion not satisfying subparagraph (A) above. Such presumption may be rebutted upon the court's finding—

''(i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant's motion for a DNA test;

''(ii) the evidence to be tested is newly discovered DNA evidence;

''(iii) that applicant's motion is not based solely upon the applicant's own assertion of innocence and, after considering all relevant facts and circumstances surrounding the motion, a denial would result in a manifest injustice; or

''(iv) upon good cause shown.

''(C) For purposes of this paragraph—

''(i) the term 'incompetence' has the meaning as defined in section 4241 of title 18, United States Code;

''(ii) the term 'manifest' means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.

''(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

''(1) NOTICE.—Upon the receipt of a motion filed under subsection (a), the court shall—

''(A) notify the Government; and

''(B) allow the Government a reasonable time period to respond to the motion.

''(2) PRESERVATION ORDER.—To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

''(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A(a)(2)(B).

''(c) TESTING PROCEDURES.—

''(1) IN GENERAL.—The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

''(2) EXCEPTION.—Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

''(3) COSTS.—The costs of any DNA testing ordered under this section shall be paid—

''(A) by the applicant; or

''(B) in the case of an applicant who is indigent, by the Government.

''(d) TIME LIMITATION IN CAPITAL CASES.—In any case in which the applicant is sentenced to death—

''(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

''(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order

any post-testing procedures under subsection (f) or (g), as appropriate.

''(e) REPORTING OF TEST RESULTS.—

''(1) IN GENERAL.—The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

''(2) NDIS.—The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as 'NDIS').

''(3) RETENTION OF DNA SAMPLE.—

''(A) ENTRY INTO NDIS.—If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

''(B) MATCH WITH OTHER OFFENSE.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

''(C) NO MATCH.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

''(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

''(1) INCONCLUSIVE RESULTS.—If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

''(2) INCULPATORY RESULTS.—If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—

''(A) deny the applicant relief; and

''(B) on motion of the Government—

''(i) make a determination whether the applicant's assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

''(ii) assess against the applicant the cost of any DNA testing carried out under this section;

''(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

''(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

''(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

''(3) SENTENCE.—In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

''(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

''(1) IN GENERAL.—Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

''(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of—

''(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

''(B) in the case of a motion for resentencing, another Federal or State offense, if evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

''(h) OTHER LAWS UNAFFECTED.—

''(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

''(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

''(3) NOT A MOTION UNDER SECTION 2255.—A motion under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the motion or any other motion is a second or successive motion under section 2255.

''§ 3600A. Preservation of biological evidence

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

''(b) DEFINED TERM.—For purposes of this section, the term 'biological evidence' means—

''(1) a sexual assault forensic examination kit; or

''(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

''(c) APPLICABILITY.—Subsection (a) shall not apply if—

''(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

''(2) the defendant knowingly and voluntarily waived the right to request DNA testing of the biological evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

''(3) after a conviction becomes final and the defendant has exhausted all opportunities for direct review of the conviction, the defendant is notified that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice;

''(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

''(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing; or

''(5) the biological evidence has already been subjected to DNA testing under section 3600 and the results included the defendant as the source of such evidence.

''(d) OTHER PRESERVATION REQUIREMENT.—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

''(e) REGULATIONS.—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

''(f) CRIMINAL PENALTY.—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

''(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

''228A. Post-conviction DNA testing ... 3600''.

(b) SYSTEM FOR REPORTING MOTIONS.—

(1) ESTABLISHMENT.—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

(2) OPERATION.—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report to Congress that contains—

(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this title;

(B) whether DNA testing was ordered pursuant to such a motion;

(C) whether the applicant obtained relief on the basis of DNA test results; and

(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

(4) ADDITIONAL INFORMATION.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this title, and any recommendations the Attorney General may have relating to future legislative action concerning that section.

(c) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

SEC. 412. KIRK BLOODSWORTH POST-CONVICTION DNA TESTING GRANT PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(c) STATE DEFINED.—For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.

For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 308, and 412 shall be reserved for grants to eligible entities that—

(1) meet the requirements under section 303, 305, 308, or 412, as appropriate; and

(2) demonstrate that the State in which the eligible entity operates—

(A) provides post-conviction DNA testing of specified evidence—

(i) under a State statute enacted before the date of enactment of this Act (or extended or renewed after such date), to persons convicted after trial and under a sentence of imprisonment or death for a State felony offense, in a manner that ensures a reasonable process for resolving claims of actual innocence; or

(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to persons under a sentence of imprisonment or death for a State felony offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense—

(i) under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if—

(I) all jurisdictions within the State comply with this requirement; and

(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.

Subtitle B—Improving the Quality of Representation in State Capital Cases

SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.

(b) DEFINED TERM.—In this section, the term ''legal representation'' means legal counsel and investigative, expert, and other services necessary for competent representation.

(c) USE OF FUNDS.—Grants awarded under subsection (a)—

(1) shall be used to establish, implement, or improve an effective system for providing competent legal representation to—

(A) indigents charged with an offense subject to capital punishment;

(B) indigents who have been sentenced to death and who seek appellate or collateral relief in State court; and

(C) indigents who have been sentenced to death and who seek review in the Supreme Court of the United States; and

(2) shall not be used to fund, directly or indirectly, representation in specific capital cases.

(d) APPORTIONMENT OF FUNDS.—

(1) IN GENERAL.—Of the funds awarded under subsection (a)—

(A) not less than 75 percent shall be used to carry out the purpose described in subsection (c)(1)(A); and

(B) not more than 25 percent shall be used to carry out the purpose described in subsection (c)(1)(B).

(2) WAIVER.—The Attorney General may waive the requirement under this subsection for good cause shown.

(e) EFFECTIVE SYSTEM.—As used in subsection (c)(1), an effective system for providing competent legal representation is a system that—

(1) invests the responsibility for appointing qualified attorneys to represent indigents in capital cases—

(A) in a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases;

(B) in an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital representation; or

(C) pursuant to a statutory procedure enacted before the date of the enactment of this Act under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity; and

(2) requires the program described in paragraph (1)(A), the entity described in paragraph (1)(B), or an appropriate entity designated pursuant to the statutory procedure described in paragraph (1)(C), as applicable, to—

(A) establish qualifications for attorneys who may be appointed to represent indigents in capital cases;

(B) establish and maintain a roster of qualified attorneys;

(C) except in the case of a selection committee or similar entity described in paragraph (1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E)(i) monitor the performance of attorneys who are appointed and their attendance at training programs; and

(ii) remove from the roster attorneys who—

(I) fail to deliver effective representation or engage in unethical conduct;

(II) fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; or

''(III) during the past 5 years, have been sanctioned by a bar association or court for ethical misconduct relating to the attorney's conduct as defense counsel in a criminal case in Federal or State court; and

(F) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, who shall be compensated—

(i) in the case of a State that employs a statutory procedure described in paragraph (1)(C), in accordance with the requirements of that statutory procedure; and

(ii) in all other cases, as follows:

(I) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

(II) Appointed attorneys shall be compensated for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(III) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(IV) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of enhancing the ability of prosecutors to effectively represent the public in State capital cases.

(b) USE OF FUNDS.—

(1) PERMITTED USES.—Grants awarded under subsection (a) shall be used for one or more of the following:

(A) To design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases.

(B) To develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases.

(C) To assess the performance of State and local prosecutors who litigate State capital cases, provided that such assessment shall not include participation by the assessor in the trial of any specific capital case.

(D) To identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases.

(E) To establish a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate.

(F) To provide support and assistance to the families of murder victims.

(2) PROHIBITED USE.—Grants awarded under subsection (a) shall not be used to fund, directly or indirectly, the prosecution of specific capital cases.

SEC. 423. APPLICATIONS.

(a) IN GENERAL.—The Attorney General shall establish a process through which a State may apply for a grant under this subtitle.

(b) APPLICATION.—

(1) IN GENERAL.—A State desiring a grant under this subtitle shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall contain—

(A) a certification by an appropriate officer of the State that the State authorizes capital punishment under its laws and conducts, or will conduct, prosecutions in which capital punishment is sought;

(B) a description of the communities to be served by the grant, including the nature of existing capital defender services and capital prosecution programs within such communities;

(C) a long-term statewide strategy and detailed implementation plan that—

(i) reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations; and

(ii) establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes;

(D) in the case of a State that employs a statutory procedure described in section 421(e)(1)(C), a certification by an appropriate officer of the State that the State is in substantial compliance with the requirements of the applicable State statute; and

(E) assurances that Federal funds received under this subtitle shall be—

(i) used to supplement and not supplant non-Federal funds that would otherwise be available for activities funded under this subtitle; and

(ii) allocated in accordance with section 426(b).

SEC. 424. STATE REPORTS.

(a) IN GENERAL.—Each State receiving funds under this subtitle shall submit an annual report to the Attorney General that—

(1) identifies the activities carried out with such funds; and

(2) explains how each activity complies with the terms and conditions of the grant.

(b) CAPITAL REPRESENTATION IMPROVEMENT GRANTS.—With respect to the funds provided under section 421, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) an explanation of the means by which the State—

(A) invests the responsibility for identifying and appointing qualified attorneys to represent indigents in capital cases in a program described in section 421(e)(1)(A), an entity described in section 421(e)(1)(B), or a selection committee or similar entity described in section 421(e)(1)(C); and

(B) requires such program, entity, or selection committee or similar entity, or other appropriate entity designated pursuant to the statutory procedure described in section 421(e)(1)(C), to—

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 421(e)(2)(A);

(ii) establish and maintain a roster of qualified attorneys in accordance with section 421(e)(2)(B);

(iii) assign attorneys from the roster in accordance with section 421(e)(2)(C);

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 421(e)(2)(D);

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs, in accordance with section 421(e)(2)(E); and

(vi) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, in accordance with section 421(e)(2)(F), including a statement setting forth—

(I) if the State employs a public defender program under section 421(e)(1)(A), the salaries received by the attorneys employed by such program and the salaries received by attorneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 421(e)(1)(B), the hourly fees received by such attorneys for actual time and service and the basis on which the hourly rate was calculated;

(III) the amounts paid to non-attorney members of the defense team, and the basis on which such amounts were determined; and

(IV) the amounts for which attorney and non-attorney members of the defense team were reimbursed for reasonable incidental expenses;

(3) in the case of a State that employs a statutory procedure described in section 421(e)(1)(C), an assessment of the extent to which the State is in compliance with the requirements of the applicable State statute; and

(4) a statement confirming that the funds have not been used to fund representation in specific capital cases or to supplant non-Federal funds.

(c) CAPITAL PROSECUTION IMPROVEMENT GRANTS.—With respect to the funds provided under section 422, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) a description of the means by which the State has—

(A) designed and established training programs for State and local prosecutors to ensure effective representation in State capital cases in accordance with section 422(b)(1)(A);

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(B);

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(C);

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 422(b)(1)(D);

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 422(b)(1)(E); and

(F) provided support and assistance to the families of murder victims; and

(3) a statement confirming that the funds have not been used to fund the prosecution of specific capital cases or to supplant non-Federal funds.

(d) PUBLIC DISCLOSURE OF ANNUAL STATE REPORTS.—The annual reports to the Attorney General submitted by any State under this section shall be made available to the public.

SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND ADMINISTRATIVE REMEDIES.

(a) EVALUATION BY INSPECTOR GENERAL.—

(1) IN GENERAL.—As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this subtitle, the Inspector General of the Department of Justice (in this section referred to as the ''Inspector General'') shall—

(A) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report evaluating the compliance by the State with the terms and conditions of the grant; and

(B) if the Inspector General concludes that the State is not in compliance with the terms and conditions of the grant, specify any deficiencies and make recommendations to the Attorney General for corrective action.

(2) PRIORITY.—In conducting evaluations under this subsection, the Inspector General shall give priority to States that the Inspector General determines, based on information submitted by the State and other comments provided by any other person, to be at the highest risk of noncompliance.

(3) DETERMINATION FOR STATUTORY PROCEDURE STATES.—For each State that employs a statutory procedure described in section 421(e)(1)(C), the Inspector General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than the end of the first fiscal year for which such State receives funds, a determination as to whether the State is in substantial compliance with the requirements of the applicable State statute.

(4) COMMENTS FROM PUBLIC.—The Inspector General shall receive and consider comments from any member of the public regarding any State's compliance with the terms and conditions of a grant made under this subtitle. To facilitate the receipt of such comments, the Inspector General shall maintain on its website a form that any member of the public may submit, either electronically or otherwise, providing comments. The Inspector General shall give appropriate consideration to all such public comments in reviewing reports submitted under section 424 or in establishing the priority for conducting evaluations under this section.

(b) ADMINISTRATIVE REVIEW.—

(1) COMMENT.—Upon the submission of a report under subsection (a)(1) or a determination under subsection (a)(3), the Attorney General shall provide the State with an opportunity to comment regarding the findings and conclusions of the report or the determination.

(2) CORRECTIVE ACTION PLAN.—If the Attorney General, after reviewing a report under subsection (a)(1) or a determination under subsection (a)(3), determines that a State is not in compliance with the terms and conditions of the grant, the Attorney General shall consult with the appropriate State authorities to enter into a plan for corrective action. If the State does not agree to a plan for corrective action that has been approved by the Attorney General within 90 days after the submission of the report under subsection (a)(1) or the determination under subsection (a)(3), the Attorney General shall, within 30 days, issue guidance to the State regarding corrective action to bring the State into compliance.

(3) REPORT TO CONGRESS.—Not later than 90 days after the earlier of the implementation of a corrective action plan or the issuance of guidance under paragraph (2), the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate as to whether the State has taken corrective action and is in compliance with the terms and conditions of the grant.

(c) PENALTIES FOR NONCOMPLIANCE.—If the State fails to take the prescribed corrective action under subsection (b) and is not in compliance with the terms and conditions of the grant, the Attorney General shall discontinue all further funding under sections 421 and 422 and require the State to return the funds granted under such sections for that fiscal year. Nothing in this paragraph shall prevent a State which has been subject to penalties for noncompliance from reapplying for a grant under this subtitle in another fiscal year.

(d) PERIODIC REPORTS.—During the grant period, the Inspector General shall periodically review the compliance of each State with the terms and conditions of the grant.

(e) ADMINISTRATIVE COSTS.—Not less than 2.5 percent of the funds appropriated to carry out this subtitle for each of fiscal years 2005

through 2009 shall be made available to the Inspector General for purposes of carrying out this section. Such sums shall remain available until expended.

(f) SPECIAL RULE FOR ''STATUTORY PROCEDURE'' STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STATUTORY PROCEDURES.—

(1) IN GENERAL.—In the case of a State that employs a statutory procedure described in section 421(e)(1)(C), if the Inspector General submits a determination under subsection (a)(3) that the State is not in substantial compliance with the requirements of the applicable State statute, then for the period beginning with the date on which that determination was submitted and ending on the date on which the Inspector General determines that the State is in substantial compliance with the requirements of that statute, the funds awarded under this subtitle shall be allocated solely for the uses described in section 421.

(2) RULE OF CONSTRUCTION.—The requirements of this subsection apply in addition to, and not instead of, the other requirements of this section.

SEC. 426. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR GRANTS.—There are authorized to be appropriated $75,000,000 for each of fiscal years 2005 through 2009 to carry out this subtitle.

(b) RESTRICTION ON USE OF FUNDS TO ENSURE EQUAL ALLOCATION.—Each State receiving a grant under this subtitle shall allocate the funds equally between the uses described in section 421 and the uses described in section 422, except as provided in section 425(f).

Subtitle C—Compensation for the Wrongfully Convicted

SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES FOR THE WRONGFULLY CONVICTED.

Section 2513(e) of title 28, United States Code, is amended by striking ''exceed the sum of $5,000'' and inserting ''exceed $100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff''.

SEC. 432. SENSE OF CONGRESS REGARDING COMPENSATION IN STATE DEATH PENALTY CASES.

It is the sense of Congress that States should provide reasonable compensation to any person found to have been unjustly convicted of an offense against the State and sentenced to death.

The SPEAKER pro tempore. Pursuant to House Resolution 823, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Massachusetts (Mr. DELAHUNT) each will control 10 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on September 22, 2004, the Committee on the Judiciary met and considered this combined Victim Rights-DNA bill. It was reported voted favorably, without amendment, on a voice vote. At the time, I assured my colleagues who raised concerns about the legislation that we would work with them as well as the Department of Justice to address the concerns. I believe this amendment represents a positive compromise in our efforts to address those concerns while protecting victims and ensuring DNA testing will be available to exonerate the innocent and to identify the guilty.

In the victims' rights portion of the legislation, we worked out a number of provisions with the authors of that part of the bill and the victims' rights groups to address issues raised by the Department of Justice, the courts, and outside groups. The result was a compromise that I believe effectively addresses the needs of victims of crime to be more involved in the criminal justice process but will not result in delaying court proceedings nor infringing on the right of a defendant to a speedy trial.

To address privacy concerns raised about DNA databases, my amendment includes increased penalties for misuse of DNA analyses from $100,000 to $250,000, and the possibility of a year in prison to discourage any person who would seek to misuse DNA for personal gain.

The amendment also requires a report to Congress if the Justice Department plans to modify or supplement the core generic markers needed for compatibility with the national DNA database. This is essential to reassure those who raise civil liberty concerns that DNA samples entered into the combined database would not be used for inappropriate purposes.

The legislation authorizes a substantial amount of money to provide grants to States to eliminate their DNA backlogs. Some have raised the concern that there may be some States that do not have a substantial backlog and, thus, would not receive funds. To ensure that the States are effectively using their resources, the amendment allows a State that has no DNA backlog to apply for grants for other forensic sciences.

With regard to the provision relating to the post-conviction DNA testing, the amendment offers a compromise, as I have previously stated, between those who wish to have no time limit on the ability of convicted persons seeking DNA testing and those who insist on a limitation of time, lest convicted persons game the system by waiting until the witnesses have died or waiting until the evidence has evaporated, thus effectively preventing a retrial.

The compromise provides for a 5-year period in which there would be a rebuttable presumption in favor of granting the DNA test. After 5 years, there is a presumption against granting a test unless the court finds that the applicant was incompetent, there is newly discovered DNA evidence, denial would result in a manifest injustice, or for other good cause shown. The amendment also includes tighter language to ensure that defendants cannot make repetitive motions for relief.

Because some of my colleagues in the Department of Justice raised concern about the standard for granting a new trial, the amendment increases the standard for obtaining a new trial to require that there be compelling evidence that a new trial would result in an acquittal. This represents a compromise from the preponderance of evidence and clear and convincing evidence.

With respect to funding prosecution and defense representation in capital cases, the original bill and this amendment do not allow funds to be used directly or indirectly to fund representation in specific capital cases. Additionally, report language on the DNA provision prohibits the creation of capital resource centers.

This amendment tightens the provisions relating to the training and appointment of capital counsel. The amendment specifies that no less than 75 percent of the funds shall be used to carry out training for representation and the creation of an effective system at the trial court level. No more than 25 percent of the funds shall be used to carry out training and systems for appellate representation.

The amendment also reduces the authorization of grants to States to provide training to defense attorneys and prosecutors, and to establish a system of appointment of counsel in capital cases.

Finally, the amendment provides for notification 180 days before the destruction of biological evidence, and provides that the time period will not begin to run until any direct appeal of the conviction was complete. This will ensure that the evidence in the case is preserved to benefit both the defendant and the government if the conviction is reversed.

I believe this amendment represents a good compromise package which will help ensure justice for all. I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. DELAHUNT. Mr. Speaker, I yield myself such time as I may consume, and I support the amendment offered by the chairman for the reasons that he has enumerated.

□ 1215

I would also make the observation, Mr. Speaker, in line with the points made by the gentleman from Wisconsin (Mr. GREEN), the gentlewoman from New York (Mrs. MALONEY), and particularly the gentleman from New York (Mr. WEINER) regarding the ability of law enforcement to identify sexual predators in the aftermath of the efforts made in New York City to reduce that backlog of DNA tests in those boxes that were sitting in that cold storage warehouse somewhere in Long Island.

I would remind those that are concerned about removing sexual predators from the streets of our communities in this country, and particularly let me remind our colleagues in government at the Department of Justice, the passage of this bill will undoubtedly lead, not to hundreds but to thousands of rapists and other sexual predators being identified. And as the gentleman from New York indicated, there is a likelihood, particularly in this category of criminals who tend to have a

high rate of recidivism, that they are committing these crimes again all over this country.

Let me suggest that this particular act, Justice for All, is and will be, if signed by the President, one of the most effective means of reducing the incidence of sexual violence in this country. We have an opportunity here to defend women and others that are victims of sexual predators. I would think that that fact alone would compel those who are in opposition to this bill, whoever they may be, to rethink their position and support it.

Let me conclude by saying again to the gentleman from Wisconsin (Mr. SENSENBRENNER), this has been a remarkable effort, and to you, Mr. Speaker. This proposal before us today, this resolution, really does reflect a good-faith effort to address concerns raised by victims organizations, lawyers, civil liberties groups, prosecutors, and all those who have an interest in justice.

I urge the passage of the manager's amendment.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to House Resolution 823, the previous question is ordered on the bill and on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

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

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

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

CONFERENCE REPORT ON H.R. 4850, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2005

Mr. FRELINGHUYSEN. Mr. Speaker, pursuant to House Resolution 822, I call up the conference report on the bill (H.R. 4850) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2005, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. TERRY). Pursuant to House Resolution 822, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of October 5, 2004 at page H8144.)

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. FRELINGHUYSEN) and the gentleman from Pennsylvania (Mr. FATTAH) each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. FRELINGHUYSEN).

GENERAL LEAVE

Mr. FRELINGHUYSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the conference report to accompany the bill, H.R. 4850, and that I may include tabular material on the same.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FRELINGHUYSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I bring before you today the fiscal year 2005 District of Columbia appropriations bill. First, Mr. Speaker, let me extend my particular thanks to the gentleman from Pennsylvania (Mr. FATTAH) for all his help and wise counsel and hard work and dedication to this city and to moving this bill forward in such an expeditious manner. He has been a pleasure to work with. May I also thank the other members of my committee on both sides of the aisle for their keen interest in this bill. I thank Chairman YOUNG for his guidance and support, and especially the staff. No bill moves without the dedication of a truly dedicated staff: Joel Kaplan, our subcommittee clerk on the majority side; Clelia Alvarado who works with him; Kathy Rowan who works with Joel Kaplan; Nancy Fox, my chief of staff. And on the minority side Martha Foley, the minority clerk, and working with her, Michelle Anderson-Lee who is dedicated as chief of staff to the gentleman from Pennsylvania (Mr. FATTAH).

Mr. Speaker, this bill totals $8.3 billion in local funds, $7.2 billion of which are in operating funds and $1.1 billion in capital outlay funds, and $560 million for Federal payments to various District programs and projects. There is much to be proud of in this bill. I believe it reflects Congress's continuing commitment to helping our Nation's Capital. This is where we all work and many of us live.

Of the $560 million provided for Federal payments to various programs and projects in the District, $409 million is allocated for the District of Columbia courts, public defender services, and the Court Services and Offender Supervision Agency. These are District functions that the Federal Government assumed responsibility for in the National Capital Revitalization and Self-Government Improvement Act of 1997.

The remaining $151 million are for programs and projects that directly benefit the District. They include many city priorities sought by Mayor Williams, the city council, city residents and supported by Members of Congress and our committee.

They include $25.6 million for the very popular tuition assistance program for District college-bound students, $15 million to reimburse the District for added emergency planning and security costs related to the presence of the Federal Government in this city, $40 million for the three-prong school choice program. This is a program which helps more school children and gives more parents in this city choices about their child's education. $6 million to complete the construction of the new unified communications center, badly needed and sought by the city.

More money for the Anacostia waterfront initiative; and more dollars for the District of Columbia Water and Sewer Authority, which in fact improves the cleanliness of the Anacostia River. $6 million for a new public school library initiative. Many school libraries are lacking books and computers that work. $5 million to improve foster care in the District. More money for transportation assistance and for family literacy. And $8 million for a new bioterrorism and forensics laboratory, a long-sought facility which will expedite a lot of critical work.

These are all initiatives we can be proud to support. In particular, I want to take a minute just to highlight the continuing efforts at helping the children of the District. To help the children of the District, the bill includes $5 million for the recently established foster care improvement program; $1 million, as I said earlier, for the family literacy program; $6 million for a new library learning center initiative to be matched by the District; and $40 million for the school improvement program.

Mr. Speaker, in summary, the fiscal year 2005 District of Columbia appropriations bill is fiscally responsible, balanced and deserves bipartisan support. I am proud of our work together this year to expedite this bill so that the city can spend its own resources and better use ours.

Mr. Speaker, I thank the gentleman from Pennsylvania (Mr. FATTAH) for his support.

DIVISION C--DISTRICT OF COLUMBIA APPROPRIATIONS BILL - FY 2005 (H.R. 4850)
(Amounts in thousands)

	FY 2004 Enacted	FY 2005 Request	House	Senate	Conference	Conference vs. Enacted
TITLE I						
FEDERAL FUNDS						
Federal payment for Resident Tuition Support	16,900	17,000	25,600	21,200	25,600	+8,700
Federal payment for Emergency Planning and Security Costs in the District of Columbia	10,935	15,000	15,000	15,000	15,000	+4,065
Federal payment to the District of Columbia Courts	166,775	228,069	202,110	195,010	190,800	+24,025
Defender Services in District of Columbia Courts	31,811	41,500	41,500	34,500	38,500	+6,689
Federal payment to the Court Services and Offender Supervision Agency for the District of Columbia	167,441	187,490	183,490	182,490	180,000	+12,559
Federal payment to the District of Columbia Water and Sewer Authority	29,823	10,000	10,000	10,000	4,800	-25,023
Federal payment for Hospital Bioterrorism Preparedness in the District of Columbia	7,456	---	---	---	---	-7,456
Federal payment for the Anacostia Waterfront Initiative /1	4,971	3,000	3,000	3,000	3,000	-1,971
Federal payment to the Criminal Justice Coordinating Council	1,292	1,300	1,300	1,300	1,300	+8
Federal payment for the Unified Communications Center	---	7,000	---	---	6,000	+6,000
Federal payment for the D.C. Fire and Emergency Medical Services Department	---	10,000	---	---	---	---
Federal payment for Capital Development in the District of Columbia /2	8,102	---	7,000	7,000	---	-8,102
Federal payment for Public School Facilities	4,473	---	---	---	---	-4,473
Federal payment for Public School Libraries	---	---	6,000	---	6,000	+6,000
Federal payment for the Family Literacy Program	1,988	---	1,000	---	1,000	-988
Federal payment for Transportation Assistance	3,479	---	---	5,000	2,500	-979
Federal payment for Foster Care Improvements in the District of Columbia	13,917	---	5,000	5,000	5,000	-8,917
Federal Payment to the Office of the Chief Financial Officer of the District of Columbia	32,159	---	19,000	32,500	32,500	+341
Federal Payment for emergency personnel cross training	497	---	---	---	---	-497
Federal payment for School Improvement	39,764	40,000	40,000	40,000	40,000	+236
Bioterrorism and Forensics Lab	---	---	---	8,000	8,000	+8,000
Total, Federal funds to the District of Columbia	541,783	560,359	560,000	560,000	560,000	+18,217

1/ Funds are for the Anacostia Riverwalk and Trail construction.

2/ Funds are for the Unified Communications Center construction

DISTRICT OF COLUMBIA FUNDS						
Operating Expenses						
Governmental direction and support	(284,415)	(416,069)	(416,069)	(416,069)	(416,069)	(+131,654)
Economic development and regulation	(276,647)	(334,745)	(334,745)	(334,745)	(334,745)	(+58,098)
Public safety and justice	(745,958)	(797,423)	(797,423)	(798,723)	(797,423)	(+51,465)
Public education system	(1,157,841)	(1,223,424)	(1,223,424)	(1,266,424)	(1,223,424)	(+65,583)
Human support services	(2,360,067)	(2,533,825)	(2,533,825)	(2,533,825)	(2,533,825)	(+173,758)
Public Works	(327,046)	(331,936)	(331,936)	(331,936)	(331,936)	(+4,890)
Cash Reserve	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	---
Repayment of Loans and Interest	(311,504)	(347,700)	(347,700)	(347,700)	(347,700)	(+36,196)
Payment of Interest on Short-Term Borrowing	(3,000)	(4,000)	(4,000)	(4,000)	(4,000)	(+1,000)
Certificates of Participation	(4,911)	(11,252)	(11,252)	(11,252)	(11,252)	(+6,341)
Settlements and Judgments	(22,522)	(20,270)	(20,270)	(20,270)	(20,270)	(-2,252)
Wilson Building	(3,704)	(3,633)	(3,633)	(3,633)	(3,633)	(-71)
Workforce Investments	(22,308)	(38,114)	(38,114)	(38,114)	(38,114)	(+15,806)
Non-Departmental Agency	(19,639)	(13,946)	(13,946)	(13,946)	(13,946)	(-5,693)
Equipment Lease Operating	---	(23,109)	(23,109)	---	(23,109)	(+23,109)
Pay-As-You-Go Capital	(11,267)	(6,531)	(6,531)	(6,531)	(6,531)	(-4,736)
Pay-As-You-Go Capital Contingency	---	(43,137)	(43,137)	(43,137)	(43,137)	(+43,137)
Tax Increment Financing Program	(1,940)	---	(9,710)	(9,710)	(9,710)	(+7,770)
Medicaid Disallowance	(57,000)	---	---	---	---	(-57,000)
Total, operating expenses, general fund	(5,659,769)	(6,199,114)	(6,208,824)	(6,230,015)	(6,208,824)	(+549,055)
Enterprise and Other Funds						
Water and Sewer Authority	(259,095)	(275,289)	(275,289)	(287,206)	(287,206)	(+28,111)
Washington Aqueduct	(55,553)	(47,972)	(47,972)	(47,972)	(47,972)	(-7,581)
Stormwater Permit Compliance enterprise fund	(3,501)	(3,792)	(3,792)	(3,792)	(3,792)	(+291)
Lottery and Charitable Games enterprise fund	(242,755)	(247,000)	(247,000)	(247,000)	(247,000)	(+4,245)
Sports and Entertainment Commission	(13,979)	(7,322)	(7,322)	(7,322)	(7,322)	(-6,657)
District of Columbia Retirement Board	(13,895)	(15,277)	(15,277)	(15,277)	(15,277)	(+1,382)
Washington Convention Center enterprise fund	(69,742)	(77,176)	(77,176)	(77,176)	(77,176)	(+7,434)
National Capital Revitalization Corporation	(7,849)	(7,849)	(7,850)	(7,850)	(7,850)	(+1)
University of the District of Columbia	---	(85,102)	(85,102)	(85,102)	(85,102)	(+85,102)

DIVISION C--DISTRICT OF COLUMBIA APPROPRIATIONS BILL - FY 2005 (H.R. 4850)
(Amounts in thousands)

	FY 2004 Enacted	FY 2005 Request	House	Senate	Conference	Conference vs. Enacted
Other Post Employee Benefits Trust Fund	---	(953)	(953)	(953)	(953)	(+953)
District of Columbia Public Library Trust Fund	---	(17)	(17)	(17)	(17)	(+17)
Unemployment Insurance Trust Fund	---	(180,000)	(180,000)	(180,000)	(180,000)	(+180,000)
Total, Enterprise Funds	(666,369)	(947,749)	(947,750)	(959,667)	(959,667)	(+293,298)
Total, operating expenses	(6,326,138)	(7,146,863)	(7,156,574)	(7,189,682)	(7,168,491)	(+842,353)
Capital Outlay						
General fund	(904,913)	(725,886)	(725,886)	(725,886)	(725,886)	(-179,027)
Water and Sewer Fund	(229,807)	(371,040)	(371,040)	(371,040)	(371,040)	(+141,233)
Total, Capital Outlay	(1,134,720)	(1,096,926)	(1,096,926)	(1,096,926)	(1,096,926)	(-37,794)
Total, District of Columbia funds	(7,460,858)	(8,243,789)	(8,253,500)	(8,286,608)	(8,265,417)	(+804,559)
Grand total:						
Federal Funds to the District of Columbia	541,783	560,359	560,000	560,000	560,000	+18,217
District of Columbia funds	(7,460,858)	(8,243,789)	(8,253,500)	(8,286,608)	(8,265,417)	(+804,559)

Mr. Speaker, I reserve the balance of my time.

Mr. FATTAH. Mr. Speaker, I yield myself such time as I may consume. I would like to thank the majority chairman of this committee. He has done extraordinary work in bringing to the floor a bill that has, I think, almost unanimous support in this House, not because it is a perfect bill but because it has been a perfect process, that is, a process that has been inclusive and that has been driven by the determined and public-spirited leadership of the chairman.

There are initiatives like the $6 million school library initiative and other initiatives that have the personal trademark of the chairman to try to improve the life chances of young people in this District. There are others that I will refer to momentarily.

I just want to thank the chairman for his extraordinary leadership and a process that has been perfect in terms of making sure that all of the issues that are important here in the District have been listened to and responded to. There has been a complete hearing process. I would like to thank the staff both on the Democratic side and on the majority side. Joel Kaplan has led the committee's work. Martha Foley. I would like to thank, obviously, Michelle Anderson on my staff and Rob Nabors for his excellent leadership and guidance as we have moved through this on the minority appropriations staff.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I want to thank my good friend, the gentleman from Pennsylvania, for yielding me this time. I begin with special thanks to the gentleman from New Jersey and the gentleman from Pennsylvania, if they will allow me to call them the engineers who have wrought this miracle. For those of us in the District of Columbia, it seems nothing short of that. I call them the engineers because they drove the train straight to the station with no unnecessary stops along the way. For the residents of the District of Columbia whose appropriation is now out, that has very special meaning.

I am also grateful to the chairman of the full committee, the gentleman from Florida (Mr. YOUNG), who I believe is term-limited and to the ranking member, the gentleman from Wisconsin (Mr. OBEY), because throughout their tenure on the committee, leading the committee, they have always understood that if the D.C. appropriation had to be here at all, it ought to be up and out. I appreciate their leadership throughout.

I cannot say enough about the leadership of the gentleman from New Jersey (Mr. FRELINGHUYSEN) and the gentleman from Pennsylvania (Mr. FATTAH). Their leadership shines on the face of this conference report. They must be exceedingly proud that there are only two conference reports out, ready for the President's signature, and that, except for Defense, D.C. is the only one. We are very grateful that D.C. is one of those two. We are particularly grateful because these two leaders have understood that these are Federal funds that are very different from other Federal funds, that these are Federal funds for a city and not a Federal agency, and, therefore, when the funds of a city are held up, untold damage is done to the management of that city.

□ 1230

The Congress has been critical of the management of the District of Columbia over the years without understanding the role the Congress has played in those management difficulties.

Try running a big city when their appropriation is here 3, 4, 5 months later than in their own State or city and perhaps they will get an understanding of why, for the District, this has meant management disarray, in part its fault, no doubt, but certainly with the degree of responsibility in the Congress itself, with disarray from bills for school books that could not be paid so books would not come, or could not be delivered, to vital programs that could not be started.

This year something very important happened, and it is the second year that it has happened. The appropriators were able to allow D.C. to spend its own money on time. This is the rest of the money. This is the Federal money. This is the nontaxpayer-raised money. That D.C. was able to begin October 1 spending its own money is virtually unheard of, at least since the majority took control, and it is profoundly appreciated by the residents of the District of Columbia. Spending our own money, not at last year's levels, but at the approved levels of the Committee on Appropriations has made a world of difference already.

I must say that I think that the District deserves this treatment and respect. It deserves it with seven balanced budgets and surpluses. It deserves it because the city that 8 years ago had an investment bond rating that was below investment grade now has an A rating by all three agencies.

One of the reasons that it has not been able to get above A, as it strives to do, is because of the congressional process. The investment agencies have been very clear that the District's budget having to come here at all imports uncertainty, and that uncertainty has to be reflected in the interest that the District of Columbia taxpayers pay. Therefore, anything of the kind we have seen this year, where our appropriation gets out on time, first and foremost comes to the attention of the investment agencies. And that means that taxpayer-raised money in the District of Columbia can go for the real necessities of the District of Columbia instead of for increased interest.

We have the highest debt service. All of this is wound up in the unique structural difference between the District and other States and localities.

The gentleman from New Jersey (Mr. FRELINGHUYSEN) and the gentleman from Pennsylvania (Mr. FATTAH) have recognized that to the extent that they could mitigate the burden that the congressional process brings to the District budget both in time and in extra cost, that it was their choice to try to do so. And I appreciate that they have done exactly that.

Few States can say that they ran 7 straight years of surpluses and balanced budgets. These were years of some hardship for States. The District of Columbia was in the same economy and in some sense worse, because of 9/11, because our largest industry, the tourist industry, was seriously affected, and yet those surpluses have come. The reason for that is, of course, extraordinary prudence. For that prudence it seems to me we all would want to commend the Council of the District of Columbia and the Mayor of the District of Columbia. They have had the highest reserve fund, and I appreciate and they appreciate that there have been small reductions that I think take into account the prudence with which they have run the city.

This appropriation process, rounding it out, completing it, was necessary because the Federal funds for State functions particularly are in this bill. And these are State functions, prisons, courts that no city carries. The Revitalization Act, therefore, takes up the cost of those State functions, and those State functions are there, and we are very grateful for that. Other non-D.C. funds, Federal funds, are here.

I am grateful that the Public Safety Reimbursement Act, the act I introduced some years ago, is now regularly funded in the President's budget. It is fully funded here. It reimburses the District for national events, everything from President Reagan's funeral to the huge Choice March here. All that expense used to fall to the residents of the District of Columbia, making it very difficult for the city to get toward the balance and the surpluses that it now insists upon.

I am grateful for the increase in the Tuition Access Act. Not every Member understands why the Federal Government should be funding this bill. I can understand their confusion. But the gentleman from New Jersey (Mr. FRELINGHUYSEN) and the gentleman from Pennsylvania (Mr. FATTAH) worked so closely with us. The gentleman from Virginia (Mr. TOM DAVIS), who was the lead sponsor of this bill with me, worked on this bill 5 years ago because the District of Columbia has no State university system the way every other Member here does.

All this bill does is put the District in the same position that other Members are in by allowing our residents to go to State colleges, State university systems, and elsewhere. And look what

it has done. In a region where one needs a college education to get any kind of decent job, we now have a 30 percent increase in young people going to college.

Most critical and what we have tried to do, the authorizers and the appropriators, is to put the District in the same position that any other city would be in. For us it means that taxpayers do not move out of the District when the children get to be 15, 16, and 17, because they can walk across the line into a region and get a low in-State tuition.

So this bill, besides its equity function, has been critical to keeping taxpayers in the District of Columbia. The large return to the Federal dollar is unspoken, but it cannot be denied.

I am grateful to the chairman. I am grateful to the ranking member, and I am grateful to the gentleman from Virginia (Mr. TOM DAVIS) that there were no riders on this bill. That is one of the reasons this bill was always last out, because we have to fight those riders, and that simply elongates, stretches out the time that this bill is on the floor.

I have seen this bill on the floor 8 and 10 hours. This is the smallest bill. This bill is irrelevant to every Member except me. With their eye focused on the prize, our appropriation, let us get it up and out; the appropriators have done their job to a fare-thee-well.

I regret that there are still riders on this bill that will not be on the bills in the Members' States, the rider that forbids us to pay using our local funds for abortions for poor women. That rider is perhaps always going to be controversial.

But the Senate removed two riders: the needle exchange rider, which would allow us to fund the exchange of dirty for clean needles and reduce the HIV/AIDS rate; and the rider, the shameless rider, that keeps us from lobbying for our own rights. Those, the Senate said, also should be eliminated from this bill. The House was not able to do so.

Finally, if I could once again thank the gentleman from New Jersey (Chairman FRELINGHUYSEN) and the gentleman from Pennsylvania (Mr. FATTAH) for the extraordinary job that they have done on this bill. Let me say that in a real sense, what they have done on this bill forecasts, is a prologue of what would happen if the budget autonomy bill that the gentleman from Virginia (Mr. TOM DAVIS) and I have pending before this House passes.

We think that there is a very decent chance of its passing in the session when we come back. It would automatically release our Federal funds, as my colleagues have had to do by act of the Committee on Appropriations. So they have, I think, demonstrated, by the way in which they have run the District of Columbia Subcommittee, something far larger; and that is how the House should move, to generally smooth the operation of the D.C. budget out of this House and into the hands of the people who raise the money, the people of the District of Columbia. They have my gratitude.

I know I expressed the gratitude of our elected officials in the District of Columbia and also of our residents, who have watched this bill this time pass through this House with what for us seems like lightning speed. It is the speed on the wings of the two leaders of our appropriation, and they have our thanks once again.

Mr. FATTAH. Mr. Speaker, I yield myself such time as I may consume.

Let me thank the gentlewoman from the District of Columbia for her comments and her insight and assistance as we move through.

Let me conclude my remarks, and I will be prepared to yield back the balance of my time. But let me just state, there is a lot that I could talk about that is in this bill in terms of help and assistance and innovation and creativity, but I think that a lot has already been said about the advances in the District's fiscal health and a lot of work that has been done.

I want to highlight just the college assistance program, the resident tuition program, which I was one of the original cosponsors of with the gentleman from Virginia (Mr. TOM DAVIS) and the gentlewoman from the District of Columbia (Ms. NORTON) some 5 years ago. It is an amazing program. It has been very successful.

And I want to return to what I was saying about the chairman of this committee. He has visited schools and committees, been out in neighborhoods and at the waterfront in the District. He has been active and aggressive in terms of trying to have the insight necessary to make some of the decisions that have to be made in this process; and I want to publicly thank him for his leadership on the subcommittee. It has been a pleasure to work with him this year on this process.

And I want to thank, again, the staff.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FRELINGHUYSEN. Mr. Speaker, I yield myself such time as I may consume.

Let me return the compliment to the gentleman from Pennsylvania (Mr. FATTAH) for his dedication and knowledge of the District's needs and priorities. He has been a great coworker with me on behalf of all the members of the committee, a keen interest in bettering the lives of the citizens of this city. And both of us are so proud of the gentlewoman from the District of Columbia (Ms. NORTON). We appreciate her pats on the back to us.

This is a great city. We are trying to make it better. I thank her for her strong advocacy as we go about our work trying to get this bill out and the money to the city, their money as well as Federal money, because we know it will be well spent.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will now put each question on which further proceedings were postponed earlier today in the following order:

passage of H.R. 5107;

adoption of the conference report to accompany H.R. 4850.

The first electronic vote will be conducted as a 15-minute vote. The remaining electronic vote will be conducted as a 5-minute vote.

JUSTICE FOR ALL ACT OF 2004

The SPEAKER pro tempore. The pending business is the question of the passage of the bill, H.R. 5107, on which further proceedings were postponed earlier today.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the passage of the bill, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 393, nays 14, not voting 25, as follows:

[Roll No. 497]

YEAS—393

Abercrombie	Brown (SC)	Cunningham
Ackerman	Brown, Corrine	Davis (AL)
Aderholt	Brown-Waite, Ginny	Davis (CA)
Akin	Burns	Davis (FL)
Alexander	Burr	Davis (IL)
Allen	Burton (IN)	Davis (TN)
Andrews	Butterfield	Davis, Jo Ann
Baca	Buyer	Davis, Tom
Bachus	Calvert	Deal (GA)
Baird	Camp	DeFazio
Baker	Cannon	DeGette
Baldwin	Cantor	Delahunt
Ballenger	Capito	DeLauro
Bartlett (MD)	Capps	DeLay
Beauprez	Capuano	Deutsch
Bell	Cardin	Diaz-Balart, L.
Berkley	Cardoza	Diaz-Balart, M.
Berman	Carson (IN)	Dicks
Berry	Carson (OK)	Dingell
Biggert	Case	Doggett
Bilirakis	Castle	Dooley (CA)
Bishop (GA)	Chabot	Doolittle
Bishop (NY)	Chocola	Doyle
Bishop (UT)	Clay	Dreier
Blackburn	Clyburn	Dunn
Blumenauer	Coble	Edwards
Blunt	Cole	Ehlers
Boehner	Collins	Emanuel
Bonilla	Conyers	Emerson
Bonner	Cooper	Engel
Bono	Costello	English
Boozman	Cox	Eshoo
Boswell	Cramer	Etheridge
Boucher	Crane	Evans
Boyd	Crenshaw	Everett
Bradley (NH)	Crowley	Farr
Brady (PA)	Cubin	Fattah
Brady (TX)	Cummings	Feeney
Brown (OH)		Ferguson

Filner
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—14

Barrett (SC)
Burgess
Carter
Culberson
Duncan
Flake
Garrett (NJ)
Granger
Hensarling
Johnson, Sam
Jones (NC)
Miller (FL)
Pence
Shadegg

NOT VOTING—25

Barton (TX)
Bass
Becerra
Boehlert
Chandler
DeMint
Gephardt
Hall
Houghton
Hyde
Istook
Kaptur
Kingston
Kleczka
Majette
Millender-McDonald
Nethercutt
Norwood
Paul
Sherwood
Slaughter
Tauzin
Towns
Wexler
Woolsey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. TERRY) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1307

Ms. GRANGER, Mr. GARRETT of New Jersey, and Mr. PENCE changed their vote from ''yea'' to ''nay.''

Mr. NEUGEBAUER changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 4850, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2005

The SPEAKER pro tempore. The pending business is the question of agreeing to the conference report on the bill, H.R. 4850.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 377, nays 36, not voting 19, as follows:

[Roll No. 498]

YEAS—377

Abercrombie
Ackerman
Aderholt
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Barton (TX)
Beauprez
Becerra
Bell
Berkley
Berman
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Foley
Forbes
Ford
Frank (MA)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Gordon
Granger
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McInnis
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Serrano
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—36

Akin
Bartlett (MD)
Berry
Boswell
Brown-Waite, Ginny
Coble
Cubin
Duncan
Flake
Fossella
Franks (AZ)
Goode
Goodlatte
Graves
Green (TX)
Hayworth
Hefley
Hensarling
Jones (NC)
Manzullo

McHugh	Platts	Stearns
McIntyre	Royce	Taylor (MS)
Miller (FL)	Ryun (KS)	Tierney
Moore	Sensenbrenner	Toomey
Otter	Shadegg	
Petri	Smith (MI)	

NOT VOTING—19

Bass	Kingston	Paul
Boehlert	Kleczka	Sherwood
DeMint	Majette	Slaughter
Gephardt	Millender-McDonald	Tancredo
Houghton	Nethercutt	Tauzin
Hyde	Norwood	Towns
King (NY)		

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. WHITFIELD) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1318

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. WHITFIELD). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on the motions to suspend the rules on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004

Mr. DELAY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4518) to extend the statutory license for secondary transmissions under section 119 of title 17, United States Code, as amended.

The Clerk read as follows:

H.R. 4518

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

(a) SHORT TITLES.—This Act may be cited as the ''Satellite Home Viewer Extension and Reauthorization Act of 2004'' or the ''W. J. (Billy) Tauzin Satellite Television Act of 2004''.

(b) TABLE OF CONTENTS.—

Sec. 1. Short titles; table of contents.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

Sec. 101. Extension of authority.
Sec. 102. Reporting of subscribers; significantly viewed and other signals; technical amendments.
Sec. 103. Statutory license for satellite carriers outside local markets.
Sec. 104. Statutory license for satellite retransmission of low power television stations.
Sec. 105. Definitions.
Sec. 106. Effect on certain proceedings.
Sec. 107. Statutory license for satellite carriers retransmitting superstation signals to commercial establishments.
Sec. 108. Expedited consideration of voluntary agreements to provide satellite secondary transmissions to local markets.
Sec. 109. Study.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

Sec. 201. Extension of retransmission consent exemption.
Sec. 202. Cable/satellite comparability.
Sec. 203. Carriage of local stations on a single dish.
Sec. 204. Replacement of distant signals with local signals.
Sec. 205. Additional notices to subscribers, networks, and stations concerning signal carriage.
Sec. 206. Privacy rights of satellite subscribers.
Sec. 207. Reciprocal bargaining obligations.
Sec. 208. Unserved digital customers.
Sec. 209. Reduction of required tests.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

(a) IN GENERAL.—Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

Section 119(a) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) in the paragraph heading, by striking ''AND PBS SATELLITE FEED'';

(B) in the first sentence, by striking ''(3), (4), and (6)'' and inserting ''(5), (6), and (8)'';

(C) in the first sentence, by striking ''or by the Public Broadcasting Service satellite feed''; and

(D) by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''(3), (4), (5), and (6)'' and inserting ''(5), (6), (7), and (8)''; and

(B) by striking subparagraph (C) and inserting the following:

''(C) EXCEPTIONS.—

''(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

''(ii) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and superstations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of tile 47 of the Code of Federal Regulations).

''(iii) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

''(I) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

''(II) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

''(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

''(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

''(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

''(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraph (3), relating to significantly viewed stations.

''(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

''(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

''(II) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and zip code), identifying those subscribers whose service pursuant to paragraph (3), relating to significantly viewed stations, has been added or dropped.

''(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

''(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.'';

(3) by striking paragraph (8);

(4) by redesignating paragraphs (9) through (12) as paragraphs (10) through (13), respectively;

(5) by redesignating paragraphs (3) through (7) as paragraphs (5) through (9), respectively;

(6) by inserting after paragraph (2) the following:

''(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

''(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to

subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

''(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.

''(C) WAIVER.—

''(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

''(ii) SUNSET.—The authority under clause (i) to grant waivers shall terminate on December 31, 2008, and any such waiver in effect shall terminate on that date.'';

(7) in paragraph (2)(B)(i), by adding at the end the following new sentence: ''The limitation in this clause shall not apply to secondary transmissions under paragraph (3).''.

SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS OUTSIDE LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

''(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

''(A) RULES FOR SUBSCRIBERS UNDER SUBSECTION (e).—

''(i) FOR THOSE RECEIVING DISTANT SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary transmission of a network station solely by reason of subsection (e) (in this subparagraph referred to as a 'distant signal'), and who, as of October 1, 2004, is receiving the distant signal of that network station, the following shall apply:

''(I) In a case in which the satellite carrier makes available to the subscriber the secondary transmission of the primary transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network—

''(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but

''(bb) only until such time as the subscriber elects to receive such local signal.

''(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

''(aa) identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant signals received by the subscriber; and

''(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant signals.

''(ii) FOR THOSE NOT RECEIVING DISTANT SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant signal of a network station solely by reason of subsection (e) and who did not receive a distant signal of a station affiliated with the same network on October 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same network.

''(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a 'distant signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

''(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the secondary transmission of the primary transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant signals received by the subscriber.

''(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the secondary transmission of the primary transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant signal of a station affiliated with the same network to that subscriber if—

''(I) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to provide pursuant to the statutory license under section 122 the secondary transmissions of the primary transmission of stations from the local market of such local network station; and

''(II) the satellite carrier, within 60 days after such date, submits to each television network a list that identifies each subscriber in that local market provided such a signal by name and address (street or rural route number, city, State, and zip code) and specifies the distant signals received by the subscriber.

''(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary transmission of a network station to a person who—

''(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

''(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122.

''(D) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

''(E) WAIVER.—A subscriber who is denied the secondary transmission of a network station under subparagraph (C) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

''(F) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of local station to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same zip code as that subscriber or person.''.

(2) Subsection (a) is amended by adding at the end the following:

''(14) WAIVERS.—A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act

of 2004 under section 339(c)(2) of the Communications Act of 1934, and that was in effect on such date of enactment, shall constitute a waiver for purposes of this subparagraph.''.

(3) Subsection (b)(1) is amended by striking subparagraph (B) and inserting the following:

''(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.''.

(4) Subsection (b)(1) is further amended by adding at the end the following flush sentence: ''Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber under paragraph (3) of such subsection.''.

(5) Subsection (c) is amended—

(A) by amending paragraph (1) to read as follows:

''(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2004, as modified under this subsection.'';

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''July 1, 1996,'' and inserting ''January 2, 2005,'';

(ii) in subparagraph (C)—

(I) in the heading, by inserting ''; PUBLIC NOTICE'' after ''AGREEMENTS'';

(II) in the first sentence, by striking ''Voluntary agreements'' and inserting ''(i) Voluntary agreements''; and

(III) by adding at the end the following:

''(ii)(I) Within 10 days after the publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding pursuant to paragraph (3).

''(II) Upon receiving a request under subclause (I), the Librarian of Congress shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

''(III) The Librarian shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding unless a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).''; and

(iii) in subparagraph (D), by striking ''December 31, 1999,'' and inserting ''December 31, 2009'';

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking ''January 1, 1997,'' and inserting ''May 1, 2005,'';

(II) by striking ''who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2).'' and inserting ''and distributors— '';

''(i) in the absence of a voluntary agreement filed in accordance with paragraph (2) that establishes the royalty fees to be paid by all satellite carriers and distributors; or

''(ii) if an objection to the fees from a voluntary agreement submitted for adoption by the Librarian of Congress to apply to all satellite carriers, distributors, and copyright owners is received under paragraph (2)(C) from a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding.'';

(ii) in the first sentence of subparagraph (B), by inserting after ''value of secondary transmissions'' the following: '', except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under any applicable voluntary agreements filed with the Copyright Office pursuant to paragraph (2).'' ; and

(iii) in subparagraph (C)(ii), by striking ''become effective as provided'' and all that follows through ''later'' and inserting ''be effective as of January 1, 2005''; and

(D) by striking paragraphs (4) and (5)

(6) Subsection (a)(7), as redesignated by section 102(5) of this Act, is amended—

(A) in subparagraph (A), by striking ''who does not reside in an unserved household'' and inserting ''who is not eligible to receive the transmission under this section'';

(B) in subparagraph (B), by striking ''who do not reside in unserved households'' and inserting ''who are not eligible to receive the transmission under this section''; and

(C) in subparagraph (D), by striking ''is for private home viewing to an unserved household'' and inserting ''is to a subscriber who is eligible to receive the secondary transmission under this section''.

SEC. 104. STATUTORY LICENSE FOR SATELLITE RETRANSMISSION OF LOW POWER TELEVISION STATIONS.

(a) IN GENERAL.—Section 119(a) of title 17, United States Code (as amended by sections 102 and 103 of this Act), is further amended by adding at the end the following:

''(15) CARRIAGE OF LOW POWER TELEVISION STATIONS.—

''(A) IN GENERAL.—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (F) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation that is licensed as a low power television station, to a subscriber who resides within the same local market.

''(B) GEOGRAPHIC LIMITATION.—

''(i) NETWORK STATIONS.—With respect to network stations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who—

''(I) reside in the same local market as the station originating the signal; and

''(II) reside within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20.

''(ii) SUPERSTATIONS.—With respect to superstations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who reside in the same local market as the station originating the signal.

''(C) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

''(D) ROYALTY FEES.—Notwithstanding subsection (b)(1)(B), a satellite carrier whose secondary transmissions of the primary transmissions of a low power television station are subject to statutory licensing under this section shall have no royalty obligation for secondary transmissions to a subscriber who resides within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20. Carriage of a superstation that is a low power television station within the station's local market, but outside of the 35-mile or 20-mile radius described in the preceding sentence, shall be subject to royalty payments under section (b)(1)(B).

''(E) LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—Secondary transmissions provided for in subparagraph (A) may be made only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license under section 122, and only in conformity with the requirements under 340(b) of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.''.

SEC. 105. DEFINITIONS.

Section 119(d) of title 17, United States Code, is amended—

(1) in paragraph (2)(A), by striking ''a television broadcast station'' and inserting ''a television station licensed by the Federal Communications Commission'';

(2) by amending paragraph (9) to read as follows:

''(9) SUPERSTATION.—The term 'superstation' means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.'';

(3) in paragraph (10)—

(A) in subparagraph (B), by striking ''granted under regulations established under section 339(c)(2) of the Communications Act of 1934'' and inserting ''that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004''; and

(B) in subparagraph (D), by striking ''(a)(11)'' and inserting ''(a)(12)''; and

(4) by striking paragraphs (11) and (12) and inserting the following:

''(11) LOCAL MARKET.—The term 'local market' has the meaning given such term under section 122(j), except that with respect to a low power television station, the term 'local market' means the designated market area in which the station is located.

''(12) LOW POWER TELEVISION STATION.—The term 'low power television station' means a low power television as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ''low power television station'' includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

''(13) COMMERCIAL ESTABLISHMENT.—The term 'commercial establishment'—

''(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

''(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.''

SEC. 106. EFFECT ON CERTAIN PROCEEDINGS.

Nothing in this title shall modify any remedy imposed on a party that is required by

the judgment of a court in any action that was brought before May 1, 2004, against that party for a violation of section 119 of title 17, United States Code.

SEC. 107. STATUTORY LICENSE FOR SATELLITE CARRIERS RETRANSMITTING SUPERSTATION SIGNALS TO COMMERCIAL ESTABLISHMENTS.

(a) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by inserting ''or for viewing in a commercial establishment'' after ''for private home viewing'' each place it appears; and

(B) by striking ''household'' and inserting ''subscriber'';

(2) in subsection (b), by striking ''for private home viewing'' each place it appears;

(3) in subsection (d)(1)—

(A) by striking ''for private home viewing''; and

(B) by inserting ''in accordance with the provisions of this section'' before the period;

(4) in subsection (d)(6), by inserting ''pursuant to this section'' before the period; and

(5) in subsection (d)(8)—

(A) by striking ''who'' and inserting ''or entity that'';

(B) by striking ''for private home viewing''; and

(C) by inserting ''in accordance with the provisions of this section'' before the period.

(b) CONFORMING AMENDMENTS.— Subsections (a)(4) and (d)(1)(A) of section 111 of title 17, United States Code, are each amended by striking ''for private home viewing''.

SEC. 108. EXPEDITED CONSIDERATION OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended by adding at the end the following:

''(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

''(1) IN GENERAL.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

''(2) DEFINITION.—For purposes of this subsection, the term 'antitrust laws'—

''(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes 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 paragraph (1).''.

SEC. 109. STUDY.

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report shall include, but not be limited to, the following:

(1) A comparison of the royalties paid by licensees under such sections, including historical rates of increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.

(2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

(3) An analysis of whether the licenses under such sections are still justified by the bases upon which they were originally created.

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

(5) An analysis of issues that may arise with respect to the application of the licenses under such sections to the secondary transmissions of the primary transmissions of network stations and superstations that originate as digital signals, including issues that relate to the application of the unserved household limitations under section 119 of title 17, United States Code, and to the determination of royalties of cable systems and satellite carriers.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

SEC. 201. EXTENSION OF RETRANSMISSION CONSENT EXEMPTION.

Section 325(b)(2)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(C)) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

SEC. 202. CABLE/SATELLITE COMPARABILITY.

(a) AMENDMENT.—Part I of title III of the Communications Act of 1934 is amended by inserting after section 339 (47 U.S.C. 339) the following new section:

''SEC. 340. SIGNIFICANTLY VIEWED SIGNALS PERMITTED TO BE CARRIED.

''(a) SIGNIFICANTLY VIEWED STATIONS.—In addition to the broadcast signals that subscribers may receive under section 338 and 339, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

''(1) has, before the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or

''(2) is, after such date of enactment, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

''(b) LIMITATIONS.—

''(1) ANALOG SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions from that satellite carrier pursuant to section 338.

''(2) DIGITAL SERVICE LIMITATIONS.—With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—

''(A) the subscriber receives from the satellite carrier pursuant to section 338 the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and

''(B) either—

''(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

''(ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

''(3) LIMITATION NOT APPLICABLE WHERE NO NETWORK AFFILIATES.—The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

''(4) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

''(c) PUBLICATION AND MODIFICATIONS OF LISTS; REGULATIONS.—

''(1) IN GENERAL.—The Commission shall—

''(A) within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004—

''(i) publish a list of the stations that are eligible for retransmission under subsection (a) (1) and the communities in which such stations are eligible for such retransmission; and

''(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

''(B) adopt rules pursuant to such rulemaking within one year after such date of enactment.

''(2) PUBLIC AVAILABILITY OF LIST.—The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

''(3) MODIFICATIONS.—In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

''(A) by which stations may be added to those that are eligible for retransmission under subsection (a), and by which communities may be added in which such stations are eligible for such retransmission; and

''(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e).

''(d) EFFECT ON OTHER OBLIGATIONS AND RIGHTS.—

''(1) NO EFFECT ON CARRIAGE OBLIGATIONS.—Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 is not affected by the eligibility of such station to be carried under this section.

''(2) RETRANSMISSION CONSENT RIGHTS NOT AFFECTED.—The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1).

''(e) NETWORK NONDUPLICATION AND SYNDICATED EXCLUSIVITY.—

''(1) NOT APPLICABLE EXCEPT AS PROVIDED BY COMMISSION REGULATIONS.—Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

''(2) LIMITATION.—Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B), with respect to persons who reside in unserved households, under 119(a)(4)(A), or under section 119(a)(12).

''(f) ENFORCEMENT.—

''(1) ORDERS AND DAMAGES.—Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

''(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to $50 per subscriber, per station, per day of the violation; and

''(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the complaint was frivolous, in an amount up to $50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

''(2) COMMISSION DECISION.—The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

''(3) REMEDIES IN ADDITION.—The remedies under this subsection are in addition to any remedies available under title 17, United States Code.

''(4) NO EFFECT ON COPYRIGHT PROCEEDINGS.—Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17, United States Code, and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

''(g) NOTICES CONCERNING SIGNIFICANTLY VIEWED STATIONS.—Each satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall—

''(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

''(2) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 and the communities in which the signals are carried.

''(h) ADDITIONAL CORRESPONDING CHANGES IN REGULATIONS.—

''(1) COMMUNITY-BY-COMMUNITY ELECTIONS.—The Commission shall, no later than April 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 and mandatory carriage pursuant to section 338 separately for each county within such station's local market, if—

''(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or

''(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network.

''(2) UNIFIED NEGOTIATIONS.—In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

''(3) ADDITIONAL PROVISIONS.—The Commission shall, no later than April 30, 2005, revise its regulations to provide the following:

''(A) NOTIFICATIONS BY SATELLITE CARRIER.—A satellite carrier's retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

''(i) In any local market in which the satellite carrier provides service pursuant to section 338 on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

''(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to this section during the next election cycle under such section of such regulations; and

''(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

''(ii) In any local market in which the satellite carrier commences service pursuant to section 338 after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle under such section of such regulations.

''(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

''(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

''(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

''(B) HARMONIZATION OF ELECTIONS AND RETRANSMISSION CONSENT AGREEMENTS.—If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

''(i) DEFINITIONS.—As used in this section:

''(1) LOCAL MARKET; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms 'local market', 'satellite carrier', 'subscriber', and 'television broadcast station' have the meanings given such terms in section 338(k).

''(2) NETWORK STATION; TELEVISION NETWORK.—The terms 'network station' and 'television network' have the meanings given such terms in section 339(d).

''(3) COMMUNITY.—The term 'community' means—

''(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

''(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

''(4) BANDWIDTH.—The terms 'equivalent bandwidth' and 'entire bandwidth' shall be defined by the Commission by regulation.''.

SEC. 203. CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.

(a) AMENDMENTS.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338(d)) is amended—

(1) by redesignating subsections (g) and (h) as subsections (j) and (k), respectively;

(2) by inserting after subsection (f) the following new subsection:

''(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.—

''(1) SINGLE DISH.—Each satellite carrier that retransmits the analog signals of local television broadcast stations in a local market shall retransmit such analog signals in such market by means of a single reception antenna and associated equipment.

''(2) EXCEPTION.—If the carrier retransmits signals in the digital television service, the carrier shall retransmit such digital signals in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for analog television service signals.

''(3) EFFECTIVE DATE.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after one year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

''(4) NOTICE OF DISRUPTIONS.—A carrier that is providing signals of a local television broadcast station in a local market under this section on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 shall, not later than

270 days after such date of enactment, provide to the licensees for such stations and the carrier's subscribers in such local market a notice that displays prominently and conspicuously a clear statement of—

''(A) any reallocation of signals between different reception antennas and associated equipment that the carrier intends to make in order to comply with the requirements of this subsection;

''(B) the need, if any, for subscribers to obtain an additional reception antenna and associated equipment to receive such signals; and

''(C) any cessation of carriage or other material change in the carriage of signals as a consequence of the requirements of this paragraph.''.

(b) CONFORMING AMENDMENTS: COMMISSION ENFORCEMENT OF SECTION; LOW POWER TELEVISION STATIONS.—

(1) Section 338(a) of such Act is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) IN GENERAL.—Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b).

''(2) REMEDIES FOR FAILURE TO CARRY.—In addition to the remedies available to television broadcast stations under section 501(f) of title 17, United States Code, the Commission may use the Commission's authority under this Act to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required as a predicate to the pursuit of a remedy available under such section 501(f).

''(3) LOW POWER STATION CARRIAGE OPTIONAL.—No low power television station whose signals are provided under section 119(a)(14) of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.''.

(2) Section 338(c)(1) of such Act is amended by striking ''subsection (a)'' and inserting ''subsection (a)(1)''.

(3) Section 338(k) of such Act (as redesignated by subsection (a)(1)) is amended—

(A) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

''(4) LOW POWER TELEVISION STATION.—The term 'low power television station' means a low power television station as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ''low power television station'' includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.''.

SEC. 204. REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.

Section 339(a) of the Communications Act of 1934 (47 U.S.C. 339(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

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

''(2) REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.—Notwithstanding any other provision of paragraph (1), the following rules shall apply after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004:

''(A) RULES FOR GRANDFATHERED SUBSCRIBERS.—

''(i) FOR THOSE RECEIVING DISTANT SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station solely by reason of section 119(e) of title 17, United States Code (in this subparagraph referred to as a 'distant signal'), and who, as of October 1, 2004, is receiving the distant signal of that network station, the following shall apply:

''(I) In a case in which the satellite carrier makes available to the subscriber the signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber—

''(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of this Act, the subscriber elects to retain the distant signal; but

''(bb) only until such time as the subscriber elects to receive such local signal.

''(II) Notwithstanding subclause (I), the carrier may not retransmit the distant signal to any subscriber who is eligible to receive the signal of a network station solely by reason of section 119(e) of title 17, United States Code, unless such carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network the list and statement required by subparagraph (E)(i).

''(ii) FOR THOSE NOT RECEIVING DISTANT SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant signal of a network station solely by reason of section 119(e) of title 17, United States Code, and who did not receive a distant signal of a station affiliated with the same network on October 1, 2004, the carrier may not provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber.

''(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under this section (in this subparagraph referred to as a 'distant signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

''(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliate with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (E)(i).

''(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if—

''(I) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to carry pursuant to section 338 the signals of stations from the local market of such local network station; and

''(II) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (E)(ii).

''(C) FUTURE APPLICABILITY.—A satellite carrier may not provide a distant signal (within the meaning of subparagraph (A) or (B)) to a person who—

''(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

''(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the signal of a local network station affiliated with the same television network pursuant to section 338.

''(D) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—This paragraph shall not prohibit a retransmission of a distant signal (within the meaning of subparagraph (A) or (B)) of any distant network station to any subscriber to whom the signal of a local network station affiliated with the same network is available pursuant to section 338, if and to the extent that such local network station has affirmatively granted a waiver from the requirements of this paragraph to such satellite carrier with respect to retransmission of such distant network station to such subscriber.

''(E) NOTICES TO NETWORKS OF DISTANT SIGNAL SUBSCRIBERS.——

''(i) Within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (A) or (B)(i) of this paragraph shall submit to each network—

''(I) a list, aggregated by designated market area, identifying each subscriber provided such a signal by—

''(aa) name;

''(bb) address (street or rural route number, city, State, and zip code); and

''(cc) the distant network signal or signals received; and

''(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (A) or (B)(i) of this paragraph.

''(ii) Within 60 days after the date a satellite carrier commences to carry pursuant to section 338 the signals of stations from a local market, such a satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (B)(ii) of this paragraph shall submit to each network —

''(I) a list identifying each subscriber in that local market provided such a signal by—

''(aa) name;

''(bb) address (street or rural route number, city, State, and zip code); and

''(cc) the distant network signal or signals received; and

''(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (B)(ii) of this paragraph.

''(F) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 340 of this Act or as an unserved household included under section 119(a)(12) of title 17, United States Code.

''(G) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes

available a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person.''.

SEC. 205. ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.

Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (g) (as added by section 203) the following new subsection:

''(h) ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.—

''(1) NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.—Any carrier that provides a distant signal of a network station to a subscriber pursuant section 339(a)(2)(A) shall—

''(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

''(i) offering to substitute the local network signal for the duplicating distant network signal; and

''(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

''(B) if the subscriber—

''(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

''(ii) fails to respond within such 60 days, terminate the distant network signal within 10 days after the end of such 60-day period.

''(2) NOTICE TO STATION LICENSEES OF COMMENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

''(A) NOTICE REQUIRED.—Within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

''(B) CONTENTS OF COMMENCEMENT NOTICE.—The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

''(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

''(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

''(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

''(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

''(C) TRANSMISSION OF NOTICES.—Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.''.

SEC. 206. PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.

(a) AMENDMENT.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (h) (as added by section 205) the following new subsection:

''(i) PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.—

''(1) NOTICE.—At the time of entering into an agreement to provide any satellite service or other service to a subscriber and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

''(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

''(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

''(C) the period during which such information will be maintained by the satellite carrier;

''(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

''(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

''(2) DEFINITIONS.—For purposes of this subsection, other than paragraph (9)—

''(A) the term 'personally identifiable information' does not include any record of aggregate data which does not identify particular persons;

''(B) the term 'other service' includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

''(C) the term 'satellite carrier' includes, in addition to persons within the definition of satellite carrier, any person who—

''(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

''(ii) provides any wire or radio communications service.

''(3) PROHIBITIONS.—

''(A) CONSENT TO COLLECTION.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

''(B) EXCEPTIONS.—A satellite carrier may use such facilities to collect such information in order to—

''(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

''(ii) detect unauthorized reception of satellite communications.

''(4) DISCLOSURE.—

''(A) CONSENT TO DISCLOSURE.—Except as provided in subparagraph (B), a satellite carrier shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

''(B) EXCEPTIONS.—A satellite carrier may disclose such information if the disclosure is—

''(i) necessary to render, or conduct a legitimate business activity related to, a satellite service or other service provided by the satellite carrier to the subscriber;

''(ii) subject to paragraph (9), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

''(iii) a disclosure of the names and addresses of subscribers to any satellite service or other service, if—

''(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

''(II) the disclosure does not reveal, directly or indirectly, the—

''(aa) extent of any viewing or other use by the subscriber of a satellite service or other service provided by the satellite carrier; or

''(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

''(iv) to a government entity as authorized under chapters 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

''(5) ACCESS BY SUBSCRIBER.—A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

''(6) DESTRUCTION OF INFORMATION.—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

''(7) PENALTIES.—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

''(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

''(B) punitive damages; and

''(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

''(8) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

''(9) COURT ORDERS.—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

''(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

''(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.''.

(b) EFFECTIVE DATE.—Section 338(i) of the Communications Act of 1934 (47 U.S.C. 338(i))

as amended by subsection (a) of this section shall be effective 60 days after the date of enactment of this Act.

SEC. 207. RECIPROCAL BARGAINING OBLIGATIONS.

(a) AMENDMENTS.—Section 325(b)(3)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)) is amended—

(1) by striking ''Within 45 days'' and all that follows through ''1999, the'' and inserting ''The'';

(2) by striking the second sentence;

(3) by striking ''and'' at the end of clause (i);

(4) in clause (ii)—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2010''; and

(B) by striking the period at the end and inserting ''; and''; and

(5) by adding at the end the following new clauses:

''(iii) until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations.''.

(b) DEADLINE.—The Federal Communications Commission shall prescribe regulations to implement the amendments made by subsection (a)(5) within 180 days after the date of enactment of this Act.

SEC. 208. UNSERVED DIGITAL CUSTOMERS.

(a) INQUIRY REQUIRED.—Consistent with the digital television service rules of the Federal Communications Commission in effect on the date of enactment of this Act, and the propagation prediction models derived from Bulletin No. 69 of the Commission's Office of Engineering and Technology, the Commission shall initiate an inquiry to recommend the appropriate methodologies for determining which consumers are in locations where the consumer will be unable, on and after the date on which analog television services are discontinued pursuant to the provisions of section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)), to receive broadcast digital television service signals that are transmitted from a station's permanent digital television channel that are of sufficient intensity to be able to receive and display digital television service using receiving terrestrial outdoor antennas of reasonable cost and ease of installation. Such methodologies shall be based on the current field strength requirements for digital television stations in section 73.622(e)(1) of the Commission's regulations (47 CFR 622(e)(1)).

(b) REPORT REQUIRED.—The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than December 31, 2005. Such report shall include—

(1) a proposal, using the best engineering practices for the broadcast television industry, for a predictive methodology for determining both which consumers—

(A) receive a digital signal of sufficient intensity to be able to receive and display digital television service using receiving terrestrial outdoor antennas of reasonable cost and ease of installation; or

(B) will receive such a signal after a local station begins transmitting on its permanent digital television channel;

(2) an analysis of whether it is possible to identify the areas of the country within which consumers will not, on and after the date on which analog television services are discontinued pursuant to the provisions of section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)), be able to receive a digital television signal of sufficient intensity to be able to receive and display digital television service using receiving terrestrial outdoor antennas of reasonable cost and ease of installation; and

(3) if possible, an identification, on a county-by-county or more localized basis, of such areas for each television network.

SEC. 209. REDUCTION OF REQUIRED TESTS.

Section 339(c)(4) of the Communications Act of 1934 (47 U.S.C. 339(c)(4)) is amended by inserting after subparagraph (C) the following new subparagraphs:

''(D) REDUCTION OF VERIFICATION BURDENS.—Within one year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier—

''(i) to whom the retransmission of the signals of local broadcast stations is available under section 338 from such carrier; or

''(ii) for whom the predictive model required by paragraph (3) predicts a signal intensity that exceeds the signal intensity standard in effect under section 119(d)(10)(A) of such title by such number of decibels as the Commission specifies in such rule.

''(E) EXCEPTION.—A subscriber in a local market in which the satellite carrier does not offer the signals of local broadcast stations under section 338 and whose household is predicted to meet or exceed the number of decibels specified by the Commission pursuant to subparagraph (D)(ii), may, at his or her own expense, authorize a signal intensity test to be performed pursuant to the procedures specified by the Commission in section 73.686(d) of title 47, Code of Federal Regulations, by a tester who is approved by the satellite carrier and by each affected network station, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test. The tester shall give 5 business days advance written notice to the satellite carrier and to the affected network station or stations. A signal intensity test conducted in accordance with the preceding sentence shall be determinative of the signal strength received at that household for purposes of determining whether the household is capable of receiving a Grade B intensity signal.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. DELAY) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. DELAY).

Mr. DELAY. Mr. Speaker, I ask unanimous consent that the chairman of the Committee on Energy and Commerce, the gentleman from Texas (Mr. BARTON), and the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), each be allowed to control 10 minutes of the time currently under my control.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the gentleman from Texas (Mr. BARTON) and I be allowed to yield portions of the time that has been yielded to us by the majority leader.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, I thank the majority leader for calling up this bill which is appropriately named in tribute to our colleague, the gentleman from Louisiana (Mr. TAUZIN), who will retire at the end of this year after having served the citizens of Louisiana for more than a quarter century.

This bill is a product of a remarkable collaborative effort that has involved members of the Committee on the Judiciary and Committee on Energy and Commerce. I would like to especially thank the gentleman from Texas (Mr. BARTON) for his excellent cooperation through this entire process.

The manager's amendment to the bill, which the Committee on the Judiciary approved unanimously on July 7, 2004, incorporates H.R. 4501 which was the Committee on Energy and Commerce version of the bill reported on July 22.

The manager's amendment incorporates important refinements to both the copyright and communications acts. These provisions are designed to extend for an additional 5 years the license that permits satellite TV companies such as DirecTV and EchoStar to retransmit to their subscribers TV programming shown on distant network stations and superstations. The extension will ensure that Americans who live in rural areas where they have trouble receiving signals from the regular broadcast stations will continue to have access to network TV programming.

Significantly, this bill does not simply preserve the status quo for the statutory period. Instead, the bill changes both the copyright and communications acts to ensure, first, that consumers will have greater choice in programming; second, that satellite providers will have greater freedom to deliver the content consumers desire; third, that free, over-the-air local broadcasters will have the opportunity to serve needs that are specific to their communities; and, fourth, the copyright owners will enjoy the first compulsory royalty fee adjustment in nearly 5 years.

The amendments have been carefully negotiated and crafted. They have benefited from an open process which has involved at least four committee hearings, the introduction and mark-up of two committee-reported bills to the House, and a willingness to consider numerous refinements to achieve the right policy and to gain consensus.

As a result, the bill is supported by numerous organizations including the

National Association of Broadcasters, numerous local broadcast stations, and the Capital Broadcasting Company. In addition, the royalty provision contained in the judiciary title has been specifically endorsed by effective stakeholders. This is a culmination of a painstaking effort under the leadership of the gentleman from Texas (Mr. SMITH) and the ranking member, the gentleman from California (Mr. BERMAN), who encouraged affected parties to negotiate a voluntary agreement.

As a result, the section 119 rate provisions contained in the manager's amendment are now supported by the two largest DBS providers, DirecTV and EchoStar; their trade association, the Satellite Broadcasting and Communications Association, and major copyright owners including the Motion Picture Association and the Office of the Commission of Baseball. Together those entities represent the copyright owners who receive the overwhelming majority of copyright royalties paid under the license and the satellite carriers who make the vast majority of such payments.

In return for extending the license to satellite companies, the bill does require the beneficiaries to accept certain reporting requirements. These requirements are designed to protect the legitimate interests of copyright owners and free over-the-air broadcasters.

I would like to take a moment to acknowledge the contributions of the subcommittee chairman, the gentleman from Texas (Mr. SMITH). We could not have reached this point without his steady work. I also want to thank the gentleman from Texas (Mr. BARTON) for all his help and support during the process. Thanks also go to other key players, the gentleman from Michigan (Mr. UPTON), the gentleman from Michigan (Mr. CONYERS), the gentleman from California (Mr. BERMAN), the gentleman from Michigan (Mr. DINGELL), and the gentleman from Massachusetts (Mr. MARKEY), all of whom have made significant contributions to this effort. I appreciate all their efforts.

I am pleased that we have been able to work together in developing this joint bill, and I look forward to building on this success next year. The bill promotes the interests of consumers, satellite providers, broadcasters, and copyright owners. It is a balanced bill and deserves the support of this House.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that the gentleman from Texas (Mr. GONZALEZ) be allowed to control 10 minutes of my time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4518 and ask my colleagues to vote in favor of its passage. I am happy to join my friend from Wisconsin (Mr. SENSENBRENNER), the chairman of the committee, the gentleman who rolled me yesterday, in supporting this legislation.

This bill is a must-pass piece of legislation. Its core provision re-authorizes the statutory license found in section 119 of the Copyright Act which is due to expire on December 31 of this year. The section 119 enables satellite television companies to retransmit distant superstation and network signals to the subscribers who cannot obtain comparable signals over the air.

Extension of the section 119 license is very important to many satellite TV subscribers who might otherwise lose access to a number of popular television stations. The section 119 license is also of great benefit to satellite TV companies as it provides them with the equivalent of a valuable government subsidy. It guarantees satellite companies the ability to retransmit copyrighted broadcast programming, without the permission of the copyright owners and to do so at a government set rate.

I support this extension of the section 119 license despite my longstanding opposition to statutory licensing of copyrighted works. Section 119 was originally enacted in order to help satellite television become competitive with cable television which benefits from an analogous license. With 22 percent of the pay TV market, it appears that satellite television has reached that goal. However, expiration of section 119 without simultaneous expiration of the analogous statutory license for cable television may upset that competitive balance. When Congress revisits this issue in 2009, it may reach a different conclusion or even decide to do away with both licenses. Until then, however, we should strive to maintain a competitive balance.

The legislation before us does far more than simply reauthorize the section 119 statutory license. It is a combination of two bills that emerged from the Committee on the Judiciary and the Committee on Energy and Commerce. As such, it is the culmination of a long, sometimes difficult but ultimately successful collaboration between our two committees.

I commend the chairmen of both committees, the Committee on Energy and Commerce and the Committee on the Judiciary, for their steady and inclusive stewardship throughout this collaborative effort. I leave it to my colleagues of the Committee on Energy and Commerce to describe the provisions of title II which fall in their jurisdiction. However, I do want to express my support for title II and in particular the single dish requirement contained therein.

This provision requires that satellite TV providers enable customers to obtain all local broadcast programming through a single satellite dish, rather than having to install two dishes. The one-dish requirement will prevent further de facto discrimination against broadcast stations carrying minority, religious, and public interest programming.

As for title I, I am pleased most of all by its royalty provisions. These provisions represent a marked improvement over the provisions found in the Judiciary-reported version of H.R. 4518. The bill before us today does not mandate any increase in royalty rates. Nor does it establish a specific royalty rate for the retransmission of distant signals. Rather, the royalty rate will be set through adoption of a voluntary industry agreement, or in the absence of an acceptable agreement, by a copyright arbitration royalty panel.

While I do not know its terms, I understand that a voluntary industry agreement on royalties has already been reached. EchoStar, DirecTV, the Satellite Broadcast Communications Associations, and the relevant copyright owners have written us a letter to this effect. The letter also expresses unequivocal support for the royalty provisions contained in the bill before us today. If no interested party raises a well-founded objection, the legislation directs the copyright office to expeditiously adopt the voluntary industry agreement.

The adoption of this agreement would represent perhaps the least contentious establishment of section 119 royalties since section 119 was first enacted. All involved deserve a great deal of credit for reaching a mutually acceptable agreement in such a compressed time frame.

Once again, Mr. Speaker, I note my support for H.R. 4518, as amended, and ask my colleagues to add their support.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Speaker, do we have the time allocated equally on both sides, or do I need to yield time to the minority?

The SPEAKER pro tempore. The gentleman from Texas (Mr. BARTON) has 10 minutes, and the time has been distributed as agreed to.

Mr. BARTON of Texas. So the gentleman from Texas (Mr. GONZALEZ) have 10 minutes?

The SPEAKER pro tempore. Yes, sir. I might point out for further clarification, the gentleman from California (Mr. BERMAN) has 10 minutes and the gentleman from Texas (Mr. GONZALEZ) has 10 minutes.

Mr. BARTON of Texas. Mr. Speaker, I was under the impression that perhaps I needed to yield time to the gentleman from Texas (Mr. GONZALEZ), but apparently not, so I yield myself such time as I may consume.

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Speaker, I will focus on what the gentleman from California (Mr. BERMAN) asked me to focus on, which is title II of H.R. 4518 which addresses a communications provision that originated in H.R. 4501.

Before I do that, I do want to say how appreciative I am that we have all agreed to name this after the former chairman of the committee, the gentleman from Louisiana (Mr. TAUZIN). It really is a tribute to him. He was an expert in telecommunications. He took a personal interest in telecommunications acts, and I am proud that my House colleagues have agreed that we can name the bill in his honor.

I would also like to inform the House that another of our colleagues, the gentleman from Georgia (Mr. NORWOOD), a distinguished member of the Committee on Energy and Commerce, did have a lung implant last evening, and he is doing well today in the hospital. When he came out from anesthesia, his first question was was his staff at work today. So he was obviously doing well.

□ 1330

Let me go to the issue at hand. Current law authorizes direct broadcast satellite operators, such as DirecTV and EchoStar, to provide the signals of distant broadcast network stations to a consumer who cannot receive an over-the-air signal from the local network stations. The Communications Act exempts satellite operators from having to obtain consent from a distant broadcaster to carry the signal into the local market. That exemption expires at the end of this year. The bill before us would extend that exemption to December 31, 2009.

Cable operators currently may carry certain out-of-market signals into a local market if the signals can be viewed by a significant number of people in the local market using over-the-air antennas. The bill would extend to satellite operators the authority to carry such significantly viewed signals on comparable terms as cable operators.

EchoStar currently uses two satellite dishes in some markets to provide local broadcast stations. Some broadcasters argue that this harms the ratings of stations on the second dish because not all customers are aware of, or want to install, that second dish. The bill before us would give EchoStar 1 year from date of enactment to provide all local stations in a market on a single satellite dish.

The bill would also require satellite operators to stop offering distant signals in markets where they carry local signals. It does, however, grandfather certain existing subscribers.

Although broadcasters are starting to transmit in digital, their digital signals do not yet reach all consumers over the air. As a result, many consumers could not receive a digital signal over the air even if they had a digital television. Once the digital television transition is complete, analog broadcasts will cease.

At that time, it will be important for satellite operators to be able to provide distant digital signals to consumers in so-called ''white areas,'' who cannot receive local digital signals over the air, just as satellite operators currently offer distant analog signals to subscribers who are unserved over the air.

The bill requires the Federal Communications Commission to submit a report to the House Committee on Energy and Commerce at the end of 2005 on how it would propose to implement a digital white air area once the DTV transition ends.

Mr. Speaker, I'm proud to bring before the House today H.R. 4518, the ''Satellite Home Viewer Extension and Reauthorization Act of 2004'', SHVERA. The bill will also be known as ''The W.J. 'Billy' Tauzin Satellite Television Act of 2004,'' in honor of our former House Energy and Commerce Committee chairman. He has done so much to foster the growth of satellite television, increase television service competition, and improve choices for consumers that it is only fitting that we name this bill after him. Chairman TAUZIN is currently recovering from a bout with cancer. My understanding is that he is doing so with his characteristic vigor and good humor, and is faring well. I am sure all join me in wishing him a speedy recovery.

The bill reauthorizes certain expiring provisions in the communications and copyright acts regarding satellite television. It also increases parity and enhances competition between satellite and cable operators by modernizing other provisions. Because the bill implicates both communications and copyright issues, the House Energy and Commerce Committee and the House Judiciary Committee have worked closely in drafting the legislation. Indeed, pursuant to a compromise between the House Energy and Commerce Committee and the House Judiciary Committee, H.R. 4518 has now been amended to combine its copyright provisions with the Communications Act provisions of H.R. 4501, which my committee reported 3 months ago.

H.R. 4501 resulted from an extensive examination of satellite television issues. The Subcommittee on Telecommunications and the Internet held an oversight hearing on March 10, 2004, and a legislative hearing on April 1, 2004. The subcommittee then marked up the legislation on April 28, 2004, and the full committee marked up the bill on June 3, 2004. I will focus the remainder of my remarks to title II of H.R. 4518, as amended, which addresses the Communications Act provisions that originated in H.R. 4501.

Current law authorizes direct broadcast satellite, DBS, operators, such as DirecTV and Echostar, to provide the signals of distant broadcast network stations to a consumer who cannot receive an over-the-air signal from the local network stations. The Communications Act exempts satellite operators from having to obtain consent from a distant broadcaster to carry the signal into the local market. That exemption expires at the end of this year. The bill would extend it to December 31, 2009.

Cable operators currently may carry certain out-of-market signals into a local market if the signals can be viewed by a ''significant number'' of people in the local market using over-the-air antennas. The bill would extend to satellite operators the authority to carry such significantly viewed signals on comparable terms as cable operators.

Echostar currently uses two satellite dishes in some markets to provide local broadcast stations. Some broadcasters argue that this harms the ratings of stations on the second dish because not all customers are aware of, or want to install, the second dish. The bill would give Echostar 1 year from enactment to provide all local stations in a market on a single satellite dish.

The bill also requires satellite operators to stop offering distant signals in markets where they carry local signals. It does, however, grandfather certain existing subscribers.

Although broadcasters are starting to transmit in digital, their digital signals do not yet reach all consumers over the air. As a result, many consumers could not receive a digital signal over the air even if they had a digital television. Once the digital television transition is complete, analog broadcasts will cease. At that time, it will be important for satellite operators to be able to provide distant digital signals to consumers in ''white areas'' who cannot receive local digital signals over the air, just as satellite operators currently offer distant analog signals to subscribers who are ''unserved'' over the air. The bill requires the Federal Communications Commission to submit a report to the House Energy and Commerce Committee at the end of 2005 on how it would propose to implement a digital white area once the LTV transition ends.

Since its introduction about a decade ago, satellite television service has become a significant facilities-based competitor to cable service. Satellite retransmission of broadcast programming is responsible for much of the growth. Satellite-delivered television service started as a way to serve consumers, particularly in rural areas, who could not get adequate over-the-air reception and did not have access to cable. But DBS does more than serve otherwise unserved areas. Its nationwide coverage allows it to compete against cable operators, and in so doing it improves consumer options. Indeed, the presence of satellite operators has caused cable operators to upgrade their infrastructure to allow consumers to receive high-quality video and more channels, as well as interactive, broadband, video-on-demand, and Internet telephony services.

By extending the expiring provisions, increasing parity, and promoting further competition, this legislation will continue to enhance service to consumers.

I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time, and I ask unanimous consent that the gentleman from Michigan (Mr. UPTON), the distinguished subcommittee chairman, control the balance of my time.

The SPEAKER pro tempore (Mr. WHITFIELD). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. GONZALEZ. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I rise in support of H.R. 4518, the Satellite Home Viewer Extension Reauthorization Act of 2004. I would like to thank the gentleman from Texas (Chairman BARTON) and the gentleman from Wisconsin (Chairman SENSENBRENNER), the gentleman from Michigan (Ranking Member DINGELL) and the gentleman from Michigan (Ranking Member CONYERS) and the subcommittee chairmen and ranking

members for their hard work on this piece of legislation.

H.R. 4518 is a comprehensive, bipartisan bill crafted jointly by the Committee on Energy and Commerce and the Committee on the Judiciary that will preserve localism, protect consumer privacy and increase competition between cable and satellite companies.

Local broadcasters play a vital role in providing to the communities they serve local news and weather, information on community events and entertainment. In 1999, Congress recognized the important role of local broadcasters when it last authorized this act. Specifically, the act requires satellite companies to offer in a nondiscriminatory manner all local broadcast signals once the satellite carriers begin offering local-into-local service in a market. This requirement, dubbed ''carry one, carry all,'' was the cornerstone of the act.

Unfortunately, in several markets, one satellite company has refused to comply with this requirement. For several years, I have heard complaints from local Spanish language broadcasters that one particular satellite company has refused to carry Spanish language broadcasts on the same dish on which it carries the signals of the major television networks. In fact, in my own home State of Texas nine of the eleven stations bumped by that particular satellite company to a second dish are Spanish language stations.

In these two-dish markets, customers do not receive all of the channels for which they have paid if they do not ask that particular company for the second dish. This is unfair to consumers, and it harms the viability of local broadcasters because fewer people are watching their channels.

The negative effects of a two-dish practice are made even greater by a failure to inform many customers of a particular company of the need for a second dish. This practice is wrong. It undermines basic principles of localism by essentially giving Spanish language and other minority-themed stations a second-class status in their own home markets.

I thank my colleagues for including language in this bill that would put an end to this two-dish practice within 1 year. Forcing satellite providers to carry all local broadcast signals on one dish will finally ensure the equal treatment of all broadcasters.

Protecting the privacy of consumers who subscribe to satellite television is also very important. Although current law protects the privacy of persons who subscribe to cable television service, it does not protect those who subscribe to satellite service.

I commend the gentleman from Massachusetts (Mr. MARKEY) in particular for seeing to it that this bill extends to satellite subscribers the same privacy protections in effect for cable subscribers.

Finally, increasing competition between cable and satellite companies is an important goal of this act. Prior to the last reauthorization of the act, cable companies provided their customers with all of the local broadcast channels, but satellite companies were not permitted to do the same. Since Congress gave satellite companies the authority to provide local-into-local service in 1999, the number of subscribers to satellite has about doubled.

This legislation before us today makes further important strides in increasing parity which should lead to greater competition between cable and satellite. Right now, cable television companies can provide their subscribers with signals that are significantly viewed in a local market. Satellite television providers have no such authority. H.R. 4518 would fix this inequity by permitting satellite carriers of those same significantly viewed signals.

Mr. Speaker, this is a good bill that preserves local broadcasting, protects the privacy of satellite television service subscribers, and will provide a more level playing field for satellite companies on which to compete against cable providers. I support these goals and urge all Members to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield the balance of my time to the gentleman from Texas (Mr. SMITH), the chairman of the Subcommittee on Courts, the Internet, and Intellectual Property.

(Mr. SMITH of Texas asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SMITH of Texas. Mr. Speaker, first of all, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for yielding me time.

Mr. Speaker, I support the manager's amendment to H.R. 4518, the Satellite Home Viewer Extension and Reauthorization Act of 2004 which I introduced.

I, too, would like to acknowledge the contributions and support of the gentleman from Texas (Chairman BARTON) and our colleagues on the Committee on Energy and Commerce.

Without the hard work of the gentleman from Michigan (Mr. UPTON), sitting to my right, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Massachusetts (Mr. MARKEY), a bill this complex would not have been able to move under suspension.

Also, I want to especially thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for his leadership, as well as recognize the personal effort and contributions of both the gentleman from Michigan (Mr. CONYERS) and the gentleman from California (Mr. BERMAN).

This bill will reauthorize the Copyrights Act's distant-signal license, which benefits the satellite industry. Because of this bill, Americans will continue to be able to receive television programming over satellite.

This legislation strikes a balance between the interests of intellectual property owners and the interests of the satellite providers who distribute copyrighted programming.

With time running out this session, it is now critically important that H.R. 4518 be enacted without delay.

The bill makes important changes to both the Copyright Act and the Communications Act to ensure that consumers will have greater choices in programming; that satellite providers have greater freedom to deliver the content consumers desire; that free over-the-air local broadcasters have the opportunity to serve needs that are specific to their communities; and that copyright owners receive the first adjustment to their compensation in 5 years.

In addition, the bill requires the Copyright Office to complete a study and provide recommendations on whether Congress should take further steps to create more parity with the cable compulsory license.

Mr. Speaker, I would also like to recognize the hard work and countless hours that were dedicated by the Copyright Office's Bill Roberts, as well as by David Whitney of my staff, Sampak Garg of the gentleman from Michigan's (Mr. CONYERS) staff, and Alec French from the gentleman from California's (Mr. BERMAN) staff.

Mr. Speaker, H.R. 4518 is a carefully crafted bill that promotes the interests of consumers, satellite providers, broadcasters and copyright owners. It is a fair and balanced bill that deserves the support of this House.

Mr. Speaker, I would like to insert a copy of the September 23 letter by DirecTV, EchoStar, the Motion Picture Association, Major League Baseball into the RECORD, as well as an October 5 letter by Eddie Fritts of the National Association of Broadcasters that endorses H.R. 4518 at this point.

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, DC, October 5, 2004.

DEAR REPRESENTATIVE: I understand that this week the House of Representatives will consider H.R. 4518, the Satellite Home Viewer Extension and Reauthorization Act. On behalf of your local television stations, I am writing to urge you to support this critical legislation, which will help preserve localism in television and protect the interests of the American viewer.

The legislation enjoys widespread, bipartisan support. The bill is the result of extensive compromise and negotiation between Members of the two Committees of jurisdiction, the Judiciary Committee and the Energy and Commerce Committee and is carefully crafted to address a range of satellite television issues in a pro-consumer fashion. For instance:

The bill would create incentives for satellite subscribers to gradually shift to selecting their local television stations in their programming packages.

It would phase-out a discriminatory ''2-dish'' practice which relegates some local television stations to a second dish, where they are all but invisible to satellite subscribers.

The bill would give satellite providers parity with cable by allowing them to import

''significantly viewed'' out-of-market stations from adjoining markets.

The legislation balances this new privilege with key safeguards ensuring such a practice is not abused to the detriment of local television and consumers.

The bill provides a long needed update to copyright rates, increasing compensation for copyright holders.

Some have argued the legislation should be modified to include a ''Digital White Areas'' provision, which would permit satellite companies to import national, distant, digital network digital networks from Los Angeles or New York into local television markets, supplanting local television stations. However, the vast majority of industry stakeholders, including local broadcast stations, the television networks, cable operators, and DirecTV have rejected this approach and are instead working to see local high-definition digital television available on cable and satellite systems. We urge you to reject the Digital White Areas proposal as well.

Ultimately, as the product of an open process of hearings and mark-ups in both Committees of jurisdiction, H.R. 4518 would reauthorize the Satellite Home Viewer Improvement Act in a manner consistent with broadcast television localism. I strongly urge you to pass H.R. 4518 as written. The measure will take import strides in protecting the interests of consumers and furthering localism in television.

Sincerely,

EDDIE FRITTS.

SEPTEMBER 23, 2004.

Re H.R. 4518, Satellite Home Viewer—Extension and Reauthorization Act of 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

Hon. LAMAR SMITH,
Chairman, Subcommittee on Courts, the Internet and Intellectual Property, House of Representatives, Rayburn House Office Building, Washington, DC.

Hon. JOHN CONYERS, Jr.,
Ranking Member, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

Hon. HOWARD L. BERMAN,
Ranking Member, Subcommittee on Courts, the Internet and Intellectual Property, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMEN: This letter is written on behalf of the undersigned representatives of those (1) copyright owners who receive the vast majority of the copyright royalties paid for the statutory licenses set forth in Section 119 of the Copyright Act, 17 U.S.C. §119; and (2) satellite carriers who pay the vast majority of the Section 119 royalties.

At your request, we undertook negotiations over the copyright royalty rates that satellite carriers should pay under Section 119 for the statutory license to retransmit superstations and network stations. As we are certain you understand, negotiations of this nature necessarily involve a number of difficult and competing considerations and strongly-held views. Nevertheless, we are pleased to report that, with the considerable assistance of you and your staff, our negotiations have been successful. We have entered into a voluntary agreement specifying the royalty fees that satellite carriers would pay for the Section 119 license during each of the years 2005 through 2009.

Our agreement is effective only if legislation is enacted into law, prior to January 1, 2005, with provisions that: (1) reauthorize 17 U.S.C. §119 for the five-year period ending December 31, 2009; (2) permit affected parties to enter into voluntary agreements as an alternative to a Copyright Arbitration Royalty Panel (''CARP'') proceeding; (3) provide for the convening, if necessary, of a CARP proceeding to adjust the royalty rates payable under 17 U.S.C. §119, provided that such provisions require the Librarian of Congress and any CARP to adjust any fees set by arbitration to account for the obligations of the parties under any applicable voluntary agreements filed with the Copyright Office; and (4) amend the Section 119 compulsory license to permit the retransmission of superstations to commercial establishments. These provisions are collectively referred to herein as the ''Section 199 Rate Provisions.''

If legislation containing each of these Section 119 Rate Provisions is enacted into law prior to January 1, 2005, we will submit to the Copyright Office our voluntary agreement that specifies the agreed-upon royalty rates, and this agreement will become binding on the parties. We will also jointly petition the Copyright Office to adopt these rates for all copyright owners, satellite carriers and distributors under Section 119.

Attachment A hereto describes in narrative form the changes that we believe must be made to H.R. 4518, as reported to the House of Representatives on September 7, 2004, for that bill to incorporate the above-identified Section 119 Rate Provisions. Attachment B provides specific suggested language amending H.R. 4518 to reflect the Section 119 Rate Provisions. Attachment C contains a red-lined version of H.R. 3518 showing the proposed Section 119 Rate Provisions.

There are a few additional points that we wish to emphasize. First, the rates to which the parties have agreed reflect multiple considerations and difficult compromises—including a desire to be responsive to your reasonable requests for a negotiated agreement and to avoid the costs and uncertainties of further controversy and political litigation. Accordingly, our agreement provides that its terms do not have any precedential value. Nevertheless, we firmly believe that it is in the best interests of all copyright owners and satellite carriers alike, as well as those consumers who receive the valuable copyrighted works offered under the Section 119 statutory license, for Congress to enact the Section 119 Rate Provisions—and for the Copyright Office ultimately to adopt the rates set forth in our voluntary agreement.

Second, nothing in our voluntary agreement prevents any party from supporting or opposing provisions other than those reflected in the attached Section 119 Rate Provisions.

Third, each of the Parties to this agreement (DIRECTV, EchoStar and the copyright owners) supports the attached Section 119 Rate Provisions. This is not to say, however, that each of the parties would support any legislative vehicle to which the Section 119 Rate Provisions could be attached. Each Party must base its decision on whether to support any such legislation on the totality of the provisions therein.

Finally, we wish to personally thank each of you and your staff for your continuing efforts in bring the parties together and assisting us to resolve our considerable differences in an amicable way that serves the best interests of all concerned. In particular, we wish to recognize the hard work of David Whitney, Alec French, Sampak Garg and Cameron Gilreath. We very much appreciated their professionalism, their diligence and their patience throughout the process. It is our fervent wish that all of these efforts bear fruit with the passage of legislation that resolves the Section 119 rate issues for the upcoming five-year period.

Sincerely,

Program Suppliers: Fritz Attaway, Executive Vice President and Washington Counsel, Motion Picture Association of America, Inc.

Joint Sports Claimants: Thomas J. Ostertag, Senior Vice President & General Counsel, Office of the Commissioner of Baseball.

DirecTV, Inc.: Daniel M. Fawcett, Executive Vice President and General Counsel.

EchoStar Satellite L.L.C.: David K. Moskowitz, Executive Vice President & General Counsel.

Satellite Broadcasting & Communications Association: Richard DalBello, President.

Mr. Speaker, finally and obviously, I urge all Members to support this good piece of legislation, and I appreciate in advance their support.

Mr. UPTON. Mr. Speaker, I yield 1½ minutes to the gentleman from Indiana (Mr. BUYER), my friend and colleague, a member of the Subcommittee on Telecommunications and the Internet.

(Mr. BUYER asked and was given permission to revise and extend his remarks.)

Mr. BUYER. Mr. Speaker, I appreciate the gentleman's good work on this.

The act we are approving today continues a strong policy of continuing local-to-local service. It also pushes the satellite industry to be as competitive as possible with cable.

For the first time, the bill will allow satellite carriers to deliver significantly viewed stations from nearby markets as cable now is able to do. In any given community, the significantly viewed stations that the direct broadcast service will be allowed to carry are exactly the same ones that cable can carry.

The act imposes a variety of limits designed to protect free, local, over-the-air broadcasting. For example, the only subscribers who can receive significantly viewed stations are those who are already receiving their own local stations by satellite.

Nor can the direct broadcast service company offer a digital signal of a significantly viewed affiliate of, say, CBS to a subscriber to which it offers only the analog feed of the local CBS station or carry the significantly viewed CBS station with more digital broadband than the local station.

There also are some pretty strong provisions in this. If the satellite carrier abuses this new regime by carrying an unauthorized station, it will be both subject to swift and severe penalties at the FCC and will forfeit its compulsory license under the Copyright Act which is conditioned on compliance with all applicable FCC rules regulations and authorization.

I had been impressed with the satellite industry and how it has created this industry, but they also now need to be fair players in the marketplace.

As Congress made clear when we passed the 1999 Satellite Home Viewer Improvement Act (''SHVIA''), it is far better for local communities if satellite carriers offer their customers local television stations—including network

stations—rather than TV stations from other cities. Put another way, local-to-local service is the right way, and—except when there is no other choice—distant network stations are the wrong way, to deliver broadcast programming by satellite. Local-to-local fosters localism and helps keep free, over-the-air television available to everyone, while delivery of distant network stations to households that can receive their own local stations (whether over the air or via local-to-local service) has just the opposite effect.

The pro-local-to-local policy of the 1999 SHVIA has been an astounding success. The satellite industry has grown spectacularly since then, spurred—as the satellite industry has many times reminded us—by the availability of local-to-local service. In fact, in the past year, the number of cable subscribers has actually shrunk, while satellite carriers continue to expand at a rapid clip.

Recognizing that local-to-local is not just good policy but good business, the DBS firms have expanded local-to-local service at a rate far faster than the industry predicted a few years ago. As to analog service, EchoStar recently announced that it was serving no fewer than 150 local markets, covering more than 90 percent of the television households in the United States. And for its part, DirecTV expects to offer local-to-local in at least 130 local markets by the end of 2004—and has committed to offering local-to-local in every market as soon as 2006, and no later than 2008.

I want to commend DirecTV for its commitment to provide service to all 210 Designated Market Areas. I hope that EchoStar is on a similar path and will provide more certainty as to when this might occur just as DirecTV has done. It is my hope that this service is provided sooner rather than later so that those satellite subscribers in Lafayette, Indiana will be able to receive their local affiliate station and achieve true local-into-local service.

But there is still more: DirecTV announced just a few weeks ago that it plans to offer high-definition local-to-local service in many markets over the next few years. With the first of its new satellites, DirecTV plans to offer during 2005 more than 500 local high-definition channels, enabling it to offer local HD programming to the majority of U.S. television households. And with the launch of still more new satellites, DirecTV will be able to add even more local HD markets in the future. Of course, in the highly competitive world of multichannel television providers, there is little doubt that DirecTV's competitors will be driven to try to match—or exceed—DirecTV's local-to-local offerings. And that is all to the good.

The Act we are approving today continues the strong policy of encouraging local-to-local service and pushing the satellite industry to be as competitive as possible with cable. For the first time, the bill will allow satellite carriers to deliver "significantly-viewed" stations from nearby markets, as cable is now able to do. In any given community, the "significantly viewed" stations that DBS will be allowed to carry are exactly the same ones that cable can carry. The Act imposes a variety of limits designed to protect free, local, over-the-air broadcasting: For example, the only subscribers who can receive significantly-viewed stations are those who already receive their own local stations by satellite. (Since cable always offers local stations, this rule ensures a level playing field.) Nor can a DBS company offer a digital signal of a significantly-viewed affiliate of, say, CBS, to a subscriber to which it offers only the analog feed of the local CBS station, or carry a significantly-viewed CBS station with more digital bandwidth than the local CBS station (unless the carrier offers the entire bandwidth of the local digital station).

If a satellite carrier abuses this new regime—by carrying unauthorized stations—it will both be subject to swift and severe penalties at the FCC, and will forfeit its compulsory license under the Copyright Act, which is conditioned on compliance with all applicable FCC rules, regulations, and authorizations.

Mr. GONZALEZ. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank the gentleman for yielding time to me. And, Mr. Speaker, I am pleased to rise in strong support of this proconsumer legislation, the Satellite Home Viewers Extension and Reauthorization Act.

I also want to thank the chairman and ranking member of the Committee on Energy and Commerce for the manner in which this legislation moved through our committee. The Committee on Energy and Commerce moved through the process, it was completely open and bipartisan; and I thank the Chair for that.

The Satellite Home Viewer Improvement Act expires at the end of this year. Thus, we must act quickly to ensure our constituents continue to receive the services they enjoy.

This bill also does a great service to our communities by preserving and strengthening local broadcasting.

My interest in this legislation was piqued when I discovered that one of the two satellite companies was engaging in a discriminatory practice that forced 95 percent of their customers to pay for services they do not receive.

EchoStar's system requires two satellite dishes on a rooftop to be able to receive all of the local channels and other channels they offer. Nothing is wrong with that. It is how their technology works. However, EchoStar is discriminatory in choosing which local broadcasters would end up on the second dish which is inconvenient. Most often it is Spanish language, public and religious broadcasters.

On top of that, EchoStar does a poor job informing its customers of the need for a second dish, and the company requires a second technician to come out and install the second dish. The company states that only about 5 percent of their customers take the second dish, which means that 95 percent of customers are paying for services they do not receive.

This legislation requires all satellite companies to put all local channels on one of the two dishes. I think that is important, and I think it is a major breakthrough.

This provision is also key to the health of the satellite industry by setting the ground rules for providing local broadcast stations. Local-to-local has been a driving force in the satellite television industry's growth. In 1999, just prior to the establishment of the local-to-local compulsory license, the industry had 10.1 million subscribers. Only 4 years later, after the advent of local-to-local, the industry had more than doubled its subscriber base to 20.4 million.

Another key provision gives consumers of satellite TV service the same choices as cable subscribers. Specifically, the bill gives satellite the ability to import significantly viewed stations from adjoining markets. At the same time, the bill includes safeguards to ensure this new privilege is not abused to the detriment of local television and television viewers.

□ 1345

This means, for example, a satellite prescriber in Baltimore could soon be getting Washington, D.C., local stations if they are significantly viewed. For people who live in or near Baltimore and commute to D.C. to work, the traffic reports are obviously vital.

In closing, Mr. Speaker, this legislation enjoys widespread bipartisan support in Congress as well as the endorsement of nearly all key industry stakeholders, including local television stations, the television networks, cable operators, and DirecTV.

Mr. UPTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering H.R. 4518, which is alternatively named the "W.J. 'Billy' Tauzin Satellite Television Act of 2004," in honor of our former chairman, BILLY TAUZIN. It is particularly fitting that this is named after Boudreaux friend, BILLY TAUZIN, since he was the chief architect of the regulatory landscape which promoted the creation of a vibrant satellite TV industry to the benefit of so many consumers across the country.

Mr. Speaker, our prayers remain with BILLY TAUZIN as he continues his fight against cancer, and I know that he is fighting with the same vim and vigor that characterizes his very able public service.

This bill reauthorizes certain expiring provisions in the communications and copyright acts. It also modernizes other provisions to increase parity and enhance competition between satellite and cable operations. And given that this bill affects both communications and copyright issues, the Committee on Energy and Commerce worked very closely with the House Committee on the Judiciary on a bipartisan basis in putting this bill together.

Procedurally, this bill combines the elements of H.R. 4501, which was reported by the House Committee on Energy and Commerce, with elements of H.R. 4518, which was reported by the House Committee on the Judiciary. I want to commend my colleagues on both committees, on both sides of the aisle, for their cooperation and dedication of this mission, particularly the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the Committee on the Judiciary; the gentleman

from Texas (Mr. SMITH), chairman of the Subcommittee on Courts, the Internet, and Intellectual Property; and, obviously, the ranking member of the Committee on Energy and Commerce, the gentleman from Michigan (Mr. DINGELL) and the ranking member of the Subcommittee on Telecommunications and the Internet, the gentleman from Massachusetts (Mr. MARKEY), for their very active work on this legislation.

This bill resulted from an extensive examination of satellite TV issues in our committee. The subcommittee on Telecommunications and the Internet held an oversight hearing on March 10, a legislative hearing on April 1, subcommittee markup to legislation on April 28, and the full committee markup to legislation on June 3 that would become H.R. 4501. As I recall, that bill passed in both the subcommittee and full committee on a voice vote. It was extensively bipartisan from the very start. And without a doubt, by extending these expiring provisions, increasing parity between satellite TV and cable operators, promoting competition between satellite TV and cable, the bill will enhance consumer choice and service.

Mr. Speaker, this bill builds upon the solid foundation laid by our friend BILLY TAUZIN. I commend this bill to my colleagues on both sides of the aisle and urge its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. GONZALEZ. Mr. Speaker, I yield myself such time as I may consume.

Just briefly again, Mr. Speaker, this is a bill that makes good business sense and is a good deal for the consumer, standing for the proposition those are not mutually exclusive concepts.

Mr. DINGELL. Mr. Speaker, I rise today in support of H.R. 4518, the Satellite Home Viewer Extension and Reauthorization Act of 2004. I congratulate Chairmen BARTON and SENSENBRENNER, Ranking Member CONYERS and the subcommittee chairmen and ranking members of their hard work on this legislation. The task of combining separate Energy and Commerce and Judiciary Committee bills into a single product is never easy, but I am pleased with this bipartisan bill before us today. Let us hope that the other body will act with due haste to ensure that this legislation becomes law this year.

I note that the bill before us incorporates the language of both H.R. 4501 and H.R. 4518 was solely referred to the Committee on Energy and Commerce. H.R. 4518 was referred solely to the Committee on the Judiciary. The members of both committees worked long and hard on their respective bills. Accordingly, the legislative history on H.R. 4518 includes the legislative history of H.R. 4501.

The bill before us achieves three very critical goals. First, it will increase regulatory parity between cable and satellite providers, thereby strengthen satellite companies' ability to compete in the multichannel video marketplace. Currently, cable providers can offer their subscribers out-of-market television signals that are "significantly viewed" in the subscribers' local communities. Satellite companies, however, are prevented by law from offering to their subscribers the same signals. This bill would change the law to provide satellite companies an equal right to provide their subscribers those "significantly viewed" signals. This increased parity should help spur greater competition between cable and satellite providers and ultimately benefit consumers in the form of lower prices and better service.

Second, the act will protect consumers and foster localism by ensuring that satellite customers receive all of their local broadcast signals when these signals become available via satellite. Local broadcasters provide their communities with important local programming. Whether it is local news, weather, or community events, these broadcasters are there, on the ground serving their friends and neighbors. This idea of localism was recognized and fostered by Congress during the last reauthorization of this statute in 1999, through a provision called "carry one, carry all." This policy mandates that a satellite provider, in a nondiscriminatory fashion, offer all local broadcast signals in a market if it offers one.

Finally, I am also pleased that this bill will help protect consumer privacy. This bill will force satellite carriers to comply with the same privacy obligations that already apply to cable television providers. Personally identifiable information will now be better protected.

Mr. Speaker, H.R. 4518 will encourage competition between cable and satellite. It also furthers the goal of localism and protects consumers. I urge my colleagues to support it.

Mr. CONYERS. Mr. Speaker, I rise in support of this legislation, of which I am an original cosponsor. I first would like to note the comity that went into drafting this bill. We worked with the Commerce Committee on addressing the relevant issues based on jurisdiction. Further, Chairman SENSENBRENNER and his staff worked diligently with us on drafting this legislation. I would particularly like to thank David Whitney, counsel to the majority, whose diligence and bipartisanship are the only reason we are here today.

In 1999, we passed the Satellite Home Viewer Improvement Act to allow satellite companies to retransmit distant network signals to customers who could not receive clear over-the-air television signals. Such companies have to pay a government-set rate to the broadcast copyright owners. While I had, and still have, hesitations about creating compulsory licenses that require content owners to sell their work for a set fee, I believe this license led to significant competition in programming distribution.

As a result of this policy decision, the satellite industry has dedicated significant technological and financial resources to expanding the choices available to consumers. I am certain we can all agree that is a good thing.

The 1999 law expires at the end of this calendar year, so we must reauthorize it. The bill before us extends the license for 5 years. Importantly, the bill goes beyond that in addressing the desires of consumers in that it permits the satellite companies to retransmit a significantly viewed local signal to a customer.

The bill also settles a gray area in terms of what satellite service customers can get when local-to-local satellite television is available. Under the new regime, current subscribers will be allowed to choose between the distant signal service or the local service. New customers would be provided with the local service.

Despite the benefits of this legislation and the work of the interested parties, much remains to be done in terms of providing complete television service across the country. I look forward to working with the content owners and satellite companies in making that happen.

I urge my colleagues to vote "yes" on this legislation.

Mr. TANCREDO. Mr. Speaker, I wish to express my views on the legislation before us today.

This legislation includes a requirement for Echostar, better known as Dish Network, to eliminate the solution it developed to serve more Americans with local service than any other satellite TV company. The legislation would eliminate its "two dish" solution within 12 months. This requirement will cause consumer inconvenience and hamper the rollout of local programming. The "two dish" remedy maximizes the number of television markets that can receive local channels by utilizing the scarce spectrum available.

I believe a better route to dealing with the lack of spectrum, which I know is a priority for you, is for this legislation to include a provision similar to that of the Senate Commerce Committee. That committee voted to allow satellite TV providers to offer High Definition TV service to markets where a local broadcaster is not even offering a digital signal. As noted in the Digital Transition Coalition letter which I will also enter into the RECORD, the freed-up spectrum could be redeployed to our Nation's first responders, auctioned to wireless companies eager to offer new advanced services, and raise funds that could be returned to the taxpayer or put to paying off the debt.

I look forward to our continuing work on this legislation.

DIGITAL TRANSITION COALITION,
Washington, DC, October 4, 2004.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
U.S. Capitol, Washington, DC.

DEAR SPEAKER HASTERT: The Digital Transition Coalition is writing to express its concern regarding the House reauthorization of the Satellite Home Viewer Improvement Act (SHVIA). While the legislation adopts rate increase adjustments for content owners and allows satellite companies to provide "distant network signals" to subscribers who cannot receive "over-the-air" broadcast signals, it fails to include the "digital white area" provision adopted by the Senate Commerce Committee which would accelerate the digital television transition. Without this provision, millions of Americans, especially consumers in rural areas, will have to wait even longer for digital and High-Definition television and be denied the world of innovation derived from freed-up spectrum.

H.R. 4501, approved by the Committee on Energy & Commerce, did not include an important provision to speed up the return of tens of billions of dollars of analog spectrum currently held by broadcasters. Despite the fact that Congress years ago set a 2006 deadline for broadcasters to return the analog spectrum (in exchange for tens of billions of dollars of free digital spectrum), it is clear that deadline will not be met. As a result, consumers in more than 39 million U.S. households (about 36 percent nationwide) will continue to be deprived of receiving all their network signals in digital.

As taxpayer groups, consumer advocates and technology leaders, our coalition has

strongly supported proposals to allow direct broadcast satellite providers to offer a distant digital network signal into local television markets where broadcasters are not transmitting a full-power digital signal. We believe such a measure is essential to provide market-based pressure on local broadcasters to complete the digital transition and return the public's valuable analog spectrum for other uses.

The satellite home viewer reauthorization legislation is the vehicle to address this issue. The Senate Commerce Committee, in its version of the satellite legislation, adopted a ''digital white area'' provision that will help provide the necessary impetus to speed up the digital transition and serve the needs of millions of television viewers who are disadvantaged by the current situation. In contrast, the House Commerce Committee bill requests a perfunctory report on the matter without any immediate remedy.

As such an important issue for consumers and the economy, we strongly urge that a digital white area provision be added to the House legislation. We appreciate your consideration of our request, and we look forward to continuing to work with the Congressional leadership, the committee chairmen and ranking members to further improve this legislation.

Sincerely,

Grover Norquist, Americans for Tax Reform; The Honorable Andrea Seastrand, The California Space Authority; Tom Schatz, Council for Citizens Against Government Waste; Charles Ergen, EchoStar Communications Corporation; George Landrith, Frontiers of Freedom; Andrew Jay Schwartzman, Media Access Project; Gigi Sohn, Public Knowledge; Richard DalBello, Satellite Broadcasting and Communications Association; Karen Kerrigan, Small Business Survival Committee.

Mr. GONZALEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. WHITFIELD). The question is on the motion offered by the gentleman from Texas (Mr. DELAY) that the House suspend the rules and pass the bill, H.R. 4518, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A Bill to extend the statutory license for secondary transmissions by satellite carriers of transmissions by television broadcast stations under title 17, United States Code, and to amend the Communications Act of 1934 with respect to such transmissions, and for other purposes.''.

A motion to reconsider was laid on the table.

WATER SUPPLY, RELIABILITY, AND ENVIRONMENTAL IMPROVEMENT ACT

Mr. POMBO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 2828) to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Water Supply, Reliability, and Environmental Improvement Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL ENHANCEMENT

Sec. 101. Short title.
Sec. 102. Definitions.
Sec. 103. Bay Delta program.
Sec. 104. Management.
Sec. 105. Reporting requirements.
Sec. 106. Crosscut budget.
Sec. 107. Federal share of costs.
Sec. 108. Compliance with State and Federal law.
Sec. 109. Authorization of appropriation.

TITLE II—MISCELLANEOUS

Sec. 201. Salton Sea study program.
Sec. 202. Alder Creek water storage and conservation project feasibility study and report.
Sec. 203. Folsom Reservoir temperature control device authorization.

TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL ENHANCEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Calfed Bay-Delta Authorization Act''.

SEC. 102. DEFINITIONS.

In this title:

(1) CALFED BAY-DELTA PROGRAM.—The terms ''Calfed Bay-Delta Program'' and ''Program'' mean the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the State agencies and Federal agencies as set forth in the Record of Decision.

(2) CALIFORNIA BAY-DELTA AUTHORITY.—The terms ''California Bay-Delta Authority'' and ''Authority'' mean the California Bay-Delta Authority, as set forth in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.).

(3) DELTA.—The term ''Delta'' has the meaning given the term in the Record of Decision.

(4) ENVIRONMENTAL WATER ACCOUNT.—The term ''Environmental Water Account'' means the Cooperative Management Program established under the Record of Decision.

(5) FEDERAL AGENCIES.—The term ''Federal agencies'' means—

(A) the Department of the Interior, including—

(i) the Bureau of Reclamation;

(ii) the United States Fish and Wildlife Service;

(iii) the Bureau of Land Management; and

(iv) the United States Geological Survey;

(B) the Environmental Protection Agency;

(C) the Army Corps of Engineers;

(D) the Department of Commerce, including the National Marine Fisheries Service (also known as ''NOAA Fisheries'');

(E) the Department of Agriculture, including—

(i) the Natural Resources Conservation Service; and

(ii) the Forest Service; and

(F) the Western Area Power Administration.

(6) FIRM YIELD.—The term ''firm yield'' means a quantity of water from a project or program that is projected to be available on a reliable basis, given a specified level of risk, during a critically dry period.

(7) GOVERNOR.—The term ''Governor'' means the Governor of the State of California.

(8) RECORD OF DECISION.—The term ''Record of Decision'' means the Calfed Bay-Delta Program Record of Decision, dated August 28, 2000.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(10) STATE.—The term ''State'' means the State of California.

(11) STATE AGENCIES.—The term ''State agencies'' means—

(A) the Resources Agency of California, including—

(i) the Department of Water Resources;

(ii) the Department of Fish and Game;

(iii) the Reclamation Board;

(iv) the Delta Protection Commission;

(v) the Department of Conservation;

(vi) the San Francisco Bay Conservation and Development Commission;

(vii) the Department of Parks and Recreation; and

(viii) the California Bay-Delta Authority;

(B) the California Environmental Protection Agency, including the State Water Resources Control Board;

(C) the California Department of Food and Agriculture; and

(D) the Department of Health Services.

SEC. 103. BAY DELTA PROGRAM.

(a) IN GENERAL.—

(1) RECORD OF DECISION AS GENERAL FRAMEWORK.—The Record of Decision is approved as a general framework for addressing the Calfed Bay-Delta Program, including its components relating to water storage, ecosystem restoration, water supply reliability (including new firm yield), conveyance, water use efficiency, water quality, water transfers, watersheds, the Environmental Water Account, levee stability, governance, and science.

(2) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) consistent with—

(i) the Record of Decision;

(ii) the requirement that Program activities consisting of protecting drinking water quality, restoring ecological health, improving water supply reliability (including additional storage, conveyance, and new firm yield), and protecting Delta levees will progress in a balanced manner; and

(iii) this title.

(B) MULTIPLE BENEFITS.—In selecting activities and projects, the Secretary and the heads of the Federal agencies shall consider whether the activities and projects have multiple benefits.

(b) AUTHORIZED ACTIVITIES.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) in furtherance of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this title, if the activity has been—

(1) subject to environmental review and approval, as required under applicable Federal and State law; and

(2) approved and certified by the relevant Federal agency, following consultation and coordination with the Governor, to be consistent with the Record of Decision.

(c) AUTHORIZATIONS FOR FEDERAL AGENCIES UNDER APPLICABLE LAW.—

(1) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1) through (10) of subsection (d), to the extent authorized under the reclamation laws, the Central Valley Project Improvement Act (title XXXIV of Public Law 102–575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(2) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection

(d), to the extent authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable law.

(3) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (1), (2), (6), (7), (8), and (9) of subsection (d), to the extent authorized under flood control, water resource development, and other applicable law.

(4) SECRETARY OF COMMERCE.—The Secretary of Commerce is authorized to carry out the activities described in paragraphs (2), (6), (7), and (9) of subsection (d), to the extent authorized under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(5) SECRETARY OF AGRICULTURE.—The Secretary of Agriculture is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), the Farm Security and Rural Investment Act of 2002 (Public Law 107–171; 116 Stat. 134) (including amendments made by that Act), and other applicable law.

(d) DESCRIPTION OF ACTIVITIES UNDER APPLICABLE LAW.—

(1) WATER STORAGE.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) planning and feasibility studies for projects to be pursued with project-specific study for enlargement of—

(I) the Shasta Dam in Shasta County; and

(II) the Los Vaqueros Reservoir in Contra Costa County;

(ii) planning and feasibility studies for the following projects requiring further consideration—

(I) the Sites Reservoir in Colusa County; and

(II) the Upper San Joaquin River storage in Fresno and Madera Counties;

(iii) developing and implementing groundwater management and groundwater storage projects; and

(iv) comprehensive water management planning.

(B) STORAGE PROJECT AUTHORIZATION AND BALANCED CALFED IMPLEMENTATION.—

(i) IN GENERAL.—If on completion of the feasibility study for a project described in clause (i) or (ii) of subparagraph (A), the Secretary, in consultation with the Governor, determines that the project should be constructed in whole or in part with Federal funds, the Secretary shall submit the feasibility study to Congress.

(ii) FINDING OF IMBALANCE.—If Congress fails to authorize construction of the project by the end of the next full session following the submission of the feasibility study, the Secretary, in consultation with the Governor, shall prepare a written determination making a finding of imbalance for the Calfed Bay-Delta Program.

(iii) REPORT ON REBALANCING.—

(I) IN GENERAL.—If the Secretary makes a finding of imbalance for the Program under clause (ii), the Secretary, in consultation with the Governor, shall, not later than 180 days after the end of the full session described in clause (ii), prepare and submit to Congress a report on the measures necessary to rebalance the Program.

(II) SCHEDULES AND ALTERNATIVES.—The report shall include preparation of revised schedules and identification of alternatives to rebalance the Program, including resubmission of the project to Congress with or without modification, construction of other projects, and construction of other projects that provide equivalent water supply and other benefits at equal or lesser cost.

(C) WATER SUPPLY AND YIELD STUDY.—

(i) IN GENERAL.—The Secretary, acting through the Bureau of Reclamation and in coordination with the State, shall conduct a study of available water supplies and existing and future needs for water—

(I) within the units of the Central Valley Project;

(II) within the area served by Central Valley Project agricultural, municipal, and industrial water service contractors; and

(III) within the Calfed Delta solution area.

(ii) RELATIONSHIP TO PRIOR STUDY.—In conducting the study, the Secretary shall incorporate and revise, as necessary, the results of the study required by section 3408(j) of the Central Valley Project Improvement Act of 1992 (Public Law 102–575; 106 Stat. 4730).

(iii) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study, including—

(I) new firm yield and water supply improvements, if any, for Central Valley Project agricultural water service contractors and municipal and industrial water service contractors, including those identified in Bulletin 160;

(II) all water management actions or projects, including those identified in Bulletin 160, that would—

(aa) improve firm yield or water supply; and

(bb) if taken or constructed, balance available water supplies and existing demand with due recognition of water right priorities and environmental needs;

(III) the financial costs of the actions and projects described under subclause (II); and

(IV) the beneficiaries of those actions and projects and an assessment of the willingness of the beneficiaries to pay the capital costs and operation and maintenance costs of the actions and projects.

(D) MANAGEMENT.—The Secretary shall conduct activities related to developing groundwater storage projects to the extent authorized under law.

(E) COMPREHENSIVE WATER PLANNING.—The Secretary shall conduct activities related to comprehensive water management planning to the extent authorized under law.

(2) CONVEYANCE.—

(A) SOUTH DELTA ACTIONS.—

(i) IN GENERAL.—In the case of the South Delta, activities under this subparagraph consist of—

(I) the South Delta Improvements Program through actions to—

(aa) increase the State Water Project export limit to 8,500 cfs;

(bb) install permanent, operable barriers in the South Delta, under which Federal agencies shall cooperate with the State to accelerate installation of the permanent, operable barriers in the South Delta, with an intent to complete that installation not later than September 30, 2007;

(cc) evaluate, consistent with the Record of Decision, fish screens and intake facilities at the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;

(II) reduction of agricultural drainage in South Delta channels, and other actions necessary to minimize the impact of drainage on drinking water quality;

(III) evaluation of lower San Joaquin River floodway improvements;

(IV) installation and operation of temporary barriers in the South Delta until fully operable barriers are constructed; and

(V) actions to protect navigation and local diversions not adequately protected by temporary barriers.

(ii) ACTIONS TO INCREASE PUMPING.—Actions to increase pumping shall be accomplished in a manner consistent with the Record of Decision requirement to avoid redirected impacts and adverse impacts to fishery protection and with any applicable Federal or State law that protects—

(I) water diversions and use (including avoidance of increased costs of diversion) by in-Delta water users (including in-Delta agricultural users that have historically relied on water diverted for use in the Delta);

(II) water quality for municipal, industrial, agricultural, and other uses; and

(III) water supplies for areas of origin.

(B) NORTH DELTA ACTIONS.—In the case of the North Delta, activities under this subparagraph consist of—

(i) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(ii) evaluation of a screened through-Delta facility on the Sacramento River; and

(iii) evaluation of lower Mokelumne River floodway improvements.

(C) INTERTIES.—Activities under this subparagraph consist of—

(i) evaluation and construction of an intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal, near the City of Tracy, as an operation and maintenance activity, except that the Secretary shall design and construct the intertie in a manner consistent with a possible future expansion of the intertie capacity (as described in subsection (f)(1)(B)); and

(ii) assessment of a connection of the Central Valley Project to the Clifton Court Forebay of the State Water Project, with a corresponding increase in the screened intake of the Forebay.

(D) PROGRAM TO MEET STANDARDS.—

(i) IN GENERAL.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.

(ii) MEASURES.—In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) RECIRCULATION PROGRAM.—The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(iv) BEST MANAGEMENT PRACTICES PLAN.—

(I) IN GENERAL.—The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

(II) COORDINATION WITH INTERESTED PARTIES.—The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) COORDINATION WITH ENTITIES THAT DISCHARGE WATER.—The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into the River, including the timing of discharges to optimize their assimilation.

(v) ACQUISITION OF WATER.—The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

(vi) PURPOSE.—The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.

(vii) UPDATING OF NEW MELONES OPERATING PLAN.—The Secretary shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.

(3) WATER USE EFFICIENCY.—

(A) WATER CONSERVATION PROJECTS.—Activities under this paragraph include water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the California Bay-Delta system.

(B) TECHNICAL ASSISTANCE.—Activities under this paragraph include technical assistance for urban and agricultural water conservation projects.

(C) WATER RECYCLING AND DESALINATION PROJECTS.—Activities under this paragraph include water recycling and desalination projects, including groundwater remediation projects and projects identified in the Bay Area Water Plan and the Southern California Comprehensive Water Reclamation and Reuse Study and other projects, giving priority to projects that include regional solutions to benefit regional water supply and reliability needs.

(D) WATER MEASUREMENT AND TRANSFER ACTIONS.—Activities under this paragraph include water measurement and transfer actions.

(E) URBAN WATER CONSERVATION.—Activities under this paragraph include implementation of best management practices for urban water conservation.

(F) RECLAMATION AND RECYCLING PROJECTS.—

(i) PROJECTS.—This subparagraph applies to—

(I) projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study, dated April 2001 and authorized by section 1606 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–4); and

(II) projects identified in the San Francisco Bay Area Regional Water Recycling Program described in the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan, dated December 1999 and authorized by section 1611 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–9).

(ii) DEADLINE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(I) complete the review of the existing studies of the projects described in clause (i); and

(II) make the feasibility determinations described in clause (iii).

(iii) FEASIBILITY DETERMINATIONS.—A project described in clause (i) is presumed to be feasible if the Secretary determines for the project—

(I) in consultation with the affected local sponsoring agency and the State, that the existing planning and environmental studies for the project (together with supporting materials and documentation) have been prepared consistent with Bureau of Reclamation procedures for projects under consideration for financial assistance under the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.); and

(II) that the planning and environmental studies for the project (together with supporting materials and documentation) demonstrate that the project will contribute to the goals of improving water supply reliability in the Calfed solution area or the Colorado River Basin within the State and otherwise meets the requirements of section 1604 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–2).

(iv) REPORT.—Not later than 90 days after the date of completion of a feasibility study or the review of a feasibility study under this subparagraph, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study or review.

(4) WATER TRANSFERS.—Activities under this paragraph consist of—

(A) increasing the availability of existing facilities for water transfers;

(B) lowering transaction costs through permit streamlining; and

(C) maintaining a water transfer information clearinghouse.

(5) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Activities under this paragraph consist of assisting local and regional communities in the State in developing and implementing integrated regional water management plans to carry out projects and programs that improve water supply reliability, water quality, ecosystem restoration, and flood protection, or meet other local and regional needs, in a manner that is consistent with, and makes a significant contribution to, the Calfed Bay-Delta Program.

(6) ECOSYSTEM RESTORATION.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) implementation of large-scale restoration projects in San Francisco Bay and the Delta and its tributaries;

(ii) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetland and riparian habitat;

(iii) fish screen and fish passage improvement projects, including the Sacramento River Small Diversion Fish Screen Program;

(iv) implementation of an invasive species program, including prevention, control, and eradication;

(v) development and integration of Federal and State agricultural programs that benefit wildlife into the Ecosystem Restoration Program;

(vi) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;

(vii) water quality improvement projects to manage or reduce concentrations of salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;

(viii) land and water acquisitions to improve habitat and fish spawning and survival in the Delta and its tributaries;

(ix) integrated flood management, ecosystem restoration, and levee protection projects;

(x) scientific evaluations and targeted research on Program activities; and

(xi) strategic planning and tracking of Program performance.

(B) REPORTING REQUIREMENTS.—The Secretary or the head of the relevant Federal agency (as appropriate under clause (ii)) shall provide to the appropriate authorizing committees of the Senate and the House of Representatives and other appropriate parties in accordance with this subparagraph—

(i) an annual ecosystem program plan report in accordance with subparagraph (C); and

(ii) detailed project reports in accordance with subparagraph (D).

(C) ANNUAL ECOSYSTEM PROGRAM PLAN.—

(i) IN GENERAL.—Not later than October 1 of each year, with respect to each ecosystem restoration action carried out using Federal funds under this title, the Secretary, in consultation with the Governor, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives an annual ecosystem program plan report.

(ii) PURPOSES.—The purposes of the report are—

(I) to describe the projects and programs to implement this subsection in the following fiscal year; and

(II) to establish priorities for funding the projects and programs for subsequent fiscal years.

(iii) CONTENTS.—The report shall describe—

(I) the goals and objectives of the programs and projects;

(II) program accomplishments;

(III) major activities of the programs;

(IV) the Federal agencies involved in each project or program identified in the plan and the cost-share arrangements with cooperating agencies;

(V) the resource data and ecological monitoring data to be collected for the restoration projects and how the data are to be integrated, streamlined, and designed to measure the effectiveness and overall trend of ecosystem health in the Bay-Delta watershed;

(VI) implementation schedules and budgets;

(VII) existing monitoring programs and performance measures;

(VIII) the status and effectiveness of measures to minimize the impacts of the program on agricultural land; and

(IX) a description of expected benefits of the restoration program relative to the cost.

(iv) SPECIAL RULE FOR LAND ACQUISITION USING FEDERAL FUNDS.—For each ecosystem restoration project involving land acquisition using Federal funds under this title, the Secretary shall—

(I) identify the specific parcels to be acquired in the annual ecosystem program plan report under this subparagraph; or

(II) not later than 150 days before the project is approved, provide to the appropriate authorizing committees of the Senate and the House of Representatives, the United States Senators from the State, and the United States Representative whose district would be affected, notice of any such proposed land acquisition using Federal funds under this title submitted to the Federal or State agency.

(D) DETAILED PROJECT REPORTS.—

(i) IN GENERAL.—In the case of each ecosystem restoration program or project funded under this title that is not specifically identified in an annual ecosystem program plan under subparagraph (C), not later than 45 days prior to approval, the Secretary, in coordination with the State, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives recommendations on the proposed program or project.

(ii) CONTENTS.—The recommendations shall—

(I) describe the selection of the program or project, including the level of public involvement and independent science review;

(II) describe the goals, objectives, and implementation schedule of the program or project, and the extent to which the program or project addresses regional and programmatic goals and priorities;

(III) describe the monitoring plans and performance measures that will be used for evaluating the performance of the proposed program or project;

(IV) identify any cost-sharing arrangements with cooperating entities;

(V) identify how the proposed program or project will comply with all applicable Federal and State laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(VI) in the case of any program or project involving the acquisition of private land using Federal funds under this title—

(aa) describe the process and timing of notification of interested members of the public and local governments;

(bb) describe the measures taken to minimize impacts on agricultural land pursuant to the Record of Decision; and

(cc) include preliminary management plans for all properties to be acquired with Federal funds, including an overview of existing conditions (including habitat types in the affected project area), the expected ecological benefits, preliminary cost estimates, and implementation schedules.

(7) WATERSHEDS.—Activities under this paragraph consist of—

(A) building local capacity to assess and manage watersheds affecting the Delta system;

(B) technical assistance for watershed assessments and management plans; and

(C) developing and implementing locally-based watershed conservation, maintenance, and restoration actions.

(8) WATER QUALITY.—Activities under this paragraph consist of—

(A) addressing drainage problems in the San Joaquin Valley to improve downstream water quality (including habitat restoration projects that improve water quality) if—

(i) a plan is in place for monitoring downstream water quality improvements; and

(ii) State and local agencies are consulted on the activities to be funded;

except that no right, benefit, or privilege is created as a result of this subparagraph;

(B) implementation of source control programs in the Delta and its tributaries;

(C) developing recommendations through scientific panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in Delta water quality for all uses;

(D) investing in treatment technology demonstration projects;

(E) controlling runoff into the California aqueduct, the Delta-Mendota Canal, and other similar conveyances;

(F) addressing water quality problems at the North Bay Aqueduct;

(G) supporting and participating in the development of projects to enable San Francisco Bay Area water districts, and water entities in San Joaquin and Sacramento Counties, to work cooperatively to address their water quality and supply reliability issues, including—

(i) connections between aqueducts, water transfers, water conservation measures, institutional arrangements, and infrastructure improvements that encourage regional approaches; and

(ii) investigations and studies of available capacity in a project to deliver water to the East Bay Municipal Utility District under its contract with the Bureau of Reclamation, dated July 20, 2001, in order to determine if such capacity can be utilized to meet the objectives of this subparagraph;

(H) development of water quality exchanges and other programs to make high quality water available for urban and other users;

(I) development and implementation of a plan to meet all Delta water quality standards for which the Federal and State water projects have responsibility;

(J) development of recommendations through science panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in water quality for all uses; and

(K) projects that are consistent with the framework of the water quality component of the Calfed Bay-Delta Program.

(9) SCIENCE.—Activities under this paragraph consist of—

(A) supporting establishment and maintenance of an independent science board, technical panels, and standing boards to provide oversight and peer review of the Program;

(B) conducting expert evaluations and scientific assessments of all Program elements;

(C) coordinating existing monitoring and scientific research programs;

(D) developing and implementing adaptive management experiments to test, refine, and improve scientific understandings;

(E) establishing performance measures, and monitoring and evaluating the performance of all Program elements; and

(F) preparing an annual science report.

(10) DIVERSIFICATION OF WATER SUPPLIES.—Activities under this paragraph consist of actions to diversify sources of level 2 refuge supplies and modes of delivery to refuges while maintaining the diversity of level 4 supplies pursuant to section 3406(d)(2) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4723).

(e) NEW AND EXPANDED AUTHORIZATIONS FOR FEDERAL AGENCIES.—

(1) IN GENERAL.—The heads of the Federal agencies described in this subsection are authorized to carry out the activities described in subsection (f) during each of fiscal years 2005 through 2010, in coordination with the Governor.

(2) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1), (2), and (4) of subsection (f).

(3) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARIES OF AGRICULTURE AND COMMERCE.—The Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the Secretary of Commerce are authorized to carry out the activities described in subsection (f)(4).

(4) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (3) and (4) of subsection (f).

(f) DESCRIPTION OF ACTIVITIES UNDER NEW AND EXPANDED AUTHORIZATIONS.—

(1) CONVEYANCE.—Of the amounts authorized to be appropriated under section 109, not more than $184,000,000 may be expended for the following:

(A) SAN LUIS RESERVOIR.—Funds may be expended for feasibility studies, evaluation, and implementation of the San Luis Reservoir lowpoint improvement project, except that Federal participation in any construction of an expanded Pacheco Reservoir shall be subject to future congressional authorization.

(B) INTERTIE.—Funds may be expended for feasibility studies and evaluation of increased capacity of the intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal.

(C) FRANKS TRACT.—Funds may be expended for feasibility studies and actions at Franks Tract to improve water quality in the Delta.

(D) CLIFTON COURT FOREBAY AND THE TRACY PUMPING PLANT.—Funds may be expended for feasibility studies and design of fish screen and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities.

(E) DRINKING WATER INTAKE FACILITIES.—

(i) IN GENERAL.—Funds may be expended for design and construction of the relocation of drinking water intake facilities to in-Delta water users.

(ii) DRINKING WATER QUALITY.—The Secretary shall coordinate actions for relocating intake facilities on a time schedule consistent with subsection (d)(2)(A)(i)(I)(bb) or take other actions necessary to offset the degradation of drinking water quality in the Delta due to the South Delta Improvement Program.

(F) NEW MELONES RESERVOIR.—

(i) IN GENERAL.—In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) PURPOSE.—The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) FUNDING.—Of the amounts authorized to be appropriated under section 109, not more than $30,000,000 may be expended to carry out clause (i).

(G) RECIRCULATION OF EXPORT WATER.—Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

(2) ENVIRONMENTAL WATER ACCOUNT.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than $90,000,000 may be expended for implementation of the Environmental Water Account.

(B) NONREIMBURSABLE FEDERAL EXPENDITURE.—Expenditures under subparagraph (A) shall be considered a nonreimbursable Federal expenditure in recognition of the payments of the contractors of the Central Valley Project to the Restoration Fund created by the Central Valley Project Improvement Act (Title XXXIV of Public Law 102–575; 106 Stat. 4706).

(C) USE OF RESTORATION FUND.—

(i) IN GENERAL.—Of the amounts appropriated for the Restoration Fund for each fiscal year, an amount not to exceed $10,000,000 for any fiscal year may be used to implement the Environmental Water Account to the extent those actions are consistent with the fish and wildlife habitat restoration and improvement purposes of the Central Valley Project Improvement Act.

(ii) ACCOUNTING.—Any such use of the Restoration Fund shall count toward the 33 percent of funds made available to the Restoration Fund that, pursuant to section 3407(a) of the Central Valley Project Improvement Act, are otherwise authorized to be appropriated to the Secretary to carry out paragraphs (4) through (6), (10) through (18), and (20) through (22) of section 3406(b) of that Act.

(iii) FEDERAL FUNDING.—The $10,000,000 limitation on the use of the Restoration Fund for the Environmental Water Account under clause (i) does not limit the appropriate amount of Federal funding for the Environmental Water Account.

(3) LEVEE STABILITY.—

(A) IN GENERAL.—For purposes of implementing the Calfed Bay-Delta Program within the Delta (as defined in Cal. Water Code § 12220)), the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

(C) SMALL FLOOD CONTROL PROJECTS.—Notwithstanding the project purpose, the authority granted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) shall apply to each project authorized under this paragraph.

(D) PROJECTS.—Of the amounts authorized to be appropriated under section 109, not more than $90,000,000 may be expended to—

(i) reconstruct Delta levees to a base level of protection (also known as the ''Public Law 84–99 standard'');

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

(4) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than $25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

(i) Program support;

(ii) Program-wide tracking of schedules, finances, and performance;

(iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;

(iv) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;

(v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and

(vi) development of Annual Reports.

(B) PROGRAM-WIDE ACTIVITIES.—Of the amount referred to in subparagraph (A), not less than 50 percent of the appropriated amount shall be provided to the California Bay-Delta Authority to carry out Program-wide management, oversight, and coordination activities.

SEC. 104. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program planning and design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) GOVERNANCE.—

(1) IN GENERAL.—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads are authorized to participate as nonvoting members of the California Bay-Delta Authority, as established in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.), to the extent consistent with Federal law, for the full duration of the period the Authority continues to be authorized by State law.

(2) RELATIONSHIP TO FEDERAL LAW AND AGENCIES.—Nothing in this subsection shall preempt or otherwise affect any Federal law or limit the statutory authority of any Federal agency.

(3) CALIFORNIA BAY-DELTA AUTHORITY.—

(A) ADVISORY COMMITTEE.—The California Bay-Delta Authority shall not be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

(B) FINANCIAL INTEREST.—The financial interests of the California Bay-Delta Authority shall not be imputed to any Federal official participating in the Authority.

(C) ETHICS REQUIREMENTS.—A Federal official participating in the California Bay-Delta Authority shall remain subject to Federal financial disclosure and conflict of interest laws and shall not be subject to State financial disclosure and conflict of interest laws.

(e) ENVIRONMENTAL JUSTICE.—The Federal agencies, consistent with Executive Order 12898 (59 Fed. Reg. 7629), should continue to collaborate with State agencies to—

(1) develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program; and

(2) fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan, dated December 13, 2000.

(f) LAND ACQUISITION.—Federal funds appropriated by Congress specifically for implementation of the Calfed Bay-Delta Program may be used to acquire fee title to land only where consistent with the Record of Decision.

SEC. 105. REPORTING REQUIREMENTS.

(a) REPORT.—

(1) IN GENERAL.—Not later than February 15 of each year, the Secretary, in cooperation with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that—

(A) describes the status of implementation of all components of the Calfed Bay-Delta Program;

(B) sets forth any written determination resulting from the review required under subsection (b) or section 103(d)(1)(B); and

(C) includes any revised schedule prepared under subsection (b) or section 103(d)(1)(B)(iii)(II).

(2) CONTENTS.—The report required under paragraph (1) shall describe—

(A) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;

(B) the status of implementation of all components of the Program;

(C) expenditures in the past fiscal year for implementing the Program;

(D) accomplishments during the past fiscal year in achieving the objectives of additional and improved—

(i) water storage;

(ii) water quality, including—

(I) the water quality targets described in section 2.2.9 of the Record of Decision; and

(II) any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets and requirements;

(iii) water use efficiency;

(iv) ecosystem restoration;

(v) watershed management;

(vi) levee system integrity;

(vii) water transfers;

(viii) water conveyance;

(ix) water supply reliability (including new firm yield), including progress in achieving the water supply targets described in section 2.2.4 of the Record of Decision and any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets; and

(x) the uses and assets of the environmental water account described in section 2.2.7 of the Record of Decision;

(E) Program goals, current schedules, and relevant financing agreements, including funding levels necessary to achieve completion of the feasibility studies and environmental documentation for the surface storage projects identified in section 103 by not later than September 30, 2008;

(F) progress on—

(i) storage projects;

(ii) conveyance improvements;

(iii) levee improvements;

(iv) water quality projects; and

(v) water use efficiency programs;

(G) completion of key projects and milestones identified in the Ecosystem Restoration Program, including progress on project effectiveness, monitoring, and accomplishments;

(H) development and implementation of local programs for watershed conservation and restoration;

(I) progress in improving water supply reliability and implementing the Environmental Water Account;

(J) achievement of commitments under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and endangered species law of the State;

(K) implementation of a comprehensive science program;

(L) progress toward acquisition of the Federal and State permits (including permits under section 404(a) of the Federal Water Pollution Control Act (33 U.S.C. 1344(a))) for implementation of projects in all identified Program areas;

(M) progress in achieving benefits in all geographic regions covered by the Program;

(N) legislative action on—

(i) water transfer;

(ii) groundwater management;

(iii) water use efficiency; and

(iv) governance;

(O) the status of complementary actions;

(P) the status of mitigation measures; and

(Q) revisions to funding commitments and Program responsibilities.

(b) ANNUAL REVIEW OF PROGRESS AND BALANCE.—

(1) IN GENERAL.—Not later than November 15 of each year, the Secretary, in cooperation with the Governor, shall review progress in implementing the Calfed Bay-Delta Program based on—

(A) consistency with the Record of Decision; and

(B) balance in achieving the goals and objectives of the Calfed Bay-Delta Program.

(2) REVISED SCHEDULE.—If, at the conclusion of each such annual review or if a timely annual review is not undertaken, the Secretary or the Governor determines in writing that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, the Secretary and the Governor, in coordination with the Bay-Delta Public Advisory Committee, shall prepare a revised schedule to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the intent of the Record of Decision.

(c) FEASIBILITY STUDIES.—Any feasibility studies completed as a result of this title shall include identification of project benefits and a cost allocation plan consistent with the beneficiaries pay provisions of the Record of Decision.

SEC. 106. CROSSCUT BUDGET.

(a) IN GENERAL.—The President's budget shall include such requests as the President considers necessary and appropriate for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program.

(b) REQUESTS BY FEDERAL AGENCIES.—The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds, in accordance with subsections (b) through (f) of section 103.

(c) REPORT.—Not later than 30 days after submission of the budget of the President to Congress, the Director of the Office of Management

and Budget, in coordination with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report certified by the Secretary containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any interagency or intra-agency transfer, for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this title; and

(B) identifies all expenditures since 1998 by the Federal and State governments to achieve the objectives of the Calfed Bay-Delta Program;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and State agencies responsible for implementing the Calfed Bay-Delta Program during the previous fiscal year;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103.

SEC. 107. FEDERAL SHARE OF COSTS.

(a) IN GENERAL.—The Federal share of the cost of implementing the Calfed Bay-Delta Program for fiscal years 2005 through 2010 in the aggregate, as set forth in the Record of Decision, shall not exceed 33.3 percent.

(b) PAYMENT FOR BENEFITS.—The Secretary shall ensure that all beneficiaries, including beneficiaries of environmental restoration and other Calfed program elements, shall pay for the benefit received from all projects or activities carried out under the Calfed Bay-Delta Program.

(c) INTEGRATED RESOURCE PLANNING.—Federal expenditures for the Calfed Bay-Delta Program shall be implemented in a manner that encourages integrated resource planning.

SEC. 108. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this title—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water;

(3) preempts or modifies any State or Federal law or interstate compact governing water quality or disposal;

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource; or

(5) alters or modifies any provision of existing Federal law, except as specifically provided in this title.

SEC. 109. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary and the heads of the Federal agencies to pay the Federal share of the cost of carrying out the new and expanded authorities described in subsections (e) and (f) of section 103 $389,000,000 for the period of fiscal years 2005 through 2010, to remain available until expended.

TITLE II—MISCELLANEOUS

SEC. 201. SALTON SEA STUDY PROGRAM.

Not later than December 31, 2006, the Secretary of the Interior, in coordination with the State of California and the Salton Sea Authority, shall complete a feasibility study on a preferred alternative for Salton Sea restoration.

SEC. 202. ALDER CREEK WATER STORAGE AND CONSERVATION PROJECT FEASIBILITY STUDY AND REPORT.

(a) STUDY.—Pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), the Secretary of the Interior (referred to in this section as the ''Secretary''), through the Bureau of Reclamation, and in consultation and cooperation with the El Dorado Irrigation District, is authorized to conduct a study to determine the feasibility of constructing a project on Alder Creek in El Dorado County, California, to store water and provide water supplies during dry and critically dry years for consumptive use, recreation, in-stream flows, irrigation, and power production.

(b) REPORT.—

(1) TRANSMISSION.—On completion of the study authorized by subsection (a), the Secretary shall transmit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the results of the study.

(2) CONTENTS OF REPORT.—The report shall contain appropriate cost sharing options for the implementation of the project based on the use and possible allocation of any stored water.

(3) USE OF AVAILABLE MATERIALS.—In developing the report under this section, the Secretary shall use reports and any other relevant information supplied by the El Dorado Irrigation District.

(c) COST SHARE.—

(1) FEDERAL SHARE.—The Federal share of the costs of the feasibility study authorized by this section shall not exceed 50 percent of the total cost of the study.

(2) IN-KIND CONTRIBUTION FOR NON-FEDERAL SHARE.—The Secretary may accept as part of the non-Federal cost share the contribution such in-kind services by the El Dorado Irrigation District as the Secretary determines will contribute to the conduct and completion of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $3,000,000.

SEC. 203. FOLSOM RESERVOIR TEMPERATURE CONTROL DEVICE AUTHORIZATION.

Section 1(c) of Public Law 105–295 (112 Stat. 2820) (as amended by section 219(b) of Public Law 108–137 (117 Stat. 1853)) is amended in the second sentence by striking ''$3,500,000'' and inserting ''$6,250,000''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. POMBO) and the gentleman from California (Mr. GEORGE MILLER) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. POMBO).

GENERAL LEAVE

Mr. POMBO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material in the record on H.R. 2828, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. POMBO. Mr. Speaker, I yield myself such time as I may consume.

Today's consideration of this historic bill is a giant step forward in resolving California's water supply problems. This legislation is proof that developing our water supplies is a bipartisan endeavor. Chairman of the Subcommittee on Water and Power, the gentleman from California (Mr. CALVERT), the original author of the bill, Senator FEINSTEIN, the ranking member on the Subcommittee on Water and Power, the gentlewoman from California (Mrs. NAPOLITANO), and others have worked constructively to reach agreement with our Senate colleagues since the bill passed out of the House.

The original intent of Calfed was to provide balance to a complex water delivery system to ensure everyone gets better together. That is what this bill does. H.R. 2828, as amended, simply and truly ensures that water quality, water supply and reliability, environmental restoration, fisheries protection, recreational values, and others all advance together. We have made significant progress in resolving the tough issues to bring before this chamber a bill that works for all those involved.

This bill makes historic strides in water quality improvements throughout California and brings together the collective efforts of all water users to provide cleaner water for everyone. The importance in moving the program forward with balanced implementation cannot be overemphasized. It is the very essence of the bill as now amended.

Specifically, balanced implementation for the first time under this bill creates storage as the linchpin for implementation of all Calfed elements. Across the board, newer and larger facilities are needed to store the excess flows now running to the ocean for later use by growing populations and the environment. Actions are necessary now to secure water and provide better water supplies for future generations of Californians. This bill ensures that the program will be carried out in balance with new water storage or else the entire program will simply not exist. To reiterate, new water storage is the linchpin of the entire program. Without it, we cannot achieve our goals of a balanced program.

My colleagues in the House and Senate have brought ultimate resolution to this bipartisan effort, and I urge my colleagues to support this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I want to begin by thanking the gentleman from California (Mr. CALVERT) and the gentleman from California (Mr. POMBO) for their assistance, and leadership, in moving this legislation, along with the gentlewoman from California (Mrs. NAPOLITANO) from our side of the aisle. I also want to thank Senator BOXER and Senator FEINSTEIN for helping to get this successfully through the Senate.

I just want to raise a couple of points, and that is that this past summer, when an earlier version of this legislation was on the House floor, I offered a motion, along with the gentlewoman from California (Mrs. TAUSCHER) to correct what I believed was a fatal flaw in that legislation, the so-called preauthorization provision of the House, that would have granted a

blank check to Federal agencies to spend billions of dollars on dams and other projects in California. It was our strong belief that this provision would in fact never pass the Senate; it would become controversial and bog down this matter in the legislative process.

Fortunately, that provision of this legislation was removed at the insistence of members of the Senate. And the discussion that somehow, if we removed it, it would blow up the Calfed program has turned out to be the opposite. The removal of that has allowed Senators from other parts of the country to let us proceed for this long overdue legislation and hold together the coalition that was put together in the House in support of this legislation on both sides of the aisle.

Again, I want to thank all of the tireless efforts that Senator FEINSTEIN put into negotiating this legislation in the Senate. There is no question this was most difficult for the gentleman from California (Mr. CALVERT) in the House. I just asked him whether or not various Members of the House were happy, and he told me happiness was not the test in this legislation, but perhaps relative happiness was the test. And I think maybe, that being the goal, we have put together support for this legislation. And I want to thank him for those negotiations.

The bill we are considering today contains one complicated provision having to do with the balance in the Calfed program. Concerns have been raised that the finding of imbalance in this provision would be disruptive to the Calfed program. This should not be the case. Congress might indeed exercise its prerogative and refuse to authorize a surface storage project if a less expensive or less damaging water supply alternative exists. That action would trigger this rebalancing provision, which includes a specific remedy and report to the Congress that should include those alternative supplies. As in the case of surface storage facilities, these alternative water supplies should be financed by the principle of ''beneficiary pays,'' just like every other aspect of the Calfed program.

Finally, it is important to note that the bill reflects the fact that ecosystem restoration and several other Calfed activities, that have not received new authorization in this bill, are already authorized under Federal law. As the program moves forward, the authorization will include the balanced funding for these program elements as well.

Again, I want to thank all of the members of the Committee on Resources, and I want to thank the gentlewoman from California (Mrs. TAUSCHER) and the gentleman from California (Mr. POMBO), who we share areas covering the great Sacramento San Joaquin Delta in our State, and the gentleman from California (Mr. POMBO) was able to get some people to slow down and give some serious consideration to the problems that have plagued the users of the delta, both the agricultural interests and our municipal users and the environmental concerns in the delta to make sure that in fact we could come up with the most balanced program possible to meet all of those needs.

Mr. Speaker, I reserve the balance of my time.

Mr. POMBO. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DREIER).

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I thank my friend for yielding me this time, and I would like to build on the remarks of my friend from Martinez by saying that I am extraordinarily happy that everyone else is relatively happy over this very important piece of legislation. I am happy because my colleagues, the gentleman from California (Mr. POMBO) and the gentleman from California (Mr. CALVERT) have worked so closely with the gentleman from California (Mr. GEORGE MILLER), the gentlewoman from California (Mrs. TAUSCHER), the gentlewoman from California (Mrs. NAPOLITANO), and others.

Focusing on the Bay-Delta region is something that has been a priority for many, many years, and it is something that will benefit not only Californians, but it will benefit us regionally.

I also want to join in extending congratulations to our California colleague DIANNE FEINSTEIN, and of course our friend Senator PETE DOMENICI, who worked hard and long in fashioning this. The gentleman from California (Mr. CALVERT) has been championing this effort for many, many years.

One other word of thanks has to go out on this, and I know some people will cringe when I say this, Mr. Speaker, but exactly 1 year ago tomorrow, the people of California, by an overwhelming margin, chose to recall the governor and elect Arnold Swarzenegger as our new governor. That happened exactly 1 year ago. And from that campaign forward, this has been a very high priority for Governor Swarzenegger.

We have seen in California huge geographic disagreement over the issue of water. And it has taken a long period of time for our State, and there are often so many jokes about what happens to California water and disagreements, almost a civil war on this issue of water between the north and the south, and to be able to focus on this Calfed issue in a bipartisan way and to address the regional concerns is something that is virtually unprecedented.

So I would like to argue that it took the leadership not only of Arnold Swarzenegger but of this tremendous coalition here in the House of Representatives, and I think it will go a long way towards addressing the very important agriculture needs and the economic needs of our State. And I thank the gentleman from California (Mr. POMBO) once again for his strong support in this effort.

□ 1400

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. NAPOLITANO) who has been very active in this matter for several years.

Mrs. NAPOLITANO. Mr. Speaker, I rise in strong support of H.R. 2828, the bill to reauthorize the CALFED Bay-Delta Program. I certainly associate myself with the comments of my colleagues, with the exception of Chairman DREIER's. I never saw the Governor at our meetings. I wish he had been. It would have helped. I would like to thank my good friend and colleague from California (Mr. CALVERT). His tireless efforts during the past two sessions of Congress to bring all CALFED stakeholders to the table and resolve several complex issues relating to California water management have paid off.

I also would like to thank and recognize the gentleman from California (Mr. POMBO), the gentleman from California (Mr. DREIER), the gentleman from West Virginia (Mr. RAHALL), and the gentleman from California (Mr. GEORGE MILLER) and especially Senators FEINSTEIN, BOXER, and DOMENICI for their excellent assistance while we worked to move this legislation throughout the 108th Congress.

The State of California for the past several years has also been operating under the most restrictive allocation of Colorado River water in history. We have been, rightfully so, told by the Interior Department that we need to reduce our water take from the river by 800,000 acre-feet by the year 2016.

Mr. Speaker, I am very pleased that this final version of H.R. 2828 addresses the current severe drought situation by including strong water-use efficiency language that would enable Southern California to take less water from Colorado River and the fragile bay-delta ecosystem through recycling and restoring our groundwater supply. As a former local and State-elected official, I have learned firsthand how groundwater reclamation activities combined with recycling efforts solved problems at the local level.

Now, as a Member of Congress, I have also learned that these projects commonly referred to, and everybody knows them as title XVI, title XVI projects, provide solutions to some of the most challenging community issues we face today and will confront tomorrow, not only in Southern California but throughout the western States.

Mr. Speaker, the key to solving California's water problems is in building partnerships. I sincerely appreciate the partnership and progress that we have all made on this legislation since its introduction last fall. I look forward to the enactment of H.R. 2828.

Mr. POMBO. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. NUNES).

Mr. NUNES. Mr. Speaker, it is really a privilege to stand up today and thank all of my colleagues who have worked so hard on this bill. This has been one of these bills in Congress that has really been a California Member bipartisan effort that we have worked with both Republicans and Democrats to come forth with a compromise on such tough language dealing with water. The gentleman from California (Mr. CALVERT) and the gentlewoman from California (Mrs. NAPOLITANO) should be thanked for holding hearings throughout the State of California last year leading up to this language.

We have strong commitments on storage. The gentleman from California (Mr. DREIER) mentioned Governor Schwarzenegger's support on storage. This is part of the overall agreement that has been achieved not only through this bill but through other agreements that have been made outside it because of this bill passing today on the floor of the House.

As we move forward, it is important for the folks in the United States and all over California to realize as California grows to 35, 40 million people, we have to have new water storage. This bill lays the groundwork for that. We are going to be working hard with the appropriators to continue to move forward on the storage aspects and the funding for the studies and obviously with our colleagues in the Senate, DIANNE FEINSTEIN, who has done a phenomenal job in moving this language forward.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. I thank the gentleman for yielding me this time.

Mr. Speaker, I am very pleased today to have the opportunity to vote in support of reasonable and responsible CALFED legislation. I want to thank the gentleman from California (Mr. POMBO), the gentleman from California (Mr. CALVERT), the gentlewoman from California (Mrs. NAPOLITANO), and especially the gentleman from California (Mr. GEORGE MILLER) for their leadership and especially the gentleman from California (Mr. POMBO) and the gentleman from California (Mr. CALVERT) for acceding to the Senate language.

As I said when the House first considered this legislation this summer, it is well past time that the State of California and the Federal Government get to work in active partnership to restore the delta's ecosystem and meet our State's growing water needs.

For too many years, Mr. Speaker, because agreement was not reached, California lost tens of millions of dollars which could have been used to begin work on these vitally important projects. In fiscal years 2001, 2002, 2003 and 2004, zero was appropriated for the CALFED projects. We could not allow this to continue. And so I am glad today we are considering the Senate version of this measure, ushered through by the hard work of our senior Senator, DIANNE FEINSTEIN.

This bill preserves the existing record of decision, strips the divisive preauthorization language, and best balances the vital water interests in our region. Fortunately, today's legislation will make new water projects subject to the critical public review and public participation process which the gentleman from California (Mr. GEORGE MILLER) and I have been fighting for, which will secure the integrity of the CALFED program into the future.

Under an open process and through this renewed Federal-State partnership, we can begin to address issues of water supply restoration, ecosystem restoration, and water-quality enhancement so vital to the future of California. As the sixth largest economy in the world, as home to some of the world's most unique, yet endangered, species and ecosystems, and as a major key to the economic strength of our Nation, it is critical that we endeavor to address our State's aging water infrastructure and diminishing resources. The CALFED program will allow us to do so. I am pleased to join my California colleagues in supporting it. I urge a ''yes'' vote.

Mr. POMBO. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. CALVERT), the author of the legislation.

Mr. CALVERT. I thank the gentleman from California for yielding me this time.

Mr. Speaker, today's consideration of this bill is a giant step forward in resolving California's water supply problems. Our water security is a critically important issue. In California alone in the last 2 decades, the population has grown over 30 percent while the water supply in storage has increased by a mere 2 percent. Over the next 15 years, California must reduce its dependence on the Colorado River by 15 percent while the population in California is projected to grow by yet another 30 percent. California's Department of Water Resources estimates that the gap between water supply and demand in the State will total 2.4 million acre-feet in normal years of rainfall and up to 6.2 million acre-feet in drought years. When you consider that a family of five uses an average of one acre-foot of water per year, it is not that difficult to imagine how destabilizing such shortages would be to California and to other western States.

We have come a long way over the last few years in assuring a reliable water supply for California. Since I have been chairman of the Subcommittee on Water and Power, we have conducted many field hearings in California, legislative hearings here in Washington, markups and too many meetings to count to get to where we are today. Today's bill is a culmination of the work and deliberation by many of us over the years. Since 1995, I have worked to bring certainty and a balanced road map for water use in California and the West. Since this bill passed the House several months ago, I have worked with the gentleman from California (Mr. POMBO), Senator FEINSTEIN, the gentleman from California (Mr. GEORGE MILLER), and, of course, the gentlewoman from California (Mrs. NAPOLITANO) and many others who have worked hard to bring this bill to the floor.

The original intent of CALFED was to provide a balance to a complex water delivery system. H.R. 2828 achieves this goal. Under this bill, the environment, recreation, drinking water, agriculture, and industry all get better together. As our distinguished colleague from California (Mr. POMBO) has stated, this bill makes historic strides in water-quality improvements throughout the entire State of California. Improved water quality helps everybody across the board. We also create new water supplies for Northern and Southern California, and we enhance surface storage to improve our water quality and supply.

Lastly, I want to thank Governor Schwarzenegger's participation recently to assure us that these feasibility reports that are in the record of decision will move forward where we can have a balanced and completed project and that we can meet our future with assurance. I urge my colleagues to support this important legislation.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Again, I want to rise in support of this legislation, but I do want to note some concurrent problems that concern me with respect to this legislation because the goals of this legislation were to strike a balance in the operation of this water system, a balance in the development of facilities and the utilization of this water between the consumption of this water, whether it be in industry or whether it be in the agricultural industry or in our municipalities or for the environment, to make sure that there was balance to those efforts. I think to the extent it was practicable, the gentleman from California (Mr. CALVERT) and others have worked that balance out.

I am concerned that as we get ready to pass this legislation and send it to the President, we now see other activities that are taking place along at the same time, and, that is, we see the emergence now of the operations criteria and plan which is the new document that sets the stage for California's most far-reaching, according to the Sacramento Bee, the most far-reaching plumbing shifts in a decade.

Under the plan, water contractors would increase the pumping from the very same delta that this legislation is designed to help protect and preserve both for its local economies, for its agricultural industries and for its environmental assets, would increase the pumping from the delta by some 27 percent to Southern California.

The suggestion is that that has to be done. Part of it is because there are contracts that have to be met. We know that many of these contracts are up currently for renewal in a number of the water districts south of the delta. The Bureau of Reclamation and the Federal Government has within its authority to modify those contracts. All of the evidence suggests that they are not prepared to do that, that they are going to maximize the water deliveries under those contracts even though those contracts envisioned a water delivery at a time that California had 20 million fewer people than it does today and when the demands on water north of the delta are different today than they were then. They are not going to modify those contracts, and they are going to try, I think, contrary to the law, they are going to try to extend those contracts for another 40 years.

The fact of the matter is that that is contrary to the protection of this Sacramento-San Joaquin Delta, and as outlined in this new operations criteria means less water flowing into San Francisco Bay. After a decades-long struggle to protect San Francisco Bay, you can start to see the reignition of a whole series of battles starting to take place because there is this rush by the State administration and the Federal Government to maximize the amount of water that can be sent south.

The concern is that when we have tried to make sure that all of the evidence was on the table, with both of our Senators and the gentlewoman from California (Ms. PELOSI) and other members of the California delegation, we asked for a continuation of the public hearings on these contract terms, the bureau has ignored our request. When we asked the bureau to extend that public comment period until those important questions were answered, the bureau ignored our request.

What worries me is this ignoring of the public interest, of the public input into this decision now fits into what we now see, that the political operations within NOAA and the scientists who are there to develop the standards for the protections of the salmon runs in the Sacramento-San Joaquin Delta, in the American River, we now see, according again to the Sacramento Bee this last weekend, that there is an overriding of the setting of those standards in terms of the adequate water flows and releases that are necessary to protect those endangered runs of salmon. We see that that is now being done for political reasons.

What worries me the most is this is the same cast of characters that arbitrarily and capriciously in the court case, it was determined, overrode the scientists on the Klamath River and led to one of the largest kill-offs of salmon in the history of the west coast, if not the largest, because they decided that they did not want to live with good science, they decided they would override it.

So all of a sudden as we pass CALFED today, we see that in fact the Sacramento-San Joaquin Delta, San Francisco Bay, the American River, maybe the runs in the Sacramento River, the fisheries runs there, may be more imperiled than at any time in history.

Why is that happening? Because what we see in spite of the agreements of cooperation, of balancing that we see in the CALFED, we see there starting to be a repetition of the same old habits which is to try and maximize the pumping from the Sacramento-San Joaquin Delta to send it south for the purposes of fulfilling these contracts or other needs.

My concern is that at a time when the chairman really held up this process until such time as the delta water agencies and others could come in and make sure what the impacts were going to be on delta water quality, on delta usage, we now see a parallel process taking place that has all of the earmarks of another devastating blow to delta water quality, to the usages in the delta, to the protection of the environment, and to the protection of the delta economy.

□ 1415

I raise these at this time because, as we celebrate the long effort and the successful effort with the passage in this House of the CALFED legislation, we see that the forces who continue to have a design on the Sacramento-San Joaquin Delta, on the impacts on San Francisco Bay by increasing the diversions from this very complicated and fragile environment, we see that they never rest. And they are back now, apparently with the cooperation of the Schwarzenegger administration in Sacramento, with the cooperation of the Bush administration, in fact, with not only the cooperation of the Bush administration but the Bush administration's political appointees now coming in and overriding the scientists who have done the studies designed to protect the delta and protect its fisheries.

So I guess the bottom line and the end of this story is, there is an awful lot of work that remains to be done. There is an awful lot of concern that we have over the long-term protection of the delta, and I would hope that the gentleman from California (Mr. POMBO) would look at these articles that are in the ''Sacramento Bee'' because they raise the most serious concerns about our economy and about our environment.

Mr. Speaker, I include for the RECORD the articles that I alluded to.

[From sacbee.com, Oct. 2, 2004]

REWRITE SOFTENS REPORT ON RISKS TO FISH

(By Stuart Leavenworth)

Officials at a federal fisheries agency ordered their biologists to revise a report on salmon and other endangered fish so that more water can be shipped to Southern California from the Delta, according to interviews and internal agency documents obtained by The Bee.

Biologists with NOAA Fisheries, an arm of the National Oceanic and Atmospheric Administration, concluded in August that a plan to pump more water through the Sacramento-San Joaquin Delta could jeopardize endangered salmon and other fish.

NOAA administrators in Long Beach, however, overruled the biologists and supervised a rewriting of their analysis. That, in turn, removed the last major obstacle to a plan that could send more water south, affecting how much is reserved in Northern California, including for salmon in the American River.

NOAA officials say the revisions were justified. Agency biologists made some errors and ''unsubstantiated conclusions'' in their original draft, said James Lecky, an agency administrator in Long Beach who ordered the revisions.

Some agency employees, however, say some of the changes had no basis in science and substantially weaken protections for endangered winter-run salmon, steelhead trout and other fish.

''I haven't seen anything this bad at NOAA since working here,'' said one agency biologist who asked that his name not be used. ''The Sacramento office (of NOAA Fisheries) is totally demoralized.''

At issue is a state-federal plan for operating the massive network of reservoirs, aqueducts and pumping plants that move water around California. The U.S. Bureau of Reclamation and state Department of Water Resources are planning major changes for those facilities, partly to free up water that can be shipped through the Delta.

The U.S. Fish and Wildlife Service gave its blessing to the plan in August, but NOAA Fisheries has sought extensions in releasing its own analysis.

Documents obtained by The Bee explain why.

In August, NOAA biologists issued a draft stating that the plan ''is likely to jeopardize the continued existence of Sacramento winter-run Chinook salmon and Central Valley Steelhead,'' as well as spring-run salmon.

The documents outlined several measures the Bureau of Reclamation could adopt to reduce impacts on fish, but the document was never signed.

Instead, Lecky delivered the draft to his counterparts in the Bureau of Reclamation, who offered suggestions on revisions, he said.

Lecky said such document sharing is commonplace as federal agencies undergo what is known as a consultation under the Endangered Species Act. NOAA officials wanted to ensure they had appropriately interpreted the bureau's plans, he said, and receive feedback on their own analysis.

A copy of NOAA's latest draft, however, shows that administrators have altered the report in ways that go beyond mere word changes.

The updated version, 289 pages and dated Sept. 27, no longer concludes that winter-run salmon or other fish could face extinction by the extra water diversions by state and federal facilities.

The report concludes that the new operations would likely reduce the juvenile population of winter-run salmon by 5 percent to 22 percent, but says that agencies can help minimize those losses by monitoring and adapting.

The latest version also softens the wording for how the Bureau of Reclamation can avoid future impacts on fish.

In the original report, NOAA biologists called on the Bureau of Reclamation to reserve 450,000 to 600,000 acre-feet of water in Folsom Lake by September to provide adequate supplies for returning salmon and steelhead.

The latest version changes the wording from ''shall maintain'' to ''shall target'' the extra water.

In addition, the latest draft no longer calls for a minimum flow standard for the American River, as the original did. The state

Water Resources Control Board called for an American River flow standard in 1988, but federal officials haven't yet agreed to one.

A former state official who now works for a leading environmental group reviewed the two versions and said he was stunned by the revisions.

''The September draft guts the minimal protections that were in the earlier version,'' said Jonas Minton, a former deputy secretary for the Department of Water Resources. ''The new version includes commitments to talk instead of commitments to protect fish.''

Minton, who now works for the Planning and Conservation League, agreed that supervisors often make routine changes to a scientific document. ''It's an entirely different thing to change science for political purposes,'' he said.

In an interview, NOAA's Lecky disputed that political appointees had pressed for changes. Everything has been handled within NOAA's Southwest Regional Office in Long Beach, he said.

Lecky declined to comment further on the revisions, saying The Bee had obtained a ''predecisional document'' that was subject to further review. Sources say a final version could be released next week.

Formerly known as the National Marine Fisheries Service, NOAA Fisheries enforces the Endangered Species Act for fish that spend part of their lives in the ocean, such as salmon. In recent years, NOAA has become embroiled in several controversies over water allocations and fish.

In 2002, NOAA biologist Michael Kelly warned that the Reclamation Bureau's water plans in Oregon could lead to fish kills downstream on the Klamath River. Later that year, warm water and disease killed about 77,000 returning salmon, according to a report by the California Department of Fish and Game.

Kelly later resigned from NOAA after another disagreement with Lecky.

In recent months, the Bureau of Reclamation has been pushing to sign long-term contracts with irrigation districts and finalize plans for shipping more water through the Delta. Some of California's most powerful groups—including the Chamber of Commerce, Westlands Water District and the Metropolitan Water District of Southern California—are lobbying for extra water.

Environmentalists suspect this pressure prompted some of NOAA's recent actions, although they acknowledge they can't prove it.

Bureau of Reclamation officials say the public will have full opportunity to comment on any changes in water operations. The Bureau and the Department of Water Resources have scheduled an informational meeting in Sacramento on Thursday from 9 a.m. to noon at the Best Western Expo Inn, 1413 Howe Ave.

[From sacbee.com, Sept. 26, 2004]

MAJOR SHIFT MAPPED FOR DELTA WATER

(By Stuart Leavenworth)

Under pressure from some of California's biggest cities and farm districts, federal and state officials are planning major changes in how water is stored and distributed across the state, including increased pumping of supplies from the Sacramento-San Joaquin Delta.

The proposed changes, outlines in an obscure state-federal document called the Operations Criteria and Plan, sets the stage for California's most far-reaching plumbing shifts in a decade. Under the plan, water contractors would increase pumping from the Delta by 27 percent, sending more to Southern California and the San Jaoquin Valley. Less water would flow to the San Francisco Bay and less would be reserved for endangered salmon during the driest of droughts.

Increased pumping from the Delta originally was envisioned under Cal-Fed, a state-federal water collaboration launched in 1994. But the U.S. Bureau of Reclamation unveiled other proposals only recently, and those are coming under fire from environmentalists, Delta farmers and sportfishing groups.

All sides agree the liquid power struggle will be a major test of Gov. Arnold Schwarzenegger and his water lieutenant, Lester Snow. Schwarzenegger has styled himself as a business-friendly, pro-environmental governor who can solve entrenched disputes. But solutions don't come easy in the Delta, where there are symbolic shadings and big stakes attached to any effort to move water around.

''The key decision-maker will be Governor Schwarzenegger,'' said Tom Graff, an Oakland-based lawyer for Environmental Defense, a group that has fought past plans to increase water exports from Northern California. ''At some point, he and his appointees will have to decide if they uphold the environmental commitments of Cal-Fed.''

Created with an eye toward raising all boats in the Delta, Cal-Fed once was touted as a $8.6 billion ''fix'' for the estuary. The program has multiple goals of increasing water supplies for farms and cities while restoring fish hurt partly by water diversions. It's still unclear if those goals can be reconciled.

The largest estuary on the West Coast, the Delta has lost roughly half its historic flow into San Francisco Bay because of upstream water diversions. If state and federal officials turn on the pumps at the wrong time, they can suck fish and larvae toward and into the pumps. The diversions also can worsen water quality for Delta farmers and the Contra Costa Water Agency by drawing salt and bromides up the estuary.

In recent years, Cal-Fed has helped water managers coordinate a complex system of raising or lowering pumping rates to meet environmental demands. A special pool of water—the Environmental Water Account—helps compensate water districts hurt by unexpected restrictions on Delta pumping.

Despite those successes, Cal-Fed has few vocal champions. Water users say the program has spent about $500 million buying potential habitat to help fish and wildlife but has done little to prevent future water shortages. Environmentalists say fish stocks remain a fraction of their past numbers, and note that Delta water standards still are violated.

Frustrated with Cal-Fed's open meetings and often plodding process, California's big water users teamed up with state and federal officials last August, and quietly negotiated their own plan for increasing Delta pumping. It became known as the Napa agreement.

For decades, the state Department of Water Resources and the Bureau of Reclamation have maintained separate reservoirs, separate aqueducts and separate pumping plants in the Delta. Napa promised to change all that. For the first time, state contractors would be able to store their water in the federal government's big reservoirs. Federal contractors, meanwhile, could ship some of their water through the state's Harvey Banks Pumping Plant and its 11 massive electrical pumps, which suck water 244 feet up in elevation and deliver it to the California Aqueduct.

Integrating these water works hasn't been controversial; the plan to increase pumping is. The Napa pact would allow the Banks plant to ramp up its regular pumping rates about 27 percent, from 6,680 to 8,500 cubic feet per second. State officials say the extra water would come from outflow to the Bay.

The state's two largest water agencies—Westlands Water District, with 570,000 acres in irrigation, and the Metropolitan Water District of Southern California, with 18 million customers—stand to be major beneficiaries. Those districts and others may end up gaining several hundred thousand acre-feet of water, said Tim Quinn, a vice president for Metropolitan.

In addition, the increased pumping capacity could lay the groundwork for more sales of water from Northern California rice farmers to Southern California.

To those excluded from the talks, the Napa meeting was less a breakthrough than a backroom deal, and a betrayal of Cal-Fed's principles.

Delta farm districts, environmental groups, sportfishing interests and many midsize urban districts were not at the table. At the urging of U.S. Rep. Richard Pombo, R-Tracy, and state Sen. Mike Machado, D-Linden, the Napa signatories later crafted side agreements with Delta farmers, who fear that extra pumping could foul their water supply. But environmentalists were not included.

''A lot of groups in the conservation sector are getting ready to wash their hands of the Cal-Fed process,'' said Steve Evans of Friends of the River, a Sacramento-based conservation group. ''It is clear that major agencies are acting outside of Cal-Fed. . . .''

Up until the last few years, irrigation districts in the San Joaquin Valley were voicing the same complaints. Farmers lost supplies when President George H.W. Bush signed the 1992 Central Valley Project Improvement Act, which allocated more water for the environment. Many farmers were skeptical that Cal-Fed would come to their aid.

In 2001, however, President George W. Bush took office and agribusiness gained new clout. Interior Secretary Gale Norton appointed Bennett Raley, a lawyer for Colorado ranchers, to manage Western water issues. She also hired Jason Peltier, a lobbyist for Central Valley irrigation districts, to handle Cal-Fed.

Two years ago, farmers won back some of their water when Bush and his appointees declined to appeal a court ruling challenging implementation of the 1992 act. South-of-Delta farmers now are pushing for extra water guarantees, said Thad Bettner, deputy general manager of the Westlands Water District, because they fear their existing supplies will be lost as California cities grow.

If federal and state officials implement key parts of the Napa pact, Westlands and other water exporters could see immediate gains. Federal water for San Joaquin Valley wildlife refuges could be moved through the state pumps, freeing up more capacity in federal pumps for irrigation supplies. In exchange, the federal Bureau of Reclamation would assume some of the state's responsibilities for meeting Bay-Delta flow requirements.

Quinn, the Metropolitan vice president, said increased pumping would occur only when it wouldn't hurt fish and water quality. He dismisses claims of a water grab by Southern California, noting that Cal-Fed has long planned to increase the capacity of the pumps.

Graff and other environmentalists, however, say it is clear that Southern California is relying more heavily on the Delta because of the Colorado River drought. Earlier this year, Environmental Defense came across financial documents filed by Metropolitan that show the agency plans to boost Delta diversions to 1.7 million acre-feet by 2008, and has steadily increased diversions the last several years.

''All this whining from urban water agencies about the supposed lack of balance in

Cal-Fed is hogwash,'' said Evans. Metropolitan, he said, ''is receiving nearly double the water they received just a few years ago.''

Hoping to make the pumping plan more palatable, Cal-Fed has come up with supplemental proposals to improve water quality in the estuary, a fig leaf for Delta farmers and urban agencies.

Environmentalists say those plans do little for fish, and they are even more troubled by the Operating Plan and Criteria, which shows how the Bureau of Reclamation expects to meet future water demands.

According to that operating plan, the bureau proposes to end decade-old protections for endangered winter-run salmon in the upper reaches of the Sacramento River.

Winter-run salmon lost their historic spawning grounds when the bureau built Shasta Dam in the 1930s. Surviving fish were nearly wiped out during the drought of 1975–77, when the bureau nearly emptied Shasta and warmed up the river.

After winter-run salmon were added to the federal Endangered Species List in 1989, the agency was ordered to carry over 1.9 million acre-feet of water in Shasta every year. Those reserves ensure that salmon have cold water to survive a drought, but they also hamper the bureau in meeting its contract obligations.

This year, with pressure building on the bureau to ship more water through the Delta, the agency is proposing to end the carry-over storage requirement and reduce the stretch of river where it must legally maintain cool water temperatures.

Reclamation officials contend they can protect salmon without these hard-line restrictions. Marian Echeverria, a spokeswoman for the bureau, said the agency now has access to water sources that weren't available back in the early 1990s.

Even with those assurances, some environmentalists and Delta farmers fear Northern California will bear the brunt of the proposed changes. Delta farmers say their irrigation supplies will become more salty as more freshwater is shipping south.

''This process needs a whole lot more daylight,'' said Tom Zuckerman, a lawyer for the Central Delta Water Agency. He suspects federal officials are rushing the process so they can sign new, long-term contracts with water districts by year's end.

The outcome could hinge on NOAA Fisheries, a federal agency charged with protecting endangered salmon and other ocean-migrating fish. NOAA biologists initially wanted to issue what is known as a ''jeopardy opinion'' under the Endangered Species Plan. Such a ruling would have blocked the bureau's plan, but NOAA hasn't yet issued a final decision.

Another wild card is Schwarzenegger and his director of water resources, Snow, who worked as regional director of the Bureau of Reclamation in the Clinton administration. Snow says state and federal officials erred by not holding recent public workshops on the operating plan. ''It wasn't very artfully handled,'' he said in an interview last week.

Nonetheless, said Snow, critics are jumping the gun. The Department of Water Resources, he said, is studying how planned Delta diversions would affect fisheries and flows to the Bay. The public will have ample opportunities to comment on any final proposal, which would need to meet both federal and state environmental laws, he said.

Snow said he also is awaiting the opinion from NOAA Fisheries and will examine it closely.

''We will not stand by and allow a lessening of salmon protections that will cause problems for the state,'' said Snow. ''If NOAA Fisheries does something that gives the bureau a free pass, we are going to catch that.''

Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. DOOLEY), who has been involved in these water issues from the day he came to Congress. And I thank him for his help and all of his years of service in these years in the House on these issues of concern to our State.

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Speaker, first off, I want to thank the gentleman from California (Mr. GEORGE MILLER), the gentleman from California (Mr. POMBO), and the gentleman from California (Mr. CALVERT), as well as Senator FEINSTEIN, for really puttingtogether a bipartisan product that is in the interest of all Californians.

All too often in the past, during my tenure at Congress, when we had a California water bill on the floor, a lot of our colleagues would shudder because oftentimes that would end up in almost a civil war among the Californians because California water issues have been difficult to solve. It has been difficult to strike that balance between providing for enhancement of the environment and still meeting the economic needs of our State through our agriculture sector as well as our municipal sector.

That is what is important about this bill, because it is a rare occasion, I hope marking a turning point, where we are solving our problems by coming together, understanding that we can provide greater certainty in the delivery of water to enhance the environment as well as to expand our economy by finding ways in which we can provide for greater conservation, greater storage, and more efficient management of our water supplies.

I think that this, hopefully, is a turning point because all too often in the past we have seen too many of the interests in California water that have retreated to the courts, that have relied on the courts to try to solve some of the difficult choices that we have to make. And I think the leadership that was demonstrated by the parties that I mentioned earlier hopefully is a call to action among all the interests impacted by California water, that they need to come together in a cooperative and a constructive manner to try to build upon this effort to ensure that we are going to have that balanced approach in utilizing the water in the State of California that could enhance our environment and, once again, ensure that we are providing the economic future which is so important to the citizens of our State.

I rise in strong support of the Senate amendments to H.R. 2828, the Calfed Bay-Delta Authorization Act.

Passage today will finally enable this vitally important legislation, long in the making, to be sent to the President for signature.

The Senate-passed version we have now before us merges many of the provisions in the House bill with a handful of changes negotiated after the House passed its version on July 9 of this year. It reflects a careful balance and set of compromises that represent our best chance for this bill becoming law this year.

The successful evolution of this bill is a credit to the leadership of many of my colleagues in the California delegation. I want to give special recognition, however, to Senators FEINSTEIN and BOXER, and Representatives POMBO, CALVERT, NAPOLITANO and CARDOZA for their steadfast stewardship and commitment.

On a bipartisan basis, these and other Members worked long and hard to bring parties together. We consulted a wide range of affected stakeholders, both regional and national. We tried to bring a visionary yet pragmatic approach to the management of California's water resources. During each step of the legislative process, we tried to improve on the bill and strengthen its base of support.

This bill authorizes $389 million for water projects in the CALFED program over the six-year-period FY 2005 through 2010. It creates new water supplies, improves water quality and reliability, and ensures ecosystem restoration. It evenhandedly provides for California's different water interests, implementing the CALFED program in a balanced manner.

One area of difference between the House and Senate-passed bills focused on the House provision that would have pre-authorized certain water storage projects, subject only to a Congressional disapproval resolution. I appreciate the interest of certain House Members to expedite the very lengthy process now involved in getting water storage projects from design to implementation. Nevertheless, the preauthorization provision of the House bill was met in the Senate with objections on both sides of the aisle and threatens to stand in the way of this bill becoming law this year.

Instead of a pre-authorized provision, the Senate amendments explicitly authorize groundwater storage and feasibility studies for major new off-stream and expanded reservoirs, including the enlargement of Los Vaqueros reservoir, the raise of Shasta Dam, Upper San Joaquin surface storage, and Sites Reservoir. With these four storage projects, California could acquire an additional 3.2 million acre feet of storage.

In addition, the Senate amendments include new procedures and safeguards if Congress fails to approve a storage project by the end of the Congressional session following the submission to Congress of a federal feasibility study. In such a case, the Secretary of Interior must, within 180 days, make a finding of ''imbalance'' and report to Congress on revised schedules and alternatives to rebalance the CALFED Program.

Although the Senate amendment does not expedite the storage authorization process as directly as the House bill attempted to do, it is an improvement over the status quo. Moreover, an even larger point must not be lost in this discussion.

Any water storage project, whether currently in the pipeline or subject to the new authority in this bill, requires appropriated funds. Due to the fact that Federal authorization for the CALFED program has lapsed, federal appropriations are not currently being approved for CALFED. This fact is disadvantaging water users and water projects throughout California.

The time has come for Congress to reauthorize the CALFED program, and allow

projects—for water quality, water supply, and fisheries protection—to move forward.

I urge my colleagues to vote today in support of the Senate amendments to H.R. 2828.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield back the balance of my time.

Mr. POMBO. Mr. Speaker, I yield myself such time as I may consume.

Just in closing I want to thank all of my colleagues who were able to work in a bipartisan manner to get this done. The gentleman from California (Chairman CALVERT) worked on this bill for a long time, and before him the gentleman from California (Mr. DOOLITTLE) worked on this bill, and there was a lot of work that went into making this happen. And we all know that some of our colleagues were not as cooperative, but I do appreciate those that were able to work with us and get this done.

I urge the passage of the bill.

Mr. CARDOZA. Mr. Speaker, I am pleased to support the passage of H.R. 2828 today.

Calfed reauthorization is an issue that Congress has debated for years and years and today—as a result of numerous parties working together—we are making significant strides toward increasing water supply, quality and reliability for California.

This is an enormous accomplishment and I applaud Representatives POMBO, NAPOLITANO and CALVERT and our esteemed Senator from California, Senator FEINSTEIN, for overcoming the numerous hurdles that have prevented this issue from progressing in years past.

This proposal will greatly strengthen California's agricultural economy and address the needs of a fast growing population by creating additional surface storage projects.

This delicate balance, while difficult to achieve, is critical to the success of Calfed.

Today, I urge my colleagues to support this measure because it will set California on the path to a sustainable water supply for its citizens, its economy and its environment.

Mr. THOMAS. Mr. Speaker, I rise today in support of H.R. 2828, the Water Supply, Reliability, and Environmental Improvement Act. This legislation, authored by my good friend, Resources Water and Power Subcommittee Chairman KEN CALVERT, is the result of many years of hard work by the California water community to find a way to balance the competing water needs of agriculture, the environment, and a growing population.

My district in the Central Valley of California is a prime example of these changing needs. In 1960, Kern County had a population of about 291,000 people and an agricultural base that produced commodities with a farm gate value of $247 million. In 2000, those numbers had increased to a population of 661,000 people and farm gate value approaching $2.5 billion. Much of this growth is due to the construction of the State Water Project in the mid-1960's, but virtually no investment in that all-important infrastructure has been made since that time. Our water infrastructure requires attention and upgrading to continue supporting California's agriculture economy, and H.R. 2828 provides for many of these necessary improvements.

I congratulate all my colleagues from California who have worked tirelessly to overcome regional differences and reconcile competing priorities to ensure that this vital legislation is enacted.

Mr. POMBO. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). The question is on the motion offered by the gentleman from California (Mr. POMBO) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 2828.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

IMPROVEMENTS TO EMPLOYMENT VERIFICATION SYSTEM UNDER IMMIGRATION AND NATIONALITY ACT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4306) to amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment, as amended.

The Clerk read as follows:

H.R. 4306

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMPROVEMENTS TO EMPLOYMENT VERIFICATION SYSTEM.

(a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(1) in paragraph (1)(A), by inserting before ''A person or entity has complied'' the following: ''Such attestation may be manifested by either a hand-written or an electronic signature.'';

(2) in paragraph (2), by adding at the end the following: ''Such attestation may be manifested by either a hand-written or an electronic signature.''; and

(3) in paragraph (3), by inserting ''a paper, microfiche, microfilm, or electronic version of'' after ''must retain''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the earlier of—

(1) the date on which final regulations implementing such amendments take effect; or

(2) 180 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4306 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4306, which would allow employers to electronically complete and store Eligibility Employment Verification Forms, known as Forms I–9.

Currently, employers must complete one of these forms for each employee to show that they have verified that the employee is eligible to work in the United States. The employer must then retain that form for at least 3 years and make it available for inspection by Immigration and Customs Enforcement, the Justice Department's Civil Rights Division, and the Department of Labor.

This legislation is straightforward and sensible. It would benefit employers in preparing and storing Forms I–9 and benefit the government in enforcing immigration, antidiscrimination, and the labor laws of our Nation.

The current regulation requires employers to retain Forms I–9 ''in their original form or on microfilm or microfiche.'' This regulation, promulgated in 1988, has failed to keep up with modern technology. For this reason, almost all employers have resorted to keeping Forms I–9 in the original format in which they are completed, that is, on paper.

With employers required to retain a Form I–9 for each employee for years, American businesses are holding an overwhelming number of the forms today. That is a lot of paper and paper which can easily be lost, damaged, or tampered with. This format is insecure, wasteful, and with the advent of electronic data storage, totally unnecessary.

Allowing the electronic completion and storage of Forms I–9 would also aid the men and women charged with enforcing our law, particularly when auditing large employers with multiple outlets spread across the country. In reviewing the Forms I–9 of employers who choose to keep the documents electronically, officers will be able to request one electronic file instead of potentially thousands of paper documents. This legislation would not require employers to electronically complete or store Forms I–9. It would simply permit them to do so if they so choose.

Accordingly, I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I appreciate the remarks of the distinguished chairman of the Committee on the Judiciary, and as well, I want to acknowledge the chairman of the Immigration, Border Security, and Claims Subcommittee and the gentleman from Michigan (Mr. CONYERS), ranking member on the full committee.

This is an important change on the benefits side of the immigration puzzle. This regulation, 8 CFR 274a2(b)(2) requires United States employers to

process and retain I–9 forms for up to 3 years. These forms are used to verify the employment eligibility and identify all employees in the United States. They are required to be kept on paper or on microfilm or microfiche.

This was fine in 1988, when the regulation was promulgated. Computers were expensive and less widely used in 1988. Paper records were an unavoidable burden then, and microfilm and microfiche were being used far more in 1988 than they are now. It is not appropriate to be restricted, however, at this point in time to such records on that kind of data in this computer age that we live in today.

Most of our corporations and small businesses are technologically sophisticated and therefore are able to access the information highway. More than half of the benefits applications that are submitted to U.S. Citizenship and Immigration Service are filed on its Web site, but employers are still required to maintain paper I–9 forms.

Employers should be permitted to keep the Form I–9 in electronic form as an option. In addition to saving paper and storage space, an electronic storage system would permit a central reservoir of sensitive data and allow retrieval of I–9 forms in a fraction of the time it takes to retrieve paper, microfiche, or microfilm copies and might, in fact, Mr. Speaker, be even more accurate.

H.R. 4306 simply would allow employers the option of electronic processing and storage of the I–9 forms. This would include electronic signatures.

I urge my colleagues to support this legislation.

The regulation 8 CFR § 274a2(b)(2) requires United States employers to process and retain I–9 forms for up to 3 years. These forms are used to verify the employment eligibility and identity of all employees in the United States. They are required to be kept on paper or on microfilm or microfiche. This was fine in 1988, when the regulation was promulgated. Computers were expensive and less widely used in 1988. Paper records were an unavoidable burden then, and microfilm and microfiche were being used far more in 1988 than they are now. It is not appropriate to be restricted to such records in the computer age that we live in today.

More than half of the benefits applications that are submitted to the U.S. Citizenship and Immigration Service are filed on its website, but employers are still required to maintain paper I–9 forms. Employers should be permitted to keep the Form I–9 in electronic form. In addition to saving paper and storage space, an electronic storage system would permit a central reservoir of data and allow retrieval of I–9 forms in a fraction of the time it takes to retrieve paper, microfiche, or microfilm copies.

H.R. 4306 simply would allow employers the option of electronic processing and storage of the I–9 forms. This would include electronic signatures. I urge you to vote for H.R. 4306.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Utah (Mr. CANNON) the author of the bill.

Mr. CANNON. Mr. Speaker, I rise to urge my colleagues to support H.R. 4306, legislation that I introduced along with the gentleman from New Jersey (Mr. ANDREWS).

I would like to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE), ranking member of the subcommittee, for their support of this bill. This is a noncontroversial bill that reinserts logic into the regulatory process by updating an outdated regulation.

The Immigration Reform and Control Act of 1986 requires the Employment Eligibility Verification form, also known as the I–9 form, to be completed and stored by an employer in order to verify the employment eligibility and identity of the employer's workforce.

The statute also stipulates that all employers must maintain these documents for at least 3 years after the date of hire or 1 year after employment is terminated, but many employers maintain the forms for longer periods of time simply because of the cost to audit the files every year.

But, Mr. Speaker, the real regulatory burden occurs with the accompanying regulations. These regulations require that the employer must retain the forms ''in their original form, either paper or on microfilm or microfiche.'' When these regulations were promulgated, microfiche was in the stratosphere of technological progress, but to place this in proper perspective, these regulations went into effect 5 years before Adobe Acrobat was invented. With new technology available today, it is vitally important that the Congress streamline burdensome and outdated regulations.

The House Corrections Day Advisory Committee was implemented to fix such things. H.R. 4306 went before the Correction Committee, a bipartisan committee cochaired by the gentleman from Michigan (Mr. CAMP) and the gentleman from California (Mr. WAXMAN), and received the committee's blessing that this legislation should receive consideration and passage because it rectifies an outdated regulation.

The need for this legislation is evidenced by the hundreds of millions of records that are stored in warehouses across the country in order to comply with the IRCA regulations. All businesses, especially those with high employee turnover, have a burden maintaining these documents in storage all over the country. Most companies do not use microfiche, so they are inundated with reams of paper to file and maintain. Some companies ship all their forms to one centralized location while others maintain the document where an individual is originally hired, even if he is transferred, causing audits to be complex and inefficient. The nonuniform method causes burdens to the employers and the investigators who may need to access specific files.

This legislation enhances security and provides greater privacy protections for employees. Electronic computer storage with backup systems is far more secure than paper-based systems in which the paper documents can be lost, damaged, misfiled or accessed by unauthorized individuals. The automatic time and date stamping of documents which occurs on automated systems will also help prevent fabrication or tampering.

It is our intent to provide employers a more practical option to meet their obligations. By permitting these forms to be completed and stored on a computer rather than simply on paper, an employer can avoid unnecessary administrative and storage costs. This will allow employers to reinvest the savings, benefiting the broader economy through the creation of new jobs.

In addition to allowing the electronic completion and storage of the I–9 forms, this legislation also allows employers to convert existing I–9 forms into electronic versions for storage purposes. An employer who continues to use paper I–9 forms with handwritten signatures should be able to convert those forms into an electronic version for storage and security purposes.

Mr. Speaker, this legislation does not mandate anything new. It allows employers to adopt electronic completion and storage of I–9 forms if they so choose. For a small employer with few employees and a few new hires per year, the paper route may be the most logical.

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But in the industries with high employee turnover, electronic completion of I–9 forms will save time and money and help in enforcement.

I would like to thank the staff that worked on this bill. Personally I would like to thank from the Committee on the Judiciary Phil Kiko, Joseph Gibson, Art Arthur, George Fishman, Perry Apelbaum, and Nolan Rappaport; from leadership, Brett Loper and Andrew Shore; and Robert Knotts from the staff of the gentleman from New Jersey (Mr. ANDREWS); and Todd Thorpe and Matthew Iandoli from my staff.

Mr. Speaker, I urge my colleagues to support this legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is my pleasure to yield 3 minutes to the distinguished gentleman from New Jersey (Mr. ANDREWS), who has been very diligent on these issues.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank my friend for yielding me time.

Mr. Speaker, I would like to begin by thanking the gentleman from Wisconsin (Chairman SENSENBRENNER) for his help and cooperation and that of his very fine staff; the ranking member, the gentleman from Michigan (Mr. CONYERS), and his fine staff; and my friend, the gentlewoman from Texas

(Ms. JACKSON-LEE), for her help and support. Most especially I would like to say to my coauthor, the gentleman from Utah (Mr. CANNON), it has been a pleasure to work with him on a commonsense approach to solving a problem that is a wave of the present.

The law dates back 16 years, but the technology is changing every minute. What seems to be a simple change in this bill I think will have a profoundly positive effect on businesses, small and large, around the country.

As we have an increasingly diverse workforce with people from all over the world enriching our economy and our country, that workforce carries with it the responsibility to maintain records on the legal status of various workers. The maintenance of those records is burdensome, expensive and done in an ungainly way, an unseemly way in some cases, under present law.

The purpose of our bill is to make it much more simple. We say to employers that at their option they may retrieve these documents and create these documents and store these documents on electronic records rather than paper records. It is a small improvement for business, but I think it is a significant improvement that will make the records more accurate, more accessible, less burdensome to maintain and less expensive to maintain. This is how business ought to be done here.

I again thank the gentleman from Utah (Mr. CANNON) for his leadership on this and all others on both sides of the aisle. I would urge our colleagues, both Republican and Democrat, to vote ''yes.''

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wanted to make sure that I added as well my appreciation to the gentleman from Utah (Mr. CANNON) for his great work, along with the gentleman from New Jersey (Mr. ANDREWS) on this legislation, and also the cooperation of the chairman and the ranking member.

One of the provisions that we were able to keep in recognizing the importance of technology is giving the option of having paper, just in case there are those who had to utilize that method because of their own lack of access to the superinformation highway.

Mr. Speaker, I just wanted to add what I heard from the 9/11 Commission families yesterday regarding a debate that we will have tomorrow, and I understand that, but it did have to do with immigration issues.

My concern as we move this legislative initiative along is that it is unclear to the American public as we lump together the question of benefits versus enforcement. This bill that we have before us helps to enhance the benefits side of the responsibilities of homeland security, and that is to ensure legalization, to ensure process, to ensure that the system works. We have so much intimidated Americans around the question of immigration that, unfortunately, we have not been able to move valuable legislation on the question of immigration reform.

Let me cite, Mr. Speaker, some issues that in fact the gentleman from Wisconsin (Chairman SENSENBRENNER) worked long and hard on. We have not been able to bring that back up again, 245(i) which is the reunification of family members. We have not been able to address that, families who are here legally. We have not been able to address those questions.

The whole question of immigration reform as it relates to documenting illegal immigrants, many of us have had comprehensive reform packages ready and waiting to be addressed, particularly talking about earned access to legalization, the Dream Act, which allows those individuals who were born here who happen not to be citizens to access higher education, legislation that deals with technology that would help secure our borders more definitively, and basic civil rights and civil liberties that are contained in the Comprehensive Fairness Reform Act of 2004 that the ranking member and I were joined on by a number of Members.

We can begin to define immigration the way we have done so in this debate today as balancing fairness and the rights of Americans as relates to making sure they have an immigration system that works, and then working with certainly those who are concerned about ensuring the safety of the homeland, particularly measuring out immigration reform that deals with security, but also deals with fairness. I think we would be much further along and I think this legislation points to the fact that Americans are willing to welcome bipartisan immigration legislation that helps fix the backlog, that helps fix some of the problems that employers face.

Might I just say in conclusion, we are going to be talking about another bill in just a moment here dealing with physicians. But our school districts around the country, many of them have asked for flexibility in immigration as it relates to school teachers who have been utilized in the elementary and primary and secondary schools, along with those who have been utilized in our higher education.

So we have a long way to go, Mr. Speaker. I believe the more we can do this in a bipartisan way, we will be making long headway. I know the gentleman from Utah (Mr. CANNON) has often said in fixing a broken system and separating out the question of terrorism and immigration, separating out enforcement, which has a bipartisan approach, from, if you will, the benefits side of it, that makes the system work on behalf of the good work of the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from Utah (Mr. CANNON).

Mr. Speaker, with that, I ask my colleagues to support H.R. 4306.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4306, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ACCESS TO RURAL PHYSICIANS IMPROVEMENT ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4453) to improve access to physicians in medically underserved areas, as amended.

The Clerk read as follows:

H.R. 4453

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF VISA REQUIREMENTS WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) EXTENSION OF DEADLINE.—

(1) IN GENERAL.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 11018 of Public Law 107–273) is amended by striking ''2004.'' and inserting ''2006.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if enacted on May 31, 2004.

(b) EXEMPTION FROM H–1B NUMERICAL LIMITATIONS.—Section 214(l)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended by adding at the end the following: ''The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.''.

(c) LIMITATION ON MEDICAL PRACTICE AREAS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended by striking ''agrees to practice medicine'' and inserting ''agrees to practice primary care or specialty medicine''.

(d) EXEMPTION FROM GEOGRAPHIC LIMITATIONS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)), as amended by subsection (c), is further amended—

(1) by striking ''except that,'' and all that follows through the period at the end and inserting ''except that—''; and

(2) by adding at the end the following:

''(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary; and

''(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation described in subparagraph (B)) in accordance with the conditions of this clause to exceed 5.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4453.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4453, introduced by the gentleman from Kansas (Mr. MORAN), would extend the program under which foreign doctors can avoid having to return home for 2 years by agreeing to practice in medically underserved areas here in America.

Aliens who participate in medical residencies in the United States on the ''J'' exchange program visas must generally leave the U.S. after the completion of their residencies and reside abroad for at least 2 years. The intent behind the policy is to encourage American-trained foreign doctors to return home to improve health conditions and advance the medical profession in their native countries.

In 1994, Congress created a waiver of the 2-year foreign residence requirement. State departments of public health may request a waiver for foreign doctors who commit to practicing medicine for no less than 3 years in geographic areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals. The number of foreign doctors who can receive this waiver is limited to 30 per State each year.

The waiver program has proven to be an important means of ensuring quality medical care in areas of the United States with physician shortages. This bill would extend the program to June 2006. It would also allow each State to place five of the doctors it sponsors each year in areas not designated by HHS as physician-shortage areas.

The bill continues the practice of allowing foreign doctors receiving a waiver to receive an H–1B visa regardless of the H–1B visa quota and will allow doctors receiving waivers to practice specialty medicine.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to acknowledge again the chairman of the Committee on the Judiciary and the ranking member, along with the chairman of my subcommittee, the gentleman from Indiana (Mr. HOSTETTLER), and also the gentleman from Kansas (Mr. MORAN), for the work on this legislation, and again cite this is an immigration bill. It is a health care impact bill, but it is a bill that we have been able to work on from the perspective of benefits again, and I think that this is truly how we should be approaching this question, to take away the fear and address the problem and resolve it.

Let me first of all acknowledge that this bill has good support in the other body. But as we were deliberating on the bill and it came to a point where we were talking about extensions, frankly, Mr. Speaker, I wanted to extend this particular bill, that I will begin to detail the rights of, for physicians to remain in the United States for 5 years. The proposal was for 1 year.

Interestingly enough, out of that negotiation and in a bipartisan effort, coming from the Texas Medical Center, being housed in Houston, knowing the great need of physicians and also the great need of underserved areas, I thought the 5-year extension would have been the best. We wound up in a bipartisan effort in negotiations to work on a 2-year extension.

So let me rise to support H.R. 4453, the Access to Rural Physicians Improvement Act of 2004, which makes it possible for foreign doctors to provide medical services in a geographic area which has been designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

Aliens who attend medical schools in the United States on ''J'' exchange program visas are required to leave the country afterwards and reside abroad for 2 years before they can receive a visa to work here as physicians. In 1994, Congress created a temporary waiver of this 2-year foreign residence requirement. It applied to foreign doctors who would commit to practicing medicine for no less than 3 years in a geographic area designated by the Secretary of Health and Human Services as having a shortage of health care professionals. This program has been successful for 10 years in bringing highly qualified physicians to medically underserved areas. It sunsetted on June 1 of this year.

The first physician recommended for a waiver in Texas was Dr. Maria Camacho, a pediatric internist. Her services to the residents of Harlingen in Cameron County provided a level of health care to children that was previously unavailable in that county.

Dr. K.M. Moorthi is a nephrologist who was recommended for a waiver to serve at a facility in Pecos, Texas, in Reeves County. He works at a brand new dialysis center. Patients requiring dialysis three times per week in that part of Texas used to have to travel more than 70 miles each way for treatment. Now it is available in Pecos.

The Access to Rural Physicians Improvement Act will provide a 2-year extension for this waiver program. It also will establish a pilot flexibility provision which will allow a State agency to place a doctor in an area that has not been designated as underserved if the doctor will nevertheless serve patients from an underserved area. This exception is limited to five doctors in each State. Finally, the doctors that receive a waiver to come here with H–1B waivers will not be counted toward the annual H–1B cap.

Mr. Speaker, I ask my colleagues to support this legislation.

The Access to Rural Physicians Improvement Act of 2004, H.R. 4453, makes it possible for foreign doctors to provide medical services in a geographic area which has been designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

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I urge you to vote for H.R. 4453.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Kansas (Mr. MORAN), the author of the bill.

Mr. MORAN of Kansas. Mr. Speaker, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER), and I thank the gentlewoman from Texas for her remarks in support of this legislation.

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It has been adequately described and well-defined.

This is an important program that serves both rural America and the core center of cities. It brings rural and urban America together. But as a Member of Congress from Kansas who cares greatly about the future of rural communities across my State, I recognize this is a significant component to meeting the needs, the health care needs of our communities. I know that should we lose our physicians, should we lose our hospitals, our doctors, our home health care agencies, the ability to keep those communities together, to keep our communities alive and well for the future dissipates quickly.

So this is one way in which we have been successful in Kansas and many communities across the country in attracting and retaining physicians.

The good news about the program is, there is a 3-year commitment that the physician remain in that underserved community for a 3-year period of time but, in reality, nearly two-thirds of all physicians in Kansas who participate in this program remain longer. They become an integral part of the community and an integral part of the health care delivery system. Jewell County, Kansas, population 3,791, has two J–1 physicians in their community. They are the only two physicians in the county, Dr. Kalderon and Dr. Meena. They have brought a breath of fresh air to Jewell County and to its hospital. Absent physicians, we cannot keep our hospital doors open, and this program has made it possible for the citizens, the residents of Jewell County to access health care. The great news is that these people become so important to not only the delivery of health care, but components of the community that make a huge difference in the future of that community.

So once, when there was despair and concern as to whether or not we would be able to access health care, whether or not the community hospital would stay alive and well, and whether or not people could be able to afford to live, because rural folks live in that community, senior citizens, young families, the question was answered when the J–1 physicians arrived and stayed.

So, Mr. Speaker, this issue is important. It matters to the future of our country, and it matters especially to the future of rural communities. I thank the gentlewoman from Wisconsin (Mr. SENSENBRENNER) as well as the gentlewoman from Texas (Ms. JACKSON-LEE) for their support today, and I ask my colleagues in Congress to quickly pass this bill, let the Senate act quickly and keep this program, this highly-valuable program, in place.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, but let me just thank the gentleman from Kansas and as well mention the gentleman from Texas (Mr. STENHOLM) who is a strong, strong supporter of this legislation.

Mr. Speaker, a few years ago, before coming to Congress, I was named to a committee, appointed by the attorney general of the State of Texas, talking about the closing of hospitals in the State of Texas, particularly because of the lack of physicians. So this legislation for our rural communities is extremely important, primarily because we are even seeing, today, hospitals and facilities being closed. This legislation will go a long way, and I particularly want to bring attention again to the idea that even if a physician goes to a served area, we have the flexibility now potentially to allow five doctors to serve in a served area but as well be able to serve in an underserved area, and that flexibility, I am delighted to indicate, is part of this legislation.

So you may be at the Texas Medical Center, but you may be able to go and serve in rural areas at places outside of that particular jurisdiction.

I rise in strong support of H.R. 4453, which I have been pleased to work on and cosponsor with the gentleman from Kansas (Mr. MORAN). I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for bringing the bill to the floor today.

Mr. Speaker, H.R. 4453 reauthorizes and expands the State Conrad 20 program. The 2-year reauthorization allows States to continue to act as an interested government agency in order to sponsor foreign-born doctors to practice in medically underserved areas. The number of doctors that can be sponsored per State is expanded from 20 to 30.

Since the mid-1990s, the J–1 Visa Program has helped numerous rural counties and underserved communities meet the health care needs of their community.

Nonetheless, the demand for doctors continues to grow. Despite a continuing population migration to urban and suburban communities throughout the State, the vast majority of Texas remains rural, posing unique challenges to the delivery and accessibility of high-quality health care. Not only are health care services likely to be unevenly distributed, but many rural residents do not even have access to a local doctor, primary care provider, or hospital.

Regrettably, a doctor would diagnose the health care problems in rural communities as chronic and persistent. The issues are not new, and we have tried a variety of medicines to remedy these problems, but we still have a long way to go before we achieve a healthy rural America.

Access to primary care promotes appropriate entry into the health system and is vital to ensure the long-term viability of rural health care delivery.

Without access to local health care professionals, rural residents are frequently forced to leave their communities to receive necessary treatments. Not only is this a burden to rural residents, who are often older or lack reliable transportation, but it drains vital health care dollars from the local community, further straining the financial well-being of rural communities.

It is imperative that we identify and expand those programs that provide physicians, pharmacists, nurses, dentists, and physician assistants incentives to practice in rural areas.

The J–1 visa waiver program was expanded in 1995, allowing medical exchange graduates in U.S. residency training to extend their stay for 3 years, provided they practice in an underserved community.

For certain rural—as well as urban—areas in the United States, the J–1 doctors have been key providers.

In rural West Texas, the area I represent, residents are benefiting directly from the services of J–1 visa physicians.

The cities of Rotan and Winters, Texas are two communities in my district that continue to rely on the care of these health care professionals.

The City of Abilene, Texas intends to use the J–1 Visa Program next year after they have exhausted all other avenues to pursue a psychiatrist.

The city is "medically underserved" in the area of psychiatry and faces extreme difficulties in attracting a mental health professional. The J–1 Visa Program may be their best solution.

Since 1995, Texas alone has received the services of 400 J-1 physicians. This represents service to a population of over 1 million people. One million people have received health care that they would not otherwise have received, or at least it would have been more difficult to receive, as a result of this program that we reauthorize today.

This isn't the final answer to our health care shortage problems but it certainly is an important part of that answer and I commend Congressman MORAN for his leadership on this issue.

I urge my colleagues to support H.R. 4453, the Access to Rural Physicians Improvement Act.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I ask my colleagues to support this legislation, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4453, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

MENTALLY ILL OFFENDER TREATMENT AND CRIME REDUCTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1194) to foster local collaborations which will ensure that resources are effectively and efficiently used within the criminal and juvenile justice systems.

The Clerk read as follows:

S. 1194

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 ''Mentally Ill Offender Treatment and Crime Reduction Act of 2004''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) According to the Bureau of Justice Statistics, over 16 percent of adults incarcerated in United States jails and prisons have a mental illness.

(2) According to the Office of Juvenile Justice and Delinquency Prevention, approximately 20 percent of youth in the juvenile justice system have serious mental health problems, and a significant number have co-occurring mental health and substance abuse disorders.

(3) According to the National Alliance for the Mentally Ill, up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives.

(4) According to the Office of Juvenile Justice and Delinquency Prevention, over 150,000 juveniles who come into contact with the juvenile justice system each year meet the diagnostic criteria for at least 1 mental or emotional disorder.

(5) A significant proportion of adults with a serious mental illness who are involved with the criminal justice system are homeless or at imminent risk of homelessness, and many of these individuals are arrested and jailed for minor, nonviolent offenses.

(6) The majority of individuals with a mental illness or emotional disorder who are involved in the criminal or juvenile justice systems are responsive to medical and psychological interventions that integrate treatment, rehabilitation, and support services.

(7) Collaborative programs between mental health, substance abuse, and criminal or juvenile justice systems that ensure the provision of services for those with mental illness or co-occurring mental illness and substance abuse disorders can reduce the number of such individuals in adult and juvenile corrections facilities, while providing improved public safety.

SEC. 3. PURPOSE.

The purpose of this Act is to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems. Such collaboration is needed to—

(1) protect public safety by intervening with adult and juvenile offenders with mental illness or co-occurring mental illness and substance abuse disorders;

(2) provide courts, including existing and new mental health courts, with appropriate mental health and substance abuse treatment options;

(3) maximize the use of alternatives to prosecution through graduated sanctions in appropriate cases involving nonviolent offenders with mental illness;

(4) promote adequate training for criminal justice system personnel about mental illness and substance abuse disorders and the appropriate responses to people with such illnesses;

(5) promote adequate training for mental health and substance abuse treatment personnel about criminal offenders with mental illness or co-occurring substance abuse disorders and the appropriate response to such offenders in the criminal justice system;

(6) promote communication among adult or juvenile justice personnel, mental health and co-occurring mental illness and substance abuse disorders treatment personnel, nonviolent offenders with mental illness or co-occurring mental illness and substance abuse disorders, and support services such as housing, job placement, community, faith-based, and crime victims organizations; and

(7) promote communication, collaboration, and intergovernmental partnerships among municipal, county, and State elected officials with respect to mentally ill offenders.

SEC. 4. DEPARTMENT OF JUSTICE MENTAL HEALTH AND CRIMINAL JUSTICE COLLABORATION PROGRAM.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"PART HH—ADULT AND JUVENILE COLLABORATION PROGRAM GRANTS

"SEC. 2991. ADULT AND JUVENILE COLLABORATION PROGRAMS.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) APPLICANT.—The term 'applicant' means States, units of local government, Indian tribes, and tribal organizations that apply for a grant under this section.

''(2) COLLABORATION PROGRAM.—The term 'collaboration program' means a program to promote public safety by ensuring access to adequate mental health and other treatment services for mentally ill adults or juveniles that is overseen cooperatively by—

''(A) a criminal or juvenile justice agency or a mental health court; and

''(B) a mental health agency.

''(3) CRIMINAL OR JUVENILE JUSTICE AGENCY.—The term 'criminal or juvenile justice agency' means an agency of a State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

''(4) DIVERSION AND ALTERNATIVE PROSECUTION AND SENTENCING.—

''(A) IN GENERAL.—The terms 'diversion' and 'alternative prosecution and sentencing' mean the appropriate use of effective mental health treatment alternatives to juvenile justice or criminal justice system institutional placements for preliminarily qualified offenders.

''(B) APPROPRIATE USE.—In this paragraph, the term 'appropriate use' includes the discretion of the judge or supervising authority, the leveraging of graduated sanctions to encourage compliance with treatment, and law enforcement diversion, including crisis intervention teams.

''(C) GRADUATED SANCTIONS.—In this paragraph, the term 'graduated sanctions' means an accountability-based graduated series of sanctions (including incentives, treatments, and services) applicable to mentally ill offenders within both the juvenile and adult justice system to hold individuals accountable for their actions and to protect communities by providing appropriate sanctions for inducing law-abiding behavior and preventing subsequent involvement in the criminal justice system.

''(5) MENTAL HEALTH AGENCY.—The term 'mental health agency' means an agency of a State or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services.

''(6) MENTAL HEALTH COURT.—The term 'mental health court' means a judicial program that meets the requirements of part V of this title.

''(7) MENTAL ILLNESS.—The term 'mental illness' means a diagnosable mental, behavioral, or emotional disorder—

''(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

''(B)(i) that, in the case of an adult, has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities; or

''(ii) that, in the case of a juvenile, has resulted in functional impairment that substantially interferes with or limits the juvenile's role or functioning in family, school, or community activities.

''(8) NONVIOLENT OFFENSE.—The term 'nonviolent offense' means an offense that does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another or is not a felony that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

''(9) PRELIMINARILY QUALIFIED OFFENDER.—The term 'preliminarily qualified offender' means an adult or juvenile accused of a nonviolent offense who—

''(A)(i) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness or co-occurring mental illness and substance abuse disorders; or

''(ii) manifests obvious signs of mental illness or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; and

''(B) has faced, is facing, or could face criminal charges for a misdemeanor or nonviolent offense and is deemed eligible by a diversion process, designated pretrial screening process, or by a magistrate or judge, on the ground that the commission of the offense is the product of the person's mental illness.

''(10) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(11) UNIT OF LOCAL GOVERNMENT.—The term 'unit of local government' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, including a State court, local court, or a governmental agency located within a city, county, township, town, borough, parish, or village.

''(b) PLANNING AND IMPLEMENTATION GRANTS.—

''(1) IN GENERAL.—The Attorney General, in consultation with the Secretary, may award nonrenewable grants to eligible applicants to prepare a comprehensive plan for and implement an adult or juvenile collaboration program, which targets preliminarily qualified offenders in order to promote public safety and public health.

''(2) PURPOSES.—Grants awarded under this section shall be used to create or expand—

''(A) mental health courts or other court-based programs for preliminarily qualified offenders;

''(B) programs that offer specialized training to the officers and employees of a criminal or juvenile justice agency and mental health personnel serving those with co-occurring mental illness and substance abuse problems in procedures for identifying the symptoms of preliminarily qualified offenders in order to respond appropriately to individuals with such illnesses;

''(C) programs that support cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety by offering mental health treatment services and, where appropriate, substance abuse treatment services for—

''(i) preliminarily qualified offenders with mental illness or co-occurring mental illness and substance abuse disorders; or

''(ii) adult offenders with mental illness during periods of incarceration, while under the supervision of a criminal justice agency, or following release from correctional facilities; and

''(D) programs that support intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

''(3) APPLICATIONS.—

''(A) IN GENERAL.—To receive a planning grant or an implementation grant, the joint applicants shall prepare and submit a single application to the Attorney General at such time, in such manner, and containing such information as the Attorney General and the Secretary shall reasonably require. An application under part V of this title may be made in conjunction with an application under this section.

''(B) COMBINED PLANNING AND IMPLEMENTATION GRANT APPLICATION.—The Attorney General and the Secretary shall develop a procedure under which applicants may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

''(4) PLANNING GRANTS.—

''(A) APPLICATION.—The joint applicants may apply to the Attorney General for a nonrenewable planning grant to develop a collaboration program.

''(B) CONTENTS.—The Attorney General and the Secretary may not approve a planning grant unless the application for the grant includes or provides, at a minimum, for a budget and a budget justification, a description of the outcome measures that will be used to measure the effectiveness of the program in promoting public safety and public health, the activities proposed (including the provision of substance abuse treatment services, where appropriate) and a schedule for completion of such activities, and the personnel necessary to complete such activities.

''(C) PERIOD OF GRANT.—A planning grant shall be effective for a period of 1 year, beginning on the first day of the month in which the planning grant is made. Applicants may not receive more than 1 such planning grant.

''(D) AMOUNT.—The amount of a planning grant may not exceed $75,000, except that the Attorney General may, for good cause, approve a grant in a higher amount.

''(E) COLLABORATION SET ASIDE.—Up to 5 percent of all planning funds shall be used to foster collaboration between State and local governments in furtherance of the purposes set forth in the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.

''(5) IMPLEMENTATION GRANTS.—

''(A) APPLICATION.—Joint applicants that have prepared a planning grant application may apply to the Attorney General for approval of a nonrenewable implementation grant to develop a collaboration program.

''(B) COLLABORATION.—To receive an implementation grant, the joint applicants shall—

''(i) document that at least 1 criminal or juvenile justice agency (which can include a mental health court) and 1 mental health agency will participate in the administration of the collaboration program;

''(ii) describe the responsibilities of each participating agency, including how each agency will use grant resources to provide supervision of offenders and jointly ensure that the provision of mental health treatment services and substance abuse services for individuals with co-occurring mental health and substance abuse disorders are coordinated, which may range from consultation or collaboration to integration in a single setting or treatment model;

''(iii) in the case of an application from a unit of local government, document that a State mental health authority has provided comment and review; and

''(iv) involve, to the extent practicable, in developing the grant application—

''(I) preliminarily qualified offenders;

''(II) the families and advocates of such individuals under subclause (I); and

''(III) advocates for victims of crime.

''(C) CONTENT.—To be eligible for an implementation grant, joint applicants shall comply with the following:

''(i) DEFINITION OF TARGET POPULATION.—Applicants for an implementation grant shall—

''(I) describe the population with mental illness or co-occurring mental illness and substance abuse disorders that is targeted for the collaboration program; and

''(II) develop guidelines that can be used by personnel of an adult or juvenile justice agency to identify preliminarily qualified offenders.

''(ii) SERVICES.—Applicants for an implementation grant shall—

''(I) ensure that preliminarily qualified offenders who are to receive treatment services under the collaboration program will first receive individualized, validated, needs-based assessments to determine, plan, and coordinate the most appropriate services for such individuals;

''(II) specify plans for making mental health, or mental health and substance abuse, treatment services available and accessible to preliminarily qualified offenders at the time of their release from the criminal justice system, including outside of normal business hours;

''(III) ensure that there are substance abuse personnel available to respond appropriately to the treatment needs of preliminarily qualified offenders;

''(IV) determine eligibility for Federal benefits;

''(V) ensure that preliminarily qualified offenders served by the collaboration program will have adequate supervision and access to effective and appropriate community-based mental health services, including, in the case of individuals with co-occurring mental health and substance abuse disorders, coordinated services, which may range from consultation or collaboration to integration in a single setting treatment model;

''(VI) make available, to the extent practicable, other support services that will ensure the preliminarily qualified offender's successful reintegration into the community (such as housing, education, job placement, mentoring, and health care and benefits, as well as the services of faith-based and community organizations for mentally ill individuals served by the collaboration program); and

''(VII) include strategies, to the extent practicable, to address developmental and learning disabilities and problems arising from a documented history of physical or sexual abuse.

''(D) HOUSING AND JOB PLACEMENT.—Recipients of an implementation grant may use grant funds to assist mentally ill offenders compliant with the program in seeking housing or employment assistance.

''(E) POLICIES AND PROCEDURES.—Applicants for an implementation grant shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel.

''(F) FINANCIAL.—Applicants for an implementation grant shall—

''(i) explain the applicant's inability to fund the collaboration program adequately without Federal assistance;

''(ii) specify how the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available, including billing third-party resources for services already covered under programs (such as Medicaid, Medicare, and the State Children's Insurance Program); and

''(iii) outline plans for obtaining necessary support and continuing the proposed collaboration program following the conclusion of Federal support.

''(G) OUTCOMES.—Applicants for an implementation grant shall—

''(i) identify methodology and outcome measures, as required by the Attorney General and the Secretary, to be used in evaluating the effectiveness of the collaboration program;

''(ii) ensure mechanisms are in place to capture data, consistent with the methodology and outcome measures under clause (i); and

''(iii) submit specific agreements from affected agencies to provide the data needed by the Attorney General and the Secretary to accomplish the evaluation under clause (i).

''(H) STATE PLANS.—Applicants for an implementation grant shall describe how the adult or juvenile collaboration program relates to existing State criminal or juvenile justice and mental health plans and programs.

''(I) USE OF FUNDS.—Applicants that receive an implementation grant may use funds for 1 or more of the following purposes:

''(i) MENTAL HEALTH COURTS AND DIVERSION/ALTERNATIVE PROSECUTION AND SENTENCING PROGRAMS.—Funds may be used to create or expand existing mental health courts that meet program requirements established by the Attorney General under part V of this title, other court-based programs, or diversion and alternative prosecution and sentencing programs (including crisis intervention teams and treatment accountability services for communities) that meet requirements established by the Attorney General and the Secretary.

''(ii) TRAINING.—Funds may be used to create or expand programs, such as crisis intervention training, which offer specialized training to—

''(I) criminal justice system personnel to identify and respond appropriately to the unique needs of preliminarily qualified offenders; or

''(II) mental health system personnel to respond appropriately to the treatment needs of preliminarily qualified offenders.

''(iii) SERVICE DELIVERY.—Funds may be used to create or expand programs that promote public safety by providing the services described in subparagraph (C)(ii) to preliminarily qualified offenders.

''(iv) IN-JAIL AND TRANSITIONAL SERVICES.—Funds may be used to promote and provide mental health treatment and transitional services for those incarcerated or for transitional re-entry programs for those released from any penal or correctional institution.

''(J) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Attorney General, in consultation with the Secretary, shall ensure that planning and implementation grants are equitably distributed among the geographical regions of the United States and between urban and rural populations.

''(c) PRIORITY.—The Attorney General, in awarding funds under this section, shall give priority to applications that—

''(1) demonstrate the strongest commitment to ensuring that such funds are used to promote both public health and public safety;

''(2) demonstrate the active participation of each co-applicant in the administration of the collaboration program;

''(3) document, in the case of an application for a grant to be used in whole or in part to fund treatment services for adults or juveniles during periods of incarceration or detention, that treatment programs will be available to provide transition and re-entry services for such individuals; and

''(4) have the support of both the Attorney General and the Secretary.

''(d) MATCHING REQUIREMENTS.—

''(1) FEDERAL SHARE.—The Federal share of the cost of a collaboration program carried out by a State, unit of local government, Indian tribe, or tribal organization under this section shall not exceed—

''(A) 80 percent of the total cost of the program during the first 2 years of the grant;

''(B) 60 percent of the total cost of the program in year 3; and

''(C) 25 percent of the total cost of the program in years 4 and 5.

''(2) NON-FEDERAL SHARE.—The non-Federal share of payments made under this section may be made in cash or in-kind fairly evaluated, including planned equipment or services.

''(e) FEDERAL USE OF FUNDS.—The Attorney General, in consultation with the Secretary, in administering grants under this section, may use up to 3 percent of funds appropriated to—

''(1) research the use of alternatives to prosecution through pretrial diversion in appropriate cases involving individuals with mental illness;

''(2) offer specialized training to personnel of criminal and juvenile justice agencies in appropriate diversion techniques;

''(3) provide technical assistance to local governments, mental health courts, and diversion programs, including technical assistance relating to program evaluation;

''(4) help localities build public understanding and support for community reintegration of individuals with mental illness;

''(5) develop a uniform program evaluation process; and

''(6) conduct a national evaluation of the collaboration program that will include an assessment of its cost-effectiveness.

''(f) INTERAGENCY TASK FORCE.—

''(1) IN GENERAL.—The Attorney General and the Secretary shall establish an interagency task force with the Secretaries of Housing and Urban Development, Labor, Education, and Veterans Affairs and the Commissioner of Social Security, or their designees.

''(2) RESPONSIBILITIES.—The task force established under paragraph (1) shall—

''(A) identify policies within their departments that hinder or facilitate local collaborative initiatives for preliminarily qualified offenders; and

''(B) submit, not later than 2 years after the date of enactment of this section, a report to Congress containing recommendations for improved interdepartmental collaboration regarding the provision of services to preliminarily qualified offenders.

''(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a planning or implementation grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for planning or implementation grants pursuant to this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice to carry out this section—

''(1) $50,000,000 for fiscal year 2005; and

''(2) such sums as may be necessary for fiscal years 2006 through 2009.''.

(b) LIST OF ''BEST PRACTICES''.—The Attorney General, in consultation with the Secretary of Health and Human Services, shall develop a list of ''best practices'' for appropriate diversion from incarceration of adult and juvenile offenders.

The SPEAKER pro tempore (Mr. FOLEY). Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 1194, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Before beginning my statement, let me state that after the committee filed the committee report on this legislation, we received a Congressional Budget Office cost estimate dated October 6, 2004, and I will insert this cost estimate into the RECORD at this point.

OCTOBER 6, 2004.

Hon F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1194, the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1194—Mentally Ill Offender Treatment and Crime Reduction Act of 2004

Summary: S. 1194 would authorize the appropriation of $50 million for fiscal year 2005 and such sums as may be necessary for the 2006–2009 period for the Department of Justice to make grants to state and local governments to improve the treatment of criminal offenders with mental illnesses or substance abuse disorders. CBO estimates that implementing the bill would cost $172 million over the 2005–2009 period, assuming the appropriation of the necessary amounts. Enacting S. 1194 would not affect direct spending or revenues.

S. 1194 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The creation of a new grant for mental health programs in the state, local, or tribal justice systems would benefit those governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1194 is shown in the following table. For this estimate, CBO assumes that the authorized amounts will be appropriated near the start of each fiscal year and that outlays will follow the historical rate of spending for similar programs. For the 2006–2009 authorization levels, CBO estimated the necessary funding levels by adjusting the fiscal year 2005 authorization level for anticipated inflation. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	50	51	52	53	55
Estimated Outlays	11	26	37	45	53

Intergovernmental and private-sector impact: S. 1194 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit state, local, and tribal governments by authorizing a joint grant program between those justice systems and social service providers. These grants could be used for planning and implementing alternative court systems for defendants with mental illness, creating training and treatment programs, and coordinating efforts of state and local governments. Any costs to those governments would be voluntarily as conditions of receiving federal aid.

Previous CBO estimate: On October 28, 2003, CBO transmitted a cost estimate for S. 1194, as reported by the Senate Committee on the Judiciary on October 23, 2003. The two versions of the bill are similar, though the authorization levels and timing of the authorizations differ and the cost estimates reflect those differences.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Melissa Merrell; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Mr. Speaker, many of our Nation's inmates are mentally ill, and the system is not well equipped to deal with them. The Bureau of Justice Statistics estimated in 1999 that 16 percent of State prison inmates, 7 percent of Federal inmates, and 16 percent of those in local jails or on probation reported either a mental condition or an overnight stay in a mental hospital.

According to this study and others, homelessness and unemployment are most prevalent amongst the mentally ill. Mental health treatment and other forms of assistance for the nonviolent mentally ill offenders can reduce recidivism in the criminal justice system. These offenders require treatment for their mental illness and often for their drug and alcohol abuse problems as well.

In response to this problem, Members on both sides of the aisle have proposed this bill to establish a grant program to encourage States to address this issue. The grants may be used to fund mental health courts or diversion programs for those with mental health issues. They may also be used to promote cooperation between the criminal justice system and the mental health community, or to train both criminal justice personnel and mental health providers to respond to the needs of mentally ill offenders.

In addition, changes were made to S. 1194 by the Committee on the Judiciary to encourage a system of graduated sanctions for mentally ill offenders and supervision of those who are offered a diversion option to ensure the safety of the community.

I believe this legislation will reduce recidivism amongst the mentally ill while striking the appropriate balance between protecting our communities and addressing the needs of mentally ill offenders. I urge my colleagues to join me in supporting it.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is Mental Health Awareness Week, and I rise to support S. 1194, the Mentally Ill Offender Treatment and Crime Reduction Act of 2003. This bill is designed to address the needs of mental illness sufferers who become entangled in the criminal justice system. All too often we find that mentally ill defendants are inappropriately placed into criminal or juvenile corrections facilities, and the negative impact that this has on the individual and society is reflected in increased recidivism rates, wasted administrative costs, and unnecessary overcrowding of correction facilities, among other things. The Bureau of Justice reported that, in 1998, over 280,000 individuals in jail or prison and almost 550,000 of those on probation had a mental impairment.

The mentally ill are disproportionately represented in jails and prisons and amongst our homeless, leaving them vulnerable to criminal acts as well as criminal activities. Five percent of all Americans have a serious mental illness, but 16 to 20 percent of incarcerated persons have a mental impairment. We need to direct the kinds of resources for this issue that will provide meaningful solutions, including

expanding diversion programs, community-based treatment, re-entry services, and improved treatment during incarcerations.

The Mentally Ill Offender Treatment and Crime Reduction Act of 2003 recognizes that true partnerships between the mental health and criminal and juvenile corrections systems and between the Federal and State governments are needed to meet these challenges. Indeed, the bill requires that Federal funds authorized under this program be supplemented with contributions from the States, local governments and tribal organizations.

Under the provisions of this bill, planning and implementation grants would be authorized for creation or expansion of mental health courts or other court-based programs for preliminary qualified offenders; training of criminal and juvenile justice personnel and mental health professionals about mental illness and substance abuse disorders; creation or expansion of cooperative efforts between criminal and juvenile justice agencies and mental health agencies; and creation or expansion of intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

Mr. Speaker, S. 1194 would authorize a grants program of $100 million a year for 2 years and would authorize amounts necessary to cover the final 3 years. Furthermore, this bill would establish a Federal interagency task force to identify better Federal, local and interdepartmental coordination of mental health services.

Congress has an obligation to legislate to protect the community from those who become aggressive or violent because of mental illness. We also have a responsibility to see that the offender receives the proper treatment for his or her illness. Far too often, mental illness goes undiagnosed, and many in our prison systems would do better in alternative settings designed to handle their particular needs.

This legislation has many supporters. It has been advocated by the U.S. Conference of Bishops and, according to its statement, S. 1194 would be a good start in ensuring that mentally ill offenders receive the proper treatment they need with grants designed to create community-based treatment programs and other services.

Mr. Speaker, I ask my colleagues in the first instance to support this particular legislation and, as well, to be cognizant of the need for more mental health services around the Nation at this time.

Mr. Speaker, I rise in support of S. 1194, the "Mentally Ill Offender Treatment and Crime Reduction Act of 2003." This bill is designed to address the needs of mental illness sufferers who become entangled within the criminal justice system.

All too often, we find that mentally ill defendants are inappropriately placed into criminal or juvenile corrections facilities, and the negative impact that this has on the individual and society is reflected in increased recidivism rates, wasted administrative costs, and unnecessary overcrowding of corrections facilities, among other things.

The Bureau of Justice reported that in 1998 over 280,000 individuals in jail or prison and almost 550,000 of those on probation had a mental impairment. The mentally ill are disproportionately represented in jails and prisons. Five percent of all Americans have a serious mental illness, but sixteen to twenty percent of incarcerated individuals have a mental impairment.

We need to direct the kinds of resources for this issue that will provide meaningful solutions, including expanding diversion programs, community-based treatment, re-entry services, and improved treatment during incarceration. The Mentally Ill Offender Treatment and Crime Reduction Act of 2003 recognizes that true partnerships between the mental health and criminal and juvenile corrections systems and between the Federal and State Governments are needed to meet these challenges. Indeed, the bill requires that Federal funds authorized under this program be supplemented with contributions from the States, local governments, and tribal organizations.

Under the provisions of this Bill, planning and implementation grants would be authorized for the:

Creation or expansion of mental health courts or other court-based "programs for preliminarily qualified offenders";

Training of criminal and juvenile justice personnel and mental health professionals about mental illness and substance abuse disorders;

Creation or expansion of cooperative efforts between criminal and juvenile justice agencies and mental health agencies; and

Creation or expansion of intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

S. 1194 would authorize the grants program at $100 million a year for 2 years and would authorize the amounts necessary to cover the final 3 years. Furthermore, this bill would establish a Federal "Interagency Task Force" to identify better Federal-local and interdepartmental coordination of mental health services.

Congress has an obligation to legislate to protect the community from those who become aggressive or violent because of mental illness. We also have a responsibility to see that the offender receives the proper treatment for his or her illness. Far too often, mental illness goes undiagnosed, and many in our prison system would do better in alternative settings designed to handle their particular needs.

This legislation has been advocated by the U.S. Conference of Bishops. According to its statement, S. 1194 would be "a good start towards ensuring that mentally ill offenders receive the proper treatment they need with grants designed to create community based treatment programs and other services."

In Texas, past treatment of mentally ill offenders illustrates the need for legislation such as S. 1194. Senior U.S. District Judge William Wayne Justice, who is experienced in dealing with mentally ill prisoners in Texas, ruled in 1980 that the Texas prison system is unconstitutional and placed it under Federal control for 30 years. In Judge Justice's estimation, the Texas laws that apply to the mentally ill "lack compassion and emphasize vengeance." KPFT news reported him as having said, "We have allowed the spirit of vengeance such unrivaled sway in our dealings with those who commit crime that we have ceased to consider properly whether we have taken adequate account of the role that mental impairment may play in the determination of moral responsibility. As a result, we punish those who we cannot justly blame. Such result is not, I believe worthy of a civil society."

The Mentally Ill Offender Treatment and Crime Reduction Act of 2003 takes a good first step toward reforming a system that has operated under a shield for far too long. We must continue to make this legislation effective enough to save the lives of these defendants who are truly victims.

Mr. Speaker, for the reasons above-stated, I support the legislation before this body as reported favorably by the Full Committee on the Judiciary and its Subcommittee on Crime, Terrorism, and Homeland Security.

Mr. Speaker, I am delighted to yield 5 minutes to the gentleman from Rhode Island (Mr. KENNEDY), one of this Congress's most vocal and most passionate voices for the underserved when it comes to mental health services around the Nation and has consistently battled on their behalf.

Mr. KENNEDY of Rhode Island. Mr. Speaker, I thank the gentlewoman for her kind words and her leadership on this issue as well. I thank the chairman as well for his work on this legislation.

I just wanted an opportunity to speak on this for a moment or two. It is true that, this week, we are celebrating the Mental Health Awareness Month, and it is appropriate as we celebrate it, to reflect on what we are doing as a Nation to address mental illness in this country. We have 271 cosponsors of mental health parity legislation in this House. We have 71 cosponsors in the United States Senate for mental health parity. We have 368 sponsors by national organizations endorsing mental health parity, and yet, mental health parity legislation is bottled up in committee.

Mental health parity legislation is very basic. It simply says that mental illness is treated as every other physical illness. And if anyone had a doubt that mental illness is not a physical illness, if their common sense did not tell them this, well, we have reams of evidence and knowledge supporting it. Even the Surgeon General Carmona and the former Surgeon General Satcher have released very extensive reports about the need to address the problem of mental illness in this country.

I say all of this because, today, we are addressing a bill that is designed to meet the needs of those who are incarcerated in this country by developing a stronger mental health network for those prisoners either coming out of prison or those juveniles before they end up in prison. But, Mr. Speaker, I would suggest that we would not have the problems in this country, where in our prison system we have 2 million people in this country incarcerated,

more people incarcerated in this country than any other industrialized Nation on the face of the earth.

□ 1500

That is an indictment, an indictment on our society that we as a country are picking up the broken pieces of people's lives because we as a country have not done what we are supposed to do in providing those support services, providing that counseling, making sure that our health care system treats the health care needs of those with mental illness.

It is discriminatory for someone with a chemical imbalance in their brain not to be given the same services and health care that someone suffering diabetes would be given. It is a shame and a violation that we are spending less money on mental health care research than many, many other diseases that do not even reflect a fraction of the burden of the disease that mental illness does in this country.

The biggest mental health hospital in this country is Los Angeles County Jail. The biggest mental health hospital is Los Angeles County Jail. Our prisons represent the unmet need of this country when it comes to those with mental illness.

So, Mr. Speaker, when it comes to S. 1194, I want to come down here and say this is the kind of legislation we need. We need to do more of this. But I might add we ought to do this in a comprehensive fashion, and that means we ought to pass mental health parity legislation. I hope we get a chance, if not in this Congress, in next Congress to finally pass mental health parity legislation. Not is it only a matter of failure in our health care system, but it is a matter of civil rights and human rights for those who suffer from mental illness because, indeed,their illness is the only illness that is being discriminated against in this country.

We spend money for every other illness, but we do not spend the money on this illness because somehow our country has not recognized that this is a real physical illness and as such we as a Nation are continuing the discrimination, the stigma that exists against people with mental illness. I look forward to working with my colleagues on this and many other bills that have to do with juvenile justice and mental illness.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, it is an indictment. Certainly this bill stands as a model of what we can do for incarcerated persons suffering from mental illness; but we are long overdue, long overdue from the vast understanding of mental health in this country and the need for a mental health parity bill. I cannot thank the gentleman enough for being the leader of this team that continues to work on this issue.

Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. STRICKLAND), who brings not only his professional background, but we have worked over the years together, particularly after the numerous school shootings, on issues dealing with counselors in schools and the need for mental health care in schools.

Mr. STRICKLAND. Mr. Speaker, I rise in support of S. 1194, the Mentally Ill Offender Treatment and Crime Reduction Act. As the sponsor of H.R. 2387, the companion House bill to S. 1194, I am very pleased to have this legislation on the floor, and I would like to thank my colleagues on the Committee on the Judiciary and their staff who have been instrumental in moving this legislation.

S. 1194 was introduced and shepherded through the Senate by Ohio Senator MIKE DEWINE, and I would like to thank him for his leadership and friendship. Senator DEWINE and I have worked together to end the criminalization of the mentally ill since the 106th Congress when we introduced and passed into law a bill that established a small demonstration program to help communities begin and operate mental health courts. Response to the mental health courts program has been tremendous, with the Department of Justice receiving applications from far more communities than they could fund with the small appropriations allocated for the program.

I am fortunate that two of the mental health courts grants have been awarded to jurisdictions that serve my constituents in Youngstown, Ohio and Athens, Hocking, and Vinton counties.

To build on the success of the mental health courts, Senator DEWINE and I introduced the bill before us today. As a counseling psychologist who has worked at a maximum security prison, I know how important this legislation is for improving mental health treatment. This bill addresses one small part of the mentally ill population's complex treatment system by seeking to treat mentally ill individuals who are or who become involved in the criminal or juvenile justice systems.

According to the Bureau of Justice statistics, over 16 percent of adults incarcerated in U.S. jails and prisons have a mental illness. In addition, the Office of Juvenile Justice and Delinquency Prevention reports that over 20 percent of the youth in the juvenile justice system have serious mental health problems, and many more have co-occurring mental health and substance abuse disorders. If a person with mental illness does not receive treatment, his or her condition almost certainly will worsen when he or she is in custody. Generally, the criminal justice system is not equipped to identify and ensure that people with mental illness find appropriate treatment programs, either through diversion into community treatment or within a jail or prison.

The Mentally Ill Offender Treatment and Crime Reduction Act addresses the needs of both the criminal justice system and the mentally ill offender population. The bill creates a grant program for communities that will provide resources for diversion programs across the spectrum of the criminal justice system. Communities will also be able to design programs that provide mental health treatment in jails and in prisons.

And, finally, grants will be available for transitional and aftercare programs that seek to ensure offenders are provided appropriate treatment and care when they transition from jail back into the community. They transition from the jail or prison back into the communities when they have completed their sentences.

In addition, the bill calls for an interagency task force to be established at the Federal level. Task force members will include the Attorney General, the Secretaries of Health and Human Services, Labor, Education, Veterans Affairs, and Housing and Urban Development and the Commissioner of Social Security who will be charged with identifying ways that Federal Departments can respond in a collaborative way to the needs of mentally ill adults and juveniles.

I believe that encouraging collaboration at the Federal, State, and local levels of government is essential to ensuring that people with mental illness are able to access appropriate treatment. Again, I would like to thank the chairman of the committee and the staff of the committee, as well as Members on my side of the aisle and for Senator MIKE DEWINE's heroic efforts in the Senate for bringing this bill to the floor.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Speaker, I commend both the minority and the majority for bringing this bill up as a suspension. It should pass well. But I would like to address something my friend, the gentleman from Rhode Island (Mr. KENNEDY), said. It is not negative. It is just a difference of opinion and the fact that we ought to condemn our society for all of the people that are in jail.

I remember a young gentleman that spray-painted a car in Singapore, and he was caned. And I guarantee you he would not do that in Singapore, although the gentleman from Wisconsin (Mr. SENSENBRENNER) did tell me he did get in trouble in the United States and then got a letter from the head of Singapore and said, I do not think he would have done that here.

In many cases, our penalties are not strong enough. We found that if many times a youth will commit a crime and just get their hands slapped, he will commit another crime and get their hands slapped and each time it elevates in severity. And many times we need the counseling, we need the guidance, I agree. And in first-time offenders I think it is very important too, but in many cases the penalty is not strong enough, so we end up with more people in jail.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, I would agree with the gentleman. The big problem here is a lot of these kids do not get anyone to pay attention to them until it starts to be too late. They commit so many crimes. They do not have the people intervene early when they show the predisposition to having a proclivity to commit crimes where they might just be calling out for help. And so the kind of grants that are going to be provided under this legislation ideally will be used as they are designed to be used in the prevention of kids getting into trouble. Because at the very outset, those children, if identified with mental illness, will get the treatment they need.

I have talked to both family court judges in Rhode Island and State court judges. The family court is very excited about the chance to have a mental health court where the child can be brought in and the family can be brought in and they can be given a treatment plan.

In the State court situations, the judges can talk about bail and say, listen, you have a chance. If you go to this treatment program you can avoid perhaps getting sentenced, if it is a minor petty crime.

So these things make sense not only for those who are caught up in our prison system, but of course it makes sense for all of us as a society to try to do the right thing early on, and I think this legislation goes in that direction. That is why I support it.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, I was expecting another speaker. I do not see that that person has arrived at this point. But let me in closing on this legislation ask my colleagues to support it.

Let me mention a fallen colleague, Senator Paul Wellstone, who I had the pleasure of having spend some time with me in my congressional district; and what the distinguished gentleman said from Rhode Island (Mr. KENNEDY) is very accurate.

We visited juvenile detention centers and found in the course of that visit individuals who really needed to have intervention with respect to mental health concerns. We found that constantly. And I just want to mention that in Texas past treatments of mentally ill offenders certainly illustrates the need for this legislation.

Senior U.S. District Judge William Wayne Justice, who is experienced in dealing with mentally ill prisoners in Texas, ruled in 1980 that the Texas prison system is unconstitutional and placed under Federal control for 30 years. In Judge Justice's estimation, the Texas laws that apply to the mentally ill lack compassion and emphasize a vengeance.

KPFT News reported him as having said, ''We have allowed the spirit of vengeance such unrivaled sway in our dealings with those who commit crime that we cease to consider properly whether we have taken adequate account of the role that mental impairment may play in the determination of moral responsibility. As a result, we punish those who we cannot justify blame. Such result is not I believe worthy of civil society.''

This mentally ill offender treatment bill will answer the question long asked in the State of Texas and many other States. Maybe the bill will also give comfort to Lydia Roumo who called me today to indicate that her sister-in-law was diagnosed manic depressive. The family had sought help in many places but could not get her hospitalized due to laws in this particular Nation. Unfortunately, she stopped taking her medication, deteriorated and became homeless.

Certainly, this is part of the mental health concern. But the tragedy of her sister-in-law is as she became homeless she also became a victim of crime and was murdered just a few days ago.

The combination of homeless persons with mental impairment, the combination of people who perpetrate terrible acts with mental impairment and juveniles warrants an enthusiastic support of the Mentally Ill Offender Treatment and Crime Reduction Act of 2003. I thank the authors of this legislation. And to Lydia, let me say that this is one step towards trying to solve her problem and the problems of many, many families around the Nation who have experienced the devastation of mental illness.

Mr. Speaker, I yield back the balance of my time.

□ 1515

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FOLEY). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 1194, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

EXTENDING AUTHORITY OF SUPREME COURT POLICE, MODIFYING VENUE OF PROSECUTIONS RELATING TO SUPREME COURT BUILDING AND GROUNDS, AND AUTHORIZING ACCEPTANCE OF GIFTS TO UNITED STATES SUPREME COURT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2742) to extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court.

The Clerk read as follows:

S. 2742

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AUTHORITY FOR THE UNITED STATES SUPREME COURT POLICE TO PROTECT COURT OFFICIALS OFF THE SUPREME COURT GROUNDS.

Section 6121(b)(2) of title 40, United States Code, is amended by striking ''2004'' and inserting ''2008''.

SEC. 2. VENUE FOR PROSECUTIONS RELATING TO THE UNITED STATES SUPREME COURT BUILDING AND GROUNDS.

Section 6137 of title 40, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) VENUE AND PROCEDURE.—Prosecution for a violation described in subsection (a) shall be in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, on information by the United States Attorney or an Assistant United States Attorney.''.

SEC. 3. GIFTS TO THE UNITED STATES SUPREME COURT.

The Chief Justice or his designee is authorized to accept, hold, administer, and utilize gifts and bequests of personal property pertaining to the history of the United States Supreme Court or its justices, but gifts or bequests of money shall be covered into the Treasury.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2742, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2742 contains three provisions that will benefit the administrative operations of the U.S. Supreme Court.

First, the bill renews until 2008 authority provided under current law that allows the Supreme Court police to provide security for the Justices when they leave the Supreme Court premises. The Supreme Court police offer that protection, and without this extension, their services would be confined to the immediate area of the Court's grounds. In other words, they would not travel with the Justices when they vacation or speak out of the area, a responsibility that is imposed upon the Marshal's Service when necessary. The need for this protection is illustrated by the recent assault on Justice Souter near his home.

Second, S. 2742 creates statutory authority for the Court to accept gifts. The scope of this text was narrowed with the Committee on the Judiciary's input and is now limited exclusively to gifts ''pertaining to the history of the Court or its Justices.'' The Court presently may accept gifts based on Comptroller General opinions.

Third, this legislation empowers the U.S. District Court for the District of Columbia, along with the D.C. Superior Court, to adjudicate cases relating to crimes committed in the Supreme Court building and on Court grounds. Under current law, all cases are referred to the D.C. Superior Court. Because some of the crimes committed on Court grounds implicate first amendment rights, the Court and the Department of Justice believe that a Federal court will do a better job of promoting uniform results since it is more experienced in handling constitutional challenges.

Mr. Speaker, the House Committee on the Judiciary, in a bipartisan fashion, worked with the Supreme Court and the other body to ensure that S. 2742 is devoid of controversy.

These changes are important to the operation of the Court. I urge Members to support the bill.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I might consume.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me also rise and thank the other body and thank the ranking member and the chairman of the Committee on the Judiciary for legislation that I think is very important. I support the legislation introduced by Senator HATCH and cosponsored by Mr. LEAHY from Vermont.

The goals of this legislation are, namely, to extend to December 29, 2008, the authority of the Marshal of the Supreme Court and the Supreme Court police to protect the Justices and official guests of the Court away from the court building and grounds; add the U.S. District Court to the District of Columbia to venue provisions governing prosecutions relating to the Supreme Court building and grounds, where venue now lies in the Superior Court of the District of Columbia; authorizes the Chief Justice to accept, hold, administer and use gifts of personal property to facilitate the work of the Supreme Court.

As a general matter, I am an advocate of extending the discretion and jurisdiction of the Federal courts. In the midst of this House's consideration and passage of several measures that patently strip the jurisdiction of the courts and the discretion of the judges, it is refreshing that we see a piece of legislation pass that actually works to enhance the Court and its security.

This legislation, S. 2742, is to add protection to the Supreme Court, and it would renew their authority to provide security for their Justices when they leave the Supreme Court and surrounding area.

On May 1 of this year, Supreme Court Justice David Souter suffered minor injuries when a group of young men assaulted him when he jogged right in this vicinity. Other judges have had some experiences along those lines.

Another provision in this legislation allows the Supreme Court to accept gifts ''pertaining to the history of the Supreme Court of the United States or its Justices.'' The Administrative Office of the Courts currently has statutory authority to accept gifts on behalf of the judiciary. This provision would grant the Supreme Court its own authority to accept gifts that would elevate or enhance its historical presence in this Nation. It would, of course, narrow the type of gift that can be received to historical items. This provision strikes the proper balance of maintaining the very favored place in history that the Supreme Court maintains, and then will improve the Court's overall function and administrative relief or issue and, as well, ensure the ethical considerations be made in order.

Again, prosecution of offenses against the Court now were moved to the district court. I think that is an appropriate way of handling these matters, and I would ask in light of the fact that our Supreme Court, now more than ever, is well-known to the American public, handling any number of controversial issues, I believe that S. 2742 is an appropriate legislative initiative to help us in the administration of justice.

With that, I ask my colleagues to support it.

Mr. Speaker, I rise to support the legislation introduced by the Gentleman from Utah, Mr. HATCH on July 22, 2004 and co-sponsored by Mr. LEAHY from Vermont. The goals of this legislation, namely to:

Extend to December 29, 2008, the authority of the Marshall of the Supreme Court and the Supreme Court Police to protect the Justices and official guests of the court away from the court building and grounds;

Add the U.S. District Court for the District of Columbia to venue provisions governing prosecutions relating to the Supreme Court building and grounds—where venue now lies in the Superior Court of the District of Columbia; and

Authorizes the Chief Justice to accept, hold, administer, and use gifts and bequests of personal property to facilitate the work of the Supreme Court.

As a general matter, I am an advocate of extending the discretion and jurisdiction of the federal courts. In the midst of this House's consideration and passage of several measures that patently strip the jurisdiction of the courts and the discretion of the judges, it is refreshing to see a piece of legislation pass that actually expands the reach of the court.

The Gentlemen co-sponsored S. 2742 at the request of the Supreme Court. This legislation would renew their authority to provide security for their justices when the leave the Supreme Court.

On May 1 of this year, Supreme Court Justice David Souter suffered minor injuries when a group of young men assaulted him as he jogged right in this vicinity. He is not the first justice to be injured in this manner. Justice Stephen Breyer was thrown from his bicycle several years ago and suffered minor injuries. These reports underscore the importance of off-campus security for Justices. If no congressional action is taken, the authority of Supreme Court police to protect its Justices off to court grounds will expire at the end of this year.

Another provision in this legislation allows the Supreme Court to accept gifts "pertaining to the history of the Supreme Court of the United States or its justices." The Administrative Office of the Courts currently has statutory authority to accept gifts on behalf of the judiciary. This provision would grant the Supreme Court its own authority to accept gifts but it would narrow the types of gifts that can received to historical items. This provision strikes the proper balance and will improve the courts's overall function.

Finally, this legislation also would provide an additional venue for the prosecution of offenses that occur on the Supreme Court grounds. Currently, the DC Superior Court is the only place of proper venue despite the uniquely federal interest at stake. This legislation would allow suit to be brought in United States District Court in the District of Columbia.

Mr. Speaker, I ask that my colleagues join me in supporting this important legislation.

Mr. Speaker, I yield back my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 2742.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

40TH ANNIVERSARY OF SIXTEENTH STREET BAPTIST CHURCH BOMBING

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 389) honoring the young victims of the Sixteenth Street Baptist Church bombing, recognizing the historical significance of the tragic event, and commending the efforts of law enforcement personnel to bring the perpetrators of this crime to justice on the occasion of its 40th anniversary.

The Clerk read as follows:

H. RES. 389

Whereas the Sixteenth Street Baptist Church of Birmingham, Alabama was constructed in 1911 and served as a center for African-American life in the city and a rallying point for the civil rights movement during the 1960s;

Whereas on Sunday, September 15, 1963, segregationists protesting the mandatory integration of Birmingham's public schools

firebombed the Sixteenth Street Baptist Church;

Whereas the blast killed Addie Mae Collins, age 14, Denise McNair, age 11, Carole Robertson, age 14, and Cynthia Wesley, age 14, all members of the Church, while they were preparing for Sunday service;

Whereas September 15, 1963 has been called the darkest day in the history of Birmingham and one of the darkest days of the entire civil rights movement;

Whereas this act of terrorism raised national and international awareness of the African-American civil rights struggle and galvanized those dedicated to the cause of civil rights;

Whereas Congress passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965 in the wake of the bombing;

Whereas the 4 men suspected of the bombing, Bobby Frank Cherry, Herman Cash, Thomas Blanton, and Robert Chambliss, were not immediately prosecuted because authorities believed it impossible to obtain a conviction in the heated racial climate of the mid-1960s;

Whereas Alabama Attorney General Bill Baxley successfully prosecuted Robert Chambliss 13 years after the bombing;

Whereas after the indictment and conviction of Robert Chambliss the bombing investigation was closed;

Whereas the investigation was reopened in 1995 due to the efforts of Federal Bureau of Investigation Special Agent Rob Langford and local African-American leaders;

Whereas in 2001 and 2002 a joint Federal and State task force, under the supervision of United States Attorney Douglas Jones and Alabama Attorney General William Pryor, successfully prosecuted Thomas Blanton and Bobby Frank Cherry with the assistance of State and local law enforcement personnel; and

Whereas the bombing, the prosecution of the offenders, and the cause of civil rights in general have become national and international concerns: Now, therefore, be it

Resolved, That the House of Representatives, on the occasion of the 40th anniversary of the bombing of the Sixteenth Street Baptist Church of Birmingham, Alabama;

(1) honors the memory of Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley;

(2) recognizes the historical significance of the bombing and the enduring impact it has had on the cause of civil rights everywhere;

(3) commends the efforts of the Alabama Attorney General's office for its successful prosecution of Robert Chambliss in 1977, the efforts of the joint Federal and State task force for the successful prosecution of Bobby Frank Cherry and Thomas Blanton in 2001 and 2002, and the efforts of all other law enforcement personnel who worked to bring the persons responsible for the bombing to justice.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 389 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 389, a resolution honoring the young victims of the Sixteenth Street Baptist Church bombing, recognizing the historical significance of the tragic event, and commending the efforts of law enforcement personnel to bring the perpetrators of this crime to justice on the occasion of its 40th anniversary. This resolution expresses the sense of the House and of all its Members that the bombing brought shame and sadness to the American community.

As we all know, our country has had a difficult history in the struggle to end racial discrimination. Nevertheless, there are some events in our history that are so awful that we must never forget them, even after the racial situation has vastly improved.

We are here today on one of these occasions. On Sunday, September 15, 1963, four little girls, Denise McNair, Cynthia Wesley, Carole Robertson and Addie Mae Collins, went to Sunday School to worship and were senselessly murdered by those who practice hate and bigotry.

In 1977, 14 years after the crime, Robert Edward Chambliss, one of the four suspects, was convicted of murder. In 1994, 31 years after the crime, another of the suspects, Herman Frank Cash, died before he could be prosecuted. In 2001, 39 years after the crime, Thomas Blanton, Jr., was convicted of murder, and in 2002, the last of the suspects, Bobby Frank Cherry, was also convicted of murder.

The law enforcement community deserves to be commended for this 39-year-long investigation that brought justice to the families and friends of Denise, Cynthia, Carole and Addie Mae.

The Sixteenth Street Church bombing did lead to the passage of the 1964 Civil Rights Act. As we remember that tragic bombing, let us also work to meet the goals of the Civil Rights Act so that the deaths of those four girls are not in vain.

I would like to thank the gentleman from Alabama (Mr. DAVIS) and the gentleman from Alabama (Mr. BACHUS) for introducing this resolution. I ask for Members' support in passing it.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I might consume.

First of all, let me rise to give overwhelming support to the gentleman from Alabama (Mr. DAVIS), my friend and distinguished colleague from the 7th Congressional District, and thank him for his leadership in bringing this important resolution to the Committee of the Whole today and to my colleague. Let me also thank his cosponsor, the gentleman from Alabama (Mr. BACHUS) for this important legislation.

It is important to note that the gentleman from Alabama's (Mr. DAVIS) leadership was exhibited even in his freshman term. Coming from Birmingham, Alabama, he knew the important crucialness of this particular legislation.

This is, in essence, way before we were calling it such, a hate crime that occurred in Birmingham, Alabama, 40 years ago. In 1963, four young African American girls at the age of no more than 14, their names being Addie Mae Collins, Denise McNair, Carole Robertson and Cynthia Wesley, were bombed senselessly at the Sixteenth Street Baptist Church, and this day is considered the darkest day of history in Birmingham. This happened because there were those who felt the hatred of color was more superior than the respect for human life and human dignity.

This resolution not only pays respect to the young ladies who lost the many years remaining in their lives, but it encourages good law enforcement. It is a testament that there is good law enforcement and that it helps people when it is done thoroughly and with integrity.

The act perpetrated in Birmingham was what we consider a terrorist offense, and the actors were rightly brought to justice some 13 years later. It is important to note that all around the country we look to the depth of the work of law enforcement that occurred after the tragedy of the bombing in Birmingham in that church one Sunday morning as a testament that no act of violence, violation of civil rights or murder of innocent persons should go uninvestigated, no matter how long it takes.

This resolution congratulates all of those who persisted to bring the perpetrators to justice, and it pays tribute to these young girls and their families.

So I ask my colleagues to support this legislation, and I thank the immediate cosponsor, or the author of this legislation, the gentleman from Alabama (Mr. DAVIS), and his cosponsor.

Mr. Speaker, I reserve my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield the balance of my time to the gentleman from Virginia (Mr. GOODLATTE) and ask unanimous consent that he be allowed to yield time as he deems fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Ms. JACKSON-LEE. Mr. Speaker, it gives me great pleasure to yield 7 minutes to the distinguished gentleman from Alabama (Mr. DAVIS), for his leadership and for his vision, allowing us in its 40th year, coming to honor or to acknowledge this historic tragedy in the resolution.

Mr. DAVIS of Alabama. Mr. Speaker, let me thank my good friend from Texas for yielding me time, and let me begin, as is customary, by certainly

thanking the Chair of this committee and the ranking member of the committee, the gentleman from Michigan (Mr. CONYERS).

I am well aware that in these last several days of the session there are a lot of bills competing to make their way onto this floor. There is a lot of potential legislation that could have been offered and put before this body, and I want to certainly thank them for allowing this bill to move forward.

Let me thank my good friend and my colleague, the gentleman from Alabama (Mr. BACHUS), from Alabama's 6th District, for making this commemoration a bipartisan cause.

Finally, let me thank my colleagues from the Senate side, Senator SHELBY and Senator SESSIONS, who have agreed to do everything in their power to move this resolution promptly through the Senate.

□ 1530

Let me begin, Mr. Speaker, by talking for a moment about that day, because it seems so distant and so far away as we stand here in this civilized capitol. It is hard to imagine, as people watch this on the television screens or in the gallery, that we were once a country where four little girls got up one Sunday morning, went to Sunday school wearing their Sunday best and never had a chance to make it home. It is hard to imagine, standing in this civilized place, that we were once a country that was so raw and so full of hate that this kind of crime could happen and that years and years would go by without it being prosecuted.

September 15, 1963, was a very different place. America was a very different land. And it is fitting that we come here today to call attention to these four little girls. Their names, Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley, echo across these last decades, and the violence that was inflicted on my city of Birmingham, Alabama, rings across those decades as well.

After I speak today, my good friend and colleague, the gentleman from Georgia (Mr. LEWIS), will stand here, and I am reminded every time I see him of the journey we have made in America in the last 41 years. We have gone from a place where four little girls could not find safety in the sanctuary of a church to the House of Representatives where 40 of us who proudly sit here are African-Americans, and to a U.S. Senate that will soon host another African-American.

We have come a long way from a time where four little girls could not find sanctuary in a church to a place where a native of Birmingham, Alabama, an African-American, is now our National Security Advisor, and another person with Birmingham ties, an African-American, is now our Secretary of State.

But it is still fitting that, as far as we have come, that we take the time to think about the tragedy. And I am pleased that my colleagues will have an opportunity to pass this resolution that writes this violent act in stone so that all future generations can see it.

Another important part of this resolution is that it honors the law enforcement personnel. The reality is, it took 14 years for the Alabama Attorney General William Baxley to bring the first of the killers to justice. It took 31 years, to 1994, for the Federal Government to reopen its investigation, and it took until the spring of 2001 for the final killer who still lives to be brought to justice.

Without the work of the former United States Attorney Doug Jones and the former Alabama Attorney General William Pryor, this justice would not have been achieved and the indictment and prosecution of these killers would not have occurred. Honoring them is an important part of this resolution.

Let me end with just these two observations. Whenever we think of this kind of sadness in America, we should also still look to the promise in our country. Whenever I hear the eloquence of the gentleman from Georgia (Mr. LEWIS), as this chamber will in a few moments, it ought to remind us of the promise that exists.

It so happens that this September 15, 2004, the gentleman from Georgia (Mr. LEWIS) and I were at this church at a commemorative event. He was there as the keynote Speaker. I was there to introduce him. And during the course of that service something enormously profound happened. We looked up in the balcony, and there was a choir of little black girls from Sixth Avenue Baptist Church in Birmingham, Alabama, and they were standing there singing America the Beautiful, and they were waving American flags as they did it.

I looked over at my colleague and my friend from Georgia, and he had a tear in his eye, as did many people who were in that church. And I have to say to my colleagues today, Mr. Speaker, that to stand in that place, 41 years after four little girls could not even manage to leave there alive, and to see those little black girls singing about the beauty of their country and waving the flag that we so proudly salute, if that does not make you feel proud to be an American, then I do not know what will.

So I conclude today simply by saying that memory is enormously important. Commemoration is enormously important. But the real power of this institution is to take those memories and translate them into contemporary good works; to take the power of those memories and to translate them into an enduring commitment to make this country as just as possible. So in their spirit, I offer this resolution and, in advance, thank this House for passing it.

Mr. GOODLATTE. Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume to thank the distinguished gentleman from Alabama and to say to him that I am glad he has reminded this House of the history of Alabama but as well the progeny and the fruits of Alabama that cross America's leadership landscape.

I thank him for paying tribute to these young girls and these families who have long suffered, as well as the law enforcement who did their job.

The gentleman mentioned one of our colleagues, and needless to say, whenever we have the opportunity to introduce the gentleman from Georgia (Mr. LEWIS) in any affiliation with the movement, as we called it, we can say nothing more than to be so grateful that he has graced our presence in this institution by his presence and membership in this body. He speaks the truth, but he has lived it as well.

Mr. Speaker, I am delighted to yield 4 minutes to the distinguished gentleman from Georgia (Mr. LEWIS).

Mr. LEWIS of Georgia. Mr. Speaker, I want to thank my colleague and my friend, the dear gentlewoman from Texas, for yielding me this time. I want to thank my friend and colleague, the gentleman from Alabama, (Mr. DAVIS), for bringing this resolution before us.

Mr. Speaker, 41 years ago last month, domestic terrorists bombed the Sixteenth Street Baptist Church in Birmingham, Alabama, claiming four innocent lives and changing the course of American history. On that Sunday morning, four beautiful young girls, Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley went to church and never came home. Four young lives, so full of promise, cut short by hatred.

Church is usually a safe haven, but it was anything but safe when segregationists who opposed the integration of Birmingham schools, lunch counters, and restaurants targeted the Sixteenth Street Baptist Church on Sunday, September 15, 1963.

As long as I can remember, I will never ever forget that Sunday. It was one of the most painful and one of the darkest hours of the Civil Rights movement. Within 3 hours of the bombing, I made my way to Birmingham. I stood in front of the church and witnessed the devastation, the pain and the hurt. I kept asking myself: What is it, what is it in human beings, what is it in our makeup that would make us so mean, so hateful, and so vicious toward our fellow human beings? What is it, what is it in us that would drive human beings to plant a bomb in a church on Sunday morning knowing that others will be killed?

I recall attending the funerals later that week. There was so much pain, so much sorrow, so much sadness, so much hurt. As horrible and tragic as their deaths were, those four young girls did not die in vain. Their blood has liberated not just the Nation, but a people. Their murders did not stop integration, as the terrorists had planned

it. Instead, their deaths shed new light on the struggle for civil rights and spurred support for the movement.

While we in the Civil Rights movement were profoundly saddened by the loss of four precious flowers from God, we did not despair. Rather, our resolve to continue to fight was solidified. In the words of my friend, my brother, my colleague, and mentor, Dr. Martin Luther King, Jr., their deaths called us to ''work passionately and relentlessly for the realization of the American Dream.''

In their honor, we persevered. And in their honor, we celebrated the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

So, Mr. Speaker, I think it is fitting that, today, we honor the memory of these four young lives and recognize the importance of this tragedy in the cause of civil rights for all Americans. Like all my colleagues who have spoken before, I ask each of you to join in supporting this long overdue recognition by passing this resolution.

Ms. JACKSON-LEE of Texas. Mr. Speaker, may I ask how much time remains?

The SPEAKER pro tempore (Mr. FOLEY). The gentlewoman from Texas has 6 minutes remaining.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am delighted to yield 2 minutes to the distinguished gentleman from Illinois (Mr. DAVIS), and to thank him for his commitment to these issues of civil rights and justice and this resolution.

Mr. DAVIS of Illinois. Mr. Speaker, I want to thank the gentleman from Alabama for giving us the opportunity to honor the memories of Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley. These four girls were killed over 40 years ago in the firebombing of the Sixteenth Street Baptist Church in Birmingham. I would also like to commend the efforts of the Alabama Attorney General's Office for its role in prosecuting the perpetrators of this evil and cowardly act of terror.

The Sixteenth Street Church, a rallying point for the Civil Rights movement in the 1960s, was firebombed. Let us honor the memory of these girls by ensuring their sacrifice was not in vain. Let us work to bring about Martin Luther King's color-blind America. Let us not forget that although we have come a long way, there is still much further to go.

Since this incident, which occurred in the lifetime of most of my colleagues in the House, our country has changed profoundly. Black parents can thankfully now send their children to church knowing that the chances of them being murdered by segregationists is not that great. Sadly, they cannot send their children to school confident in the belief that they will be educated or safe. Instead, many of them must fear they will fall prey to the drugs and violence that plague our inner city schools and inner city communities. They may fear they will fall prey to poverty, as 4 million additional families did last year. Or that they, like 45 million Americans, will not have access to health care. I hope that these problems can be addressed as rapidly as earlier problems were during the Civil Rights movement.

So, Mr. Speaker, this day gives us the opportunity to celebrate lives that were lost, but also to ensure and make sure that those lives were not in vain.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume, and let me just say that we hope in this body that tragedies like the bombing in Birmingham would never have to occur again. We thank the gentleman from Alabama (Mr. DAVIS) for honoring us by bringing this to our attention and to the attention again of the Nation.

Just a few years ago, in Texas, something that we now define as a hate crime, occurred in Jasper County. James Byrd, an African-American male, was murdered and, ultimately, his body dismembered. As I close my remarks, I want to insert in the RECORD the words of his daughter, Frances Renee Byrd Mullins, in support of the James Byrd, Jr. Hate Crimes bill passed in Texas and authored by Representative Senfronia Thompson.

□ 1545

I will not read her statement at this time, but I would simply say that this commemorative resolution and statement being made today is not only to pay tribute, as I have already said, to these murdered young girls but to be able to remind us that we must be ever vigilant and diligent in fighting against hatred, hateful acts, murderous acts as we have done today by this statement, continued into the history of the United States, that we never repeat the past.

I ask my colleagues to support H. Res. 389.

Mr. Speaker, I rise to give overwhelming support to my distinguished Colleague from the State of Alabama, its 7th Congressional District, ARTUR DAVIS, and to thank him for his leadership in bringing this important resolution to the Committee of the Whole today.

He will come to the Floor to remind us of the act of terrorism that occurred in Birmingham, Alabama years ago—in 1963. Four young African-American girls, at an age of no more than 14, were murdered in a senseless bombing of the Sixteenth Street Baptist Church, and this day is considered the ''darkest day in the history of Birmingham.''

This resolution not only pays respect to the young ladies who lost the many years remaining in their full lives, but it encourages good law enforcement. It is the testament that there is good law enforcement and that it helps people when it is done thoroughly and with integrity. The act perpetrated in Birmingham was what we consider a ''terrorist offense,'' and the actor(s) were rightly brought to justice some 13 years later.

In my Congressional District in Houston, I am no stranger to the heinous perpetration of hate crimes and similar terrorist offenses.

On June 7, 1998 in Jasper County—minutes from Houston in Southeast Texas, James Byrd's throat was cut before he was dragged to bits along a lonely country road. I would like to share an excerpt from testimony given by Mr. Byrd's oldest daughter, Francis Renee (Byrd) Mullins in support of the James Byrd Jr. Hate Crimes Bill 87–60 authored by Rep. Senfronia Thompson, D-Houston:

As I come before you today it still sends chills through my body just knowing the reasoning behind my being here. I find it difficult to speak today because moments like these let me know that the fact of the matter is that my father is gone and has been for almost a year. I feel in my heart I am doing the right thing by supporting this bill so that no other family will have to suffer my tragic fate. I do not want to sound rhetorical, but I feel as if I have to tell the story in this way. For a moment, I want you to imagine, if you can, walking home from an anniversary party, when three individuals pick you up, take you to a remote area, beat you repeatedly, then while you are still alive chain you by your ankles to the back of a truck and then proceed to drag you for about two and a half to three miles down a logging road. The point in which you actually die after enduring a tremendous amount of pain and broken bones is when your head and arm are ripped from your body like a piece of paper is torn. Now stop imagining. After coming back from the road my dad was dragged to death on, how can we not want to do the right thing and pass this bill? What if it was your father, mother, sister, brother or even an animal that you love? An animal should not have to undergo what my father went through on the early morning of June 7, 1998.

Mr. Speaker, hate crimes are real, and they affect the lives of real people. This is why I have co-sponsored the Local Law Enforcement Hate Crimes Enforcement Prevention Act 2004.

We must prevent hate crimes from occurring and we must bring justice in a timely fashion. Mr. Speaker, I thank the gentleman from Alabama.

Mr. Speaker, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

I want to thank all the Members who have spoken so eloquently in favor of this resolution and who have helped to remind us of this tragedy of 40 years ago. This devastating event for this church and these families helped bring us together; a wrong put us on the path to doing things right. This is a very worthwhile resolution. I thank everybody who has helped to bring it forward. I thank the chairman of the Committee on the Judiciary; I thank the gentlewoman from Texas and others.

I urge my colleagues to support the resolution.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FOLEY). The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and agree to the resolution, H. Res. 389.

The question was taken; and (two-thirds having voted in favor thereof)

the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

INTERNET SPYWARE (I–SPY) PREVENTION ACT OF 2004

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4661) to amend title 18, United States Code, to discourage spyware, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4661

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 ''Internet Spyware (I–SPY) Prevention Act of 2004''.

SEC. 2. PENALTIES FOR CERTAIN UNAUTHORIZED ACTIVITIES RELATING TO COMPUTERS.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1030 the following:

''§ 1030A. Illicit indirect use of protected computers

''(a) Whoever intentionally accesses a protected computer without authorization, or exceeds authorized access to a protected computer, by causing a computer program or code to be copied onto the protected computer, and intentionally uses that program or code in furtherance of another Federal criminal offense shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) Whoever intentionally accesses a protected computer without authorization, or exceeds authorized access to a protected computer, by causing a computer program or code to be copied onto the protected computer, and by means of that program or code—

''(1) intentionally obtains, or transmits to another, personal information with the intent to defraud or injure a person or cause damage to a protected computer; or

''(2) intentionally impairs the security protection of the protected computer;

shall be fined under this title or imprisoned not more than 2 years, or both.

''(c) No person may bring a civil action under the law of any State if such action is premised in whole or in part upon the defendant's violating this section. For the purposes of this subsection, the term 'State' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

''(d) As used in this section—

''(1) the terms 'protected computer' and 'exceeds authorized access' have, respectively, the meanings given those terms in section 1030; and

''(2) the term 'personal information' means—

''(A) a first and last name;

''(B) a home or other physical address, including street name;

''(C) an electronic mail address;

''(D) a telephone number;

''(E) a Social Security number, tax identification number, drivers licence number, passport number, or any other government-issued identification number; or

''(F) a credit card or bank account number or any password or access code associated with a credit card or bank account.

''(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1030 the following new item:

''1030A. Illicit indirect use of protected computers.''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

In addition to any other sums otherwise authorized to be appropriated for this purpose, there are authorized to be appropriated for each of fiscal years 2005 through 2008, the sum of $10,000,000 to the Attorney General for prosecutions needed to discourage the use of spyware and the practice commonly called phishing.

SEC. 4. FINDINGS AND SENSE OF CONGRESS CONCERNING THE ENFORCEMENT OF CERTAIN CYBERCRIMES.

(a) FINDINGS.—Congress makes the following findings:

(1) Software and electronic communications are increasingly being used by criminals to invade individuals' and businesses' computers without authorization.

(2) Two particularly egregious types of such schemes are the use of spyware and phishing scams.

(3) These schemes are often used to obtain personal information, such as bank account and credit card numbers, which can then be used as a means to commit other types of theft.

(4) In addition to the devastating damage that these heinous activities can inflict on individuals and businesses, they also undermine the confidence that citizens have in using the Internet.

(b) SENSE OF CONGRESS.—Because of the serious nature of these offenses, and the Internet's unique importance in the daily lives of citizens and in interstate commerce, it is the sense of Congress that the Department of Justice should use the amendments made by this Act, and all other available tools, vigorously to prosecute those who use spyware to commit crimes and those that conduct phishing scams.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentlewoman from California (Ms. LOFGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. GOODLATTE).

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4661, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 4661, the Internet Spyware (I–SPY) Prevention Act. This bipartisan legislation which I introduced with the gentlewoman from California (Ms. LOFGREN) and the gentleman from Texas (Mr. SMITH) will impose tough criminal penalties on the most egregious purveyors of spyware without imposing a broad regulatory regime on legitimate software providers. I believe that this targeted approach is the best way to combat spyware.

Spyware is a growing and serious problem. The Federal Trade Commission has testified that spyware appears to be a new and rapidly growing practice that poses a risk of serious harm to consumers. Spyware is software that provides a tool for criminals to crack into computers to conduct nefarious activities, such as altering a user's security settings, collecting personal information to steal a user's identity, or to commit other crimes.

The I–SPY Prevention Act would impose criminal penalties on the most egregious behaviors associated with spyware. Specifically, this legislation would impose up to a 5-year prison sentence on anyone who uses software to intentionally break into a computer and uses that software in furtherance of another Federal crime. In addition, it would impose up to a 2-year prison sentence on anyone who uses spyware to intentionally break into a computer and either alter the computer's security settings or obtain personal information with the intent to defraud or injure a person or with the intent to damage a computer. By imposing stiff penalties on these bad actors, this legislation will help deter the use of spyware and will thus help protect consumers from these aggressive attacks.

Enforcement is crucial in combating spyware. The I–SPY Prevention Act authorizes $10 million for fiscal years 2005 through 2008 to be devoted to prosecutions and expresses the sense of Congress that the Department of Justice vigorously enforce the laws against spyware violations as well as against online phishing scams in which criminals send fake e-mail messages to consumers on behalf of famous companies and request account information that is later used to conduct criminal activities.

In addition, the I–SPY Prevention Act is technology-friendly. It would not interfere with the development of technological solutions to block spyware. Many technologies are currently available to help consumers detect and rid their computers of spyware. As these technologies progress, we must be careful not to impose unnecessary burdens on these innovators who are helping to fight against spyware. Furthermore, by targeting the truly bad actors, this legislation would protect the ability of legitimate software companies to innovate and develop new and exciting products and services in response to consumer demand instead of imposing a one-size-fits-all regulation on the entire industry.

The I–SPY Prevention Act is a targeted approach that protects consumers by imposing stiff penalties on the truly bad actors without imposing excessive red tape and regulations on legitimate technology companies. I

urge my colleagues to support this important legislation. I thank the chairman of the Committee on the Judiciary for bringing this legislation forward.

Mr. Speaker, I reserve the balance of my time.

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am proud to have partnered with my colleague from Virginia (Mr. GOODLATTE) on this legislation to combat spyware. Spyware is quickly becoming one of the biggest threats to consumers on the Internet. It is one of the reasons why we have an identity theft epidemic. Thieves are using spyware to harvest personal information from unsuspecting Americans. Criminals are even using spyware to track every keystroke an individual makes, including credit card and Social Security numbers.

Spyware also adversely affects the business community which must spend money to block and remove it from their systems. Microsoft has stated that spyware is ''at least partially responsible for approximately one-half of all application crashes'' reported to them. Experts estimate that as many as 80 to 90 percent of all personal computers contain some form of spyware. Earthlink recently identified more than 29 million spyware programs. In short, spyware is a very real problem that is endangering consumers, damaging businesses, and creating millions of dollars of additional costs.

I am proud to support H.R. 4661, this bipartisan measure that identifies the truly unscrupulous acts associated with spyware and subjects them to criminal punishment. This bill is important because it focuses on behavior, not on technology. It targets the worst form of spyware without unduly burdening technological innovation.

H.R. 4661 also authorizes for the Attorney General the money he needs to find and prosecute spyware offenders. At the same time, it is important to note that this bill does not prevent existing or future State laws that prohibit spyware. Report language clearly explains that this bill only preempts civil actions that are based on violations of this new Federal criminal law. It does not prevent a State from passing a similar law, nor does it prevent any lawsuits that are premised on existing State laws.

I am honored that this bill has the strong support of some of the biggest names in technology, including Microsoft and Dell. It is also supported by the U.S. Chamber of Commerce, the Center For Democracy and Technology, and even the Distributed Computing Industry Association, which represents peer-to-peer networks. Consumers and businesses cannot wait any longer for help.

I urge my colleagues to support H.R. 4661.

Mr. Speaker, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to particularly thank the gentlewoman from California for her help in making this legislation possible. This is truly a bipartisan effort that has been broadly supported in the Committee on the Judiciary and by other Members of Congress. I think it is a very appropriate approach to a very serious problem. I also want to thank the gentleman from North Carolina (Mr. COBLE), chairman of the Subcommittee on Crime, and the gentleman from Texas (Mr. SMITH), chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, who also were very helpful and very supportive as we moved this legislation forward.

There are a number of organizations. The gentlewoman from California mentioned some. I would like to call Members' attention to others that have indicated their strong support of this legislation, including the Information Technology Association of America; the Information Technology Industry Council; the Business Software Alliance; the Center For Democracy and Technology; NetChoice, a coalition representing e-commerce companies and thousands of e-consumers from across the Nation; the Internet Commerce Coalition; the Chamber of Commerce of the United States of America; the Software Information Industry Association; and a host of individual companies and individuals who have been in touch with us about the ravages that occur with spyware and the phishing scam.

These are things that are great threats to consumers. We want them to feel confident when they use the Internet. The Internet holds great promise for people to be able to use the Internet for education, for commerce, for communicating with families and friends and people who share a common cause with them; but people increasingly know of the dangers they face on the Internet, from hackers and spam and pornography and people attempting to participate in various types of fraudulent schemes.

Many of those center around the use of spyware and phishing. These are threats to people's use of the Internet. We need to crack down on the people who perpetrate these actions. This is the legislation to do that, to make sure that people feel comfortable, that they themselves and their children can go online and have the opportunity to use the Internet with confidence that their personal information is not being stolen, that they are not becoming the victim of identity theft, that they are not confronting what looks like a Web site of a legitimate company using all of the technology available.

Some of these criminals will actually create a duplicate Web site that looks exactly like the original, but then attempt to use that Web site to extract information from you by suggesting that they need to update their account information or need your Social Security number or need your driver's license or some other personal information which they then intend to use to steal from your bank account, run up credit card bills, whatever the case might be. This legislation is designed to come down hard on those people.

Mr. Speaker, I urge my colleagues to support the legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

I would like to thank as well the gentleman from Virginia for such a productive collaboration on this bill. I think it is a good product and one that we can all be very satisfied with. I also want to take a moment to thank two members of my staff. The staff does not generally get thanked in public. Andrew Kugler, a lawyer on my staff and a brand new father, worked very hard with the gentleman from Virginia's staff to make sure that all these issues were dealt with successfully; and while he was on paternity leave, Ur Jaddou on my staff filled in for him. So thanks to both of those fine lawyers for the effort that they made. The staff works behind the scenes, but they help us accomplish a lot, and we need to thank them.

I also wanted to mention and agree with the gentleman from Virginia in terms of the phishing issue. I will admit that one of the brightest people I know, my daughter, was caught up actually in a phishing scheme. Very smart people can get taken by these phishing schemes. As soon as her thumb hit the send button, she thought, oh, my goodness, what have I done. We had to call and cancel all the credit cards and the like.

This is something that preys upon people. If you think about the impact of phishing and also spyware, it is not just an inconvenience to consumers; but if we do not successfully abate this, we are going to have a very serious impact on the vitality of the Internet itself, because if people cannot trust Internet commerce, they will not use Internet commerce and so that is going to have an impact on the productivity of the American economy.

What we are doing here today is important for consumers, it is important for businesses, but it is also important for the future of our high-tech economy because we have got to make sure that the Internet is safe for commerce and for individual users and also for businesses.

I urge and I do believe that this House will in large number support the bill. When you do, you are striking a blow for the continued vitality of the Internet as an instrument of commerce and economic growth for America.

Mr. Speaker, I reserve the balance of my time.

□ 1600

Mr. GOODLATTE. Mr. Speaker, I thank the gentlewoman for her comments.

Mr. Speaker, I yield such time as he may consume to the gentleman from

Texas (Mr. SMITH), chairman of the Courts, the Internet, and Intellectual Property Subcommittee of the House Committee on the Judiciary and a real leader on technology issues in the Congress.

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Virginia (Chairman GOODLATTE) for his nice comments, and I am happy to join him in cosponsoring this legislation, but I especially want to express my appreciation to him for being the author and introducing this legislation.

Computer spyware is a growing problem that threatens the future of commerce over the Internet. A recent report found that more than 3 million scans for spyware have been performed just this year alone. These scans revealed approximately 83 million instances of spyware. That is certainly disturbing.

Spyware can be a confusing problem for consumers. Many do not know they have it, or if they do, they do not know how to get rid of it. A Yahoo! Internet search of the term ''spyware'' yields over 8 million results. It is no wonder that the problem is only getting worse.

Mr. Speaker, H.R. 4661 addresses spyware through the regulation of bad behavior rather than the regulation of technology. It provides strong penalties for those who engage in the illicit activities of spyware and phishing.

Rather than add to an already confusing regulatory structure, the bill takes a very narrow approach. H.R. 4661 sets strong penalties for anyone who intentionally uses software to break into a computer in order to alter security settings or obtain personal information. It further authorizes money for the Department of Justice to prosecute spyware and phishing crimes.

Mr. Speaker, I again urge my colleagues to put an end to spyware and support this bill, and again I want to thank the gentleman from Virginia (Chairman GOODLATTE) for introducing this piece of legislation.

Mr. SENSENBRENNER. Mr. Speaker, I rise today in support of H.R. 4661, the "Internet Spyware Prevention Act of 2004." This narrow criminal legislation will deter and allow the prosecution of the worst forms of behavior involving spyware by providing additional tools and resources to criminal prosecutors. I would like to thank the Gentleman from Virginia, Mr. GOODLATTE, for introducing the legislation before us today.

Technologies designed to enhance the speed and efficiency of data transfer have fueled the explosive growth of the Internet. Unfortunately, the sad reality is that the same software and technology innovations that have enhanced and personalized usage of the Internet can also provide opportunities for abuse and illegal behavior.

Like many other ills on the Internet these latest malicious behaviors cannot be stopped by federal legislation alone. In fact, there is no one silver bullet—legal, regulatory, or technological—to end the misuse of spyware or the related practice of "phishing." But greater consumer awareness and use of available technological countermeasures clearly hold the greatest promise for curbing these abusive practices. Congressional efforts will only help if they focus on behavior—not rapidly changing technology.

H.R. 4661 is a good start because it focuses on behavior that is criminal, not on technologies. Unlike some other proposals, this bill does not set up new requirements that dictate how things appear on a computer screen or that bombard a user with unwanted notices. Nor does this bill pose the same dangers of strict liability for legitimate companies who make a mistake. In short, it represents a measured solution to the problem it seeks to correct.

I believe that this narrow legislation updating necessary criminal law provisions and emphasizing increased enforcement, rather than broad regulation, is the correct legislative response at this time. I urge may colleagues to support H.R. 4661 and reserve the balance of my time.

Ms. LOFGREN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I urge my colleagues to support this legislation, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and pass the bill, H.R. 4661, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. GOODLATTE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 1134. An act to reauthorize and improve the program authorized by the Public Works and Economic Development Act of 1965.

S. 2796. An act to clarify that service marks, collective marks, and certification marks are entitled to the same protections, rights, and privileges of trademarks.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1417. An act to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

HONORING NATIONAL NURSE PRACTITIONERS WEEK

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 500) honoring the goals and ideals of National Nurse Practitioners Week.

The Clerk read as follows:

H. CON. RES. 500

Whereas there are more than 106,000 licensed nurse practitioners in the United States providing high-quality, cost-effective health care;

Whereas nurse practitioners are registered nurses, with advanced education and advanced clinical training, most with master's or post-master's degrees;

Whereas nurse practitioners diagnose acute and chronic conditions, prescribe medications, treat illnesses, and counsel patients on health care issues, in coordination with physicians and other health care providers;

Whereas the excellence, safety, and cost-effectiveness of the care provided by nurse practitioners has been established;

Whereas nurse practitioners provide health care to people of all ages and in diverse health care settings, such as private office practice, hospitals, long-term care facilities, schools, State and local health departments, and managed care facilities;

Whereas more than 20 percent of nurse practitioners practice in rural settings with populations of less than 25,000, and of the 62 percent who work in cities with populations of more than 50,000, more than 39 percent work in inner-city areas; and

Whereas the American Academy of Nurse Practitioners has designated the week of November 7–13, 2004, as National Nurse Practitioners Week in recognition of the many contributions that this dedicated group of health care professionals makes to the health and well-being of the people in the communities they serve in this great country: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) honors the goals and ideals of National Nurse Practitioners Week; and

(2) offers sincere support to nurse practitioners around the country as they continue to provide high-quality health care to many Americans.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the House Concurrent Resolution 500.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H. Con. Res. 500, honoring the goals and ideals of National Nurse Practitioners Week, introduced by the gentleman from Texas (Mr. BURGESS).

The American Academy of Nurse Practitioners has designated the week of November 7 through 13, 2004, as National Nurse Practitioners Week in recognition of the many contributions that this dedicated group of health care professionals makes to the people

and well-being of the people in the communities they serve in this great country.

Currently, there are more than 100,000 licensed nurse practitioners in the United States providing high-quality, cost-effective health care. These nurses have advanced education and advanced clinical training, most with Master's or post-Master's degrees. Every day they, in coordination with physicians and other health care providers, diagnose acute and chronic conditions, prescribe medications, treat illnesses, and counsel patients on health care issues.

I urge my colleagues to offer their support to nurse practitioners around the country and to help us support H. Con. Res. 500.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, nurse practitioners play a critical role in meeting our Nation's medical needs. Working hand-in-hand with other professionals, nurse practitioners improve the flexibility and responsiveness and efficiency of our health care system. Because of their focus on primary care, disease prevention, and counseling, nurse practitioners serve as health care first responders for many American families. From weight management, blood pressure, dangerous infections, injuries, nurse practitioners have the frontline view of health care in our country.

Nurse practitioners also improve the health care system's ability to reach underserved populations. As we all know, primary health care is desperately needed in many urban and central city communities.

As this resolution notes, nurse practitioners have been there to help meet this need. Twenty percent of nurse practitioners serve in rural areas. Forty percent who serve in metropolitan areas work in central city settings.

In this age of double-digit health care cost inflation, nurse practitioners help to improve the cost effectiveness of American health care. By improving patient choice of provider and by promoting competition, nurse practitioners help to moderate spiraling health care costs.

Nurse practitioner training programs were first developed some 40 years ago. A shortage of doctors forced State governments to innovate, and a few nurse practitioners were certified, mostly, in those days, initially in pediatrics. From that modest beginning, the nurse practitioner profession has grown to fill an important and vital role in America's health care system. There are now more than 100,000 nurse practitioners serving the American public.

I join my colleagues in urging the House to agree to this concurrent resolution celebrating those 100,000 nurse practitioners and marking the goals and ideals of National Nurse Practitioners Week.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. BURGESS), the writer of this bill, a gentleman who is a medical doctor, who certainly has practical real-world experience in the world of nurse practitioners.

Mr. BURGESS. Mr. Speaker, I thank the chairman for allowing this bill to come to the floor. I am aware that there are many of pieces of legislation that could have filled these hours this week.

Mr. Speaker, nurse practitioners fill a vital role in America's health care system. As the gentleman from Ohio pointed out, there are over 106,000 nurse practitioners providing high-quality care around the Nation, and they are especially important in rural and underserved areas.

These health care professionals are critical in my district, especially in areas of Fort Worth, Texas. John Peter Smith, the public hospital system in Tarrant County, maintains 23 clinics for low-income and indigent patients around the county.

Nurse practitioners are able to enhance the services provided in many of these health care clinics. By utilizing nurse practitioners, John Peter Smith is able to see significantly more patients in an outpatient setting and to do so on a finite, fixed taxpayer-funded budget. John Peter Smith and the patients served by the health system could not do without the dedicated corps of nurse practitioners.

And on a personal note, Mr. Speaker, I have worked with nurse practitioners both in a training program at Parkland Hospital and I have had several come through my private practice in Lewisville, Texas, who trained there and stayed on with me to work in private practice, Lori Driggs and Jenny Andrews, and certainly I learned a great deal more from them than I was ever able to teach them.

Mr. Speaker, on November 7 through 13, 2004, the American Academy of Nurse Practitioners will recognize National Nurse Practitioners Week to honor the dedication and commitment of these health care professionals. I rise to commend nurse practitioners for the contribution they make to the health and well-being of our country.

Mr. BROWN of Ohio. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Speaker, I simply rise in strong support of H. Con. Res. 500, honoring the goals and ideals of National Nurse Practitioners Week. I also want to commend the gentleman from Florida (Chairman BILIRAKIS), chairman of the subcommittee, and the gentleman from Ohio (Mr. BROWN), ranking member, for the tremendous work that they do on health and health-related issues.

A great deal of my personal health care is provided by a nurse practitioner, and I simply commend her and all of the other nurse practitioners throughout the country who make up an integral part of our health care delivery system. And I would urge agreement to this concurrent resolution.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 500.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

AMENDING SECTION 340E OF PUBLIC HEALTH SERVICE ACT RELATING TO CHILDREN'S HOSPITALS

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5204) to amend section 340E of the Public Health Service Act (relating to children's hospitals) to modify provisions regarding the determination of the amount of payments for indirect expenses associated with operating approved graduate medical residency training programs.

The Clerk read as follows:

H.R. 5204

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISREGARD OF NEWBORN BASSINETS IN CALCULATING CASE MIX FOR RECEIPT BY CHILDREN'S HOSPITALS OF FUNDING FOR GRADUATE MEDICAL EDUCATION PROGRAMS.

(a) IN GENERAL.—Section 340E(d) of the Public Health Service Act (42 U.S.C. 256e(d)) is amended—

(1) in paragraph (1), by striking ''related to'' and inserting ''associated with''; and

(2) in paragraph (2)(A)—

(A) by inserting ''ratio of the'' after ''hospitals and the''; and

(B) by inserting at the end before the semicolon ''to beds (but excluding beds or bassinets assigned to healthy newborn infants)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments for periods beginning with fiscal year 2005.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 5204, which would amend section 340(e) of the Public Health Service Act to modify provisions regarding the determination of the amount of payments for indirect expenses associated with operating approved graduate medical residency training programs. This legislation was introduced by the gentlewoman from California (Ms. ESHOO), a lady who does so many great things in the Congress, particularly for her district.

Children's hospitals receive important funding through the Federal Children's Hospitals Graduate Medical Education, which we call GME, Payment Program. This funding helps train residents and better enables children's hospitals to serve all children, regardless their ability to pay.

Next year, the Committee on Energy and Commerce plans to work to reauthorize the Children's Graduate Medical Education Program. As chairman of the Health Subcommittee and a proponent of the children's hospitals throughout my entire time in Congress, I plan to vigorously support this reauthorization.

However, while we will be working to reauthorize the program next year, H.R. 5204 provides a necessary, immediate fix for a small number of hospitals that treat a disproportionately high number of healthy infants. Healthy infants. This legislation would allow these hospitals to receive fair CHGME payments by excluding the number of healthy beds and bassinets in children's hospitals from the case mix adjustment. By excluding these healthy beds and bassinets, these hospitals will no longer be penalized for treating healthy babies.

I urge all my colleagues to support H.R. 5204 today.

Mr. Speaker, I reserve the balance of my time.

□ 1615

Mr. BROWN of Ohio. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I am pleased to support this legislation and I want to commend its author the gentlewoman from California (Ms. ESHOO). She has played a leading role in establishing the successful graduate medical education program that is the focus of today's bill and a whole host of other issues.

The Children's Hospital Graduate Medical Education program, known as Children's GME program, corrected an anomaly in medical education funding that prevented children's hospitals from establishing medical training programs for pediatricians and other children's health specialists, in large part because of the peculiarity of the way we fund graduate medical education through Medicare.

The legislation of the gentlewoman from California (Ms. ESHOO) improves that program by ensuring that hospitals with special programs for certain newborns are not discriminated against in the calculation of medical education funding. This correction is included in both the House and Senate versions of GME reauthorization legislation.

I am proud to be the lead Democratic sponsor of this legislation, along with my colleague, the gentlewoman from Connecticut (Mrs. JOHNSON), through H.R. 4578. This legislation before us today provides an interim solution until the reauthorization bill is written into the law, and I urge my colleagues to support the bill offered by the gentlewoman from California (Ms. ESHOO).

Mr. BILIRAKIS. Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield 5 minutes to the gentlewoman from California (Ms. ESHOO), the sponsor of the bill.

Ms. ESHOO. Mr. Speaker, I want to thank my good friend, the gentleman from Ohio (Mr. BROWN), for his leadership as ranking member on this Subcommittee on Health, which is so important not only here in the Congress but for our entire country; and to my good friend, the gentleman from Florida (Mr. BILIRAKIS), our chairman. Surely we would not be here this afternoon were it not for his support and pushing to bring this to the floor so that we can consider it.

What this bill is about, Mr. Speaker, is legislation that is going to fix a flaw in the Children's Hospital Graduate Medical Education payment formula. This formula inadvertently penalizes Lucile Packard Children's Hospital, which is in my district in Palo Alto.

If I just might depart for a moment, Lucile Packard is the mother and the visionary that established this hospital in Palo Alto. There are many from across the world and from different parts of the country that come to have their children cared for there. So I think she is watching us, and she would be very proud. Were it not for Lucile Packard, as I said, this hospital would not exist today.

Mr. Speaker, a portion of the Graduate Medical Education calculation is based on the severity of case mixes. At Lucile Packard Hospital, which is only one of two hospitals in the United States that offers pregnancy and healthy newborn services, it is then penalized. Most do not take care of healthy newborn babies. When they become part of the mix with the very ill ones, the formula becomes skewed. So if the hospital did not care for the healthy newborns, we would not be here today.

The Committee on Energy and Commerce took a look at this to fix it permanently. As the gentleman stated, that will be taken care of in 2006. Today, we are fixing the small gap between now and 2006. It is going to go a long way.

I want to reassure my colleagues, there are not any costs associated with the bill. This is paid for by a reduction in the fiscal year 2005 payment to all hospitals that receive these payments under the program, and that would not have happened unless the hospitals came together. And they have endorsed this. There is endorsement from the National Association of Children's Hospitals, and I want to thank them for coming together to allow this to happen.

I also want to thank John Ford on the staff of the gentleman from Michigan (Mr. DINGELL) and certainly Chuck Clapton on the staff of the gentleman from Texas (Chairman BARTON), and I want to urge all my colleagues to vote in favor of H.R. 5204. It is going to help a great deal, and that help is going to be appreciated not only by the children and their families, but also the young physicians that have devoted themselves to a life in medicine; and in this graduate medical payment, it will enjoy the fullness it should and this will be repaired.

Again, I thank the gentleman from Florida (Mr. BILIRAKIS), most of all for his friendship that I have enjoyed and benefited from and am grateful for since first coming to the House.

Mr. BROWN of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Speaker, I rise in strong support of H.R. 5204 and commend the gentlewoman from California (Ms. ESHOO) for her sponsorship of this legislation.

I represent a congressional district that has five medical schools and 28 hospitals, including Children's Memorial in Chicago, which is one of the best in the Nation. This legislation is going to be very helpful to several of these institutions.

I simply rise in strong support of this legislation, urge passage, and commend again the leadership of this subcommittee for its tremendous activity related to health care and the health care needs of people in these United States of America.

Ms. JACKSON-LEE of Texas. As one of the co-chairs of the Congressional Children's Caucus, I urge my colleagues today to support H.R. 5204, amending section 304e of the Public Health Service Act as it relates to payments to children's hospitals under the Graduate Medical Education program.

The existing provisions of the Public Service Health Act unfairly penalize the two hospitals in the U.S. that offer both pregnancy and healthy newborn services. This penalty is related to calculation of the reimbursements that hospitals receive under the Children's Hospital Graduate Medical Education program (CHGME).

As it is currently configured, the CHGME program calculates payments to hospitals based on severity of the "case mix index." Healthy newborns, like those treated in these two hospitals, reduce the severity of the case mix index and thus the payments to the hospitals. I believe the current method of calculating these payments is unreasonable.

For example, one of the only two hospitals offering healthy newborn services in the U.S. is the Lucile Packard Children's Hospital. When healthy newborns are excluded from the calculation, the Packard hospital has the highest "case mix index" of all children's hospitals in California. With the healthy newborns included, it has the lowest. In other words, Packard is unfairly denied resources to treat seriously ill newborns because it also provides services to healthy newborns. Until the problem is corrected, the Packard hospital will continue to be shortchanged more than $300,000 each year.

This bill corrects the reimbursement problem faced by these two hospitals only for fiscal year 2005. Another bill to reauthorize the Children's Hospital Graduate Medical Education Act, currently on referral to the Subcommittee on Health, will correct this problem in fiscal year 2006 and future years. This legislation is needed to provide relief to the two affected hospitals in fiscal year 2005. This legislation does not change the eligibility for hospitals to qualify under the CHGME program.

I believe that it is unreasonable to penalize hospitals offering services to healthy newborns and urge my colleagues to support this legislation.

Mr. BROWN of Ohio. Mr. Speaker, I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, H.R. 5204.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RESEARCH REVIEW ACT OF 2004

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5213) to expand research information regarding multidisciplinary research projects and epidemiological studies, as amended.

The Clerk read as follows:

H.R. 5213

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 "Research Review Act of 2004".

SEC. 2. MULTI-DISCIPLINARY RESEARCH TEAM AND CONSORTIA REPORT.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the "Secretary"), in coordination with the Director of the National Institutes of Health, shall prepare a report outlining the methods by which the Roadmap for Medical Research, an initiative of such Institutes, has advanced the use of multidisciplinary research teams and consortia of research institutions to advance treatments, develop new therapies, and collaborate on clinical trials, including with respect to spinal cord injury and paralysis research.

(b) REPORT.—Not later than February 1, 2005, the Secretary shall submit the report under subsection (a) to the Committee on Energy and Commerce of the House of Representatives and to the Committe on Health, Education, Labor, and Pensions of the Senate.

SEC. 3. EPIDEMIOLOGICAL STUDY REPORT.

(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall prepare a report outlining the epidemiological studies currently under way at such Centers, future planned studies, the criteria involved in determining what epidemiological studies to conduct, defer, or suspend, and the scope of those studies, including with respect to the inflammatory bowel disease epidemiological study. The report shall include a description of the activities the Centers for Disease Control and Prevention undertakes to establish partnerships with research and patient advocacy communities to expand epidemiological studies.

(b) REPORT.—Not later than May 1, 2005, the Secretary shall submit the report under subsection (a) to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 4. STUDY BY GOVERNMENT ACCOUNTABILITY OFFICE ON MEDICARE AND MEDICAID COVERAGE STANDARDS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the coverage standards that, under the programs under titles XVIII and XIX of the Social Security Act (commonly known as Medicare and Medicaid, respectively), apply to patients with inflammatory bowel disease for the following therapies:

(1) Parenteral nutrition.

(2) Enteral nutrition formula.

(3) Medically necessary food products.

(4) Ostomy supplies.

(5) Therapies approved by the Food and Drug Administration for Crohn's disease and ulcerative colitis.

(b) CONTENT.—The study under subsection (a) shall take into account the appropriate outpatient or home health care delivery settings.

(c) REPORT.—Not later than six months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report describing the findings of the study under subsection (a).

SEC. 5. STUDY BY GOVERNMENT ACCOUNTABILITY OFFICE INVOLVING DISABILITY INSURANCE.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the problems patients encounter when applying for disability insurance benefits under title II of the Social Security Act. The study shall include recommendations for improving the application process for patients with inflammatory bowel disease.

(b) REPORT.—Not later than six months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report describing the findings of the study under subsection (a).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5213, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 5213, the Research Review Act. I introduced this legislation only with the fantastic cooperation of my colleagues and friends, the gentlewoman from New York (Mrs. KELLY) and the gentleman from Ohio (Mr. BROWN) from Ohio, the ranking member on my subcommittee. It was with their cooperation and with the hard work of members of the staff, Mr. Speaker, we were able to get this thing done at really almost the 11th hour.

As chairman of the Committee on Energy and Commerce, Subcommittee on Health, I am extremely concerned, as I think all of us are, about how Federal agencies that fall under our committee's jurisdiction set their priorities for disease research. Every day I have patients, along with their families and friends, looking to me to increase research funding for diseases and conditions that afflict them or their loved ones. While I know that it is not in anyone's best interests to mandate agencies to conduct research into specific diseases, I do believe it is my job, I believe it is our job, to ensure that the Federal initiatives are sufficient.

Next year, I look forward to working with the gentleman from Texas (Chairman BARTON), the gentleman from Ohio (Mr. BROWN) and the gentleman from Michigan (Mr. DINGELL) and all the members of the Committee on Energy and Commerce to reauthorize the National Institutes of Health. My subcommittee has held five hearings during this Congress, the 108th, to highlight research activities at the NIH and to educate members and others about the work that the NIH is doing so we can assess how to help NIH better meet its stated mission.

One thing that has become clear is that while NIH is an exemplary agency, its transparency and accountability in letting Members of Congress and the public know what research is being funded and why could be improved. Providing the public with information is not a problem that is unique to the NIH, however; many of our agencies have similar problems translating their efforts to the public.

I introduced H.R. 5213 to take an additional step in assisting Congress to understand the process of Federal agencies. I believe that this legislation will assist Members of Congress as we work with Federal agencies in the future. It will allow two agencies, the NIH and the CDC, to highlight their involvement using the examples of two debilitating conditions that afflict many individuals, paralysis and inflammatory bowel disease, which we refer to as IBD.

H.R. 5213 directs the Secretary of Health and Human Services, in coordination with the Director of the National Institutes of Health, to prepare a report outlining the methods by which the roadmap for medical research created by Director Dr. Elias Zerhouni has advanced the use of multidisciplinary research teams and institutions to advance treatments, develop new therapies and collaborate in clinical trials, and to also include in this report how this relates to the Federal research initiatives into spinal cord and paralysis research.

The bill also requires the Director of the Centers for Disease Control and Prevention, CDC, to prepare a report outlining epidemiological studies conducted at the CDC, including the irritated bowel disease study currently under way at CDC. The study would include a description of the activity CDC is undertaking to establish partnerships with research and patient advocacy groups to expand these studies, such as the partnership between the CDC and the Chron's and Colitis Foundation.

Additionally, H.R. 5213 directs the General Accounting Office to conduct studies on the Medicare and Medicaid coverage standards that apply to patients with inflammatory bowel disease for therapy, such as medically necessary food products and nutrition services, and the problems that IBD patients encounter when applying for Social Security disability benefits.

Both paralysis and inflammatory bowel disease are crippling diseases, Mr. Speaker, though in very different ways, and both can be extremely debilitating.

I would like to thank the Christopher Reeve Foundation and, in particular, Mr. Christopher Reeve and the Chron's and Colitis Foundation for all of their help. I have worked closely with both of these groups, as well, as I indicated, with the gentlewoman from New York (Mrs. KELLY) and the gentleman from Ohio (Mr. BROWN) to develop this legislation.

I do want to thank the staff, Mr. Ford from the other side, Cheryl Jaeger and Jeanne Haggerty of our staff on this side, for their hard work in getting this piece of legislation ready to come to the floor today; and also I would like to thank the gentleman from Texas (Chairman BARTON) for his leadership in working to provide oversight and reauthorize these Federal agencies; and obviously the cooperation I have always had with the gentleman from Ohio (Mr. BROWN).

I urge my colleagues to approve this important bipartisan bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, over the past 20 or so years, overall inpatient, that is hospital and rehabilitation, overall inpatient days for those living with paralysis have been cut in half. However, those individuals living with paralysis still face astronomical medical costs, and only one-third remain employed after becoming paralyzed.

Fortunately, we stand on the brink of amazing breakthroughs in science for those living with paralysis, with spinal cord injury and other physical disabilities. Through the Christopher Reeve Paralysis Foundation, Christopher Reeve and his wife, Dana, have courageously pushed forward by helping thousands of patients and their families adjust to the dramatic changes engendered by paralysis and by investing in the awareness and advancement of medical research.

I have been honored to cosponsor the Christopher Reeve Paralysis Act in the past two Congresses, alongside my friend, the chairman of the Subcommittee on Health, the gentleman from Florida (Mr. BILIRAKIS).

This legislation is an important step toward understanding the developments and advancements in paralysis and spinal cord injury research and will help our Nation's leaders in medical research set their priorities for the future.

I am also pleased that this legislation includes several provisions relating to the inflammatory bowel disease known as IBD. I have heard from many Ohioans who suffer through this disease, including a remarkable young woman named Sarah Levin.

Sarah Levin takes 11 medications a day. She has endured major surgery and taken steroids that have compromised her physical health. She has been forced to miss work again and again, because Chron's disease can flare up at any time.

Despite the difficult conditions, Sarah has joined her father and thousands of advocates across this country working on legislation focusing on IBD.

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Like so many others, she has been tireless. She has been positive. And her efforts have made a real difference for many of those who are suffering.

This legislation will examine the epidemiology of IBD and therapies currently approved by FDA for the treatment of this debilitating condition.

These studies will also examine appropriate settings for the treatment of IBD and barriers that currently exist for those IBD patients applying for Social Security disability benefits.

This bill contains important measures that promote the public health, and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New York (Mrs. KELLY), who probably knows more about IBD, with the exception of the medical doctors in the Congress, and she shares that information with us, and we are just very indebted to her for making us aware of the horrors of this disease.

Mrs. KELLY. Mr. Speaker, I rise today in support of this measure, H.R. 5213, the Research Review Act of 2004.

This bill represents an important step forward in a long struggle by so many important people in the Crohn's and colitis advocacy communities, patients and their families who have worked so hard to support and advance this legislation. My legislation was H.R. 290, the Inflammatory Bowel Disease Act. We have rolled that bill into this act, and I am very grateful to my colleague, the gentleman from Florida (Mr. BILIRAKIS), for his interest in this issue and for his leadership in getting this bill to the Floor.

Crohn's Disease and ulcerative colitis, collectively known as inflammatory bowel disease, are chronic disorders of the gastrointestinal tract that cause severe pain and suffering in the more than 1 million Americans who are afflicted. We are at an exciting time with respect to the prospect for research and advances on these challenging diseases.

A few years ago, the scientific community discovered the first gene associated with Crohn's disease. This landmark discovery and other advancements in the field have opened up exciting new research pathways which have the potential to lead to better treatments and, hopefully, soon, one day, a cure. However, more needs to be done. This legislation seeks to further this momentum by capitalizing on these promising opportunities.

The IBD epidemiologic study at the Centers for Disease Control is critical to our understanding of the scope of this group of diseases. The CDC, together with the Crohn's and Colitis Foundation of America, have made significant strides toward uncovering vital information about the people who are afflicted with digestive disorders and how many there are out there. This will provide the foundation to move forward with research and disease management and then a cure. We should encourage this type of public-private partnership, and I hope that the CDC will support this worthy project on a long-term basis.

Again, I really want to thank my colleague, the gentleman from Florida (Mr. BILIRAKIS), and my colleague, the gentleman from Texas (Mr. BARTON), and my colleague, the gentleman from Ohio (Mr. BROWN), for their work on this. I encourage all Members to support this measure.

Mr. Speaker, I hope that all Members will vote for this bill.

Mr. BROWN of Ohio. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, H.R. 5213, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BILIRAKIS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

DISTRICT OF COLUMBIA MENTAL HEALTH CIVIL COMMITMENT MODERNIZATION ACT OF 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4302) to amend title 21, District of Columbia Official Code, to enact the provisions of the Mental Health Civil Commitment Act of 2002 which affect the Commission on Mental Health and require action by Congress in order to take effect, as amended.

The Clerk read as follows:

H.R. 4302

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 ''District of Columbia Mental Health Civil Commitment Modernization Act of 2004''.

SEC. 2. COMPOSITION, APPOINTMENT, AND ORGANIZATION OF COMMISSION ON MENTAL HEALTH.

(a) IN GENERAL.—Section 21–502, District of Columbia Official Code, is amended to read as follows:

''§ 21–502. Commission on Mental Health; composition; appointment and terms of members; organization; chairperson; salaries

''(a) The Commission on Mental Health is continued. The Chief Judge of the Superior Court of the District of Columbia shall appoint the members of the Commission, and the Commission shall be composed of 9 members and an alternate chairperson. One member shall be a magistrate judge of the Court appointed pursuant to title 11, District of Columbia Official Code, who shall be a member of the bar of the Court and has engaged in active practice of law in the District of Columbia for a period of at least 5 years prior to his or her appointment. The magistrate judge shall be the Chairperson of the Commission and act as the administrative head of the Commission. The Chairperson shall preside at all hearings and direct all of the proceedings before the Commission. Eight members of the Commission shall be psychiatrists or qualified psychologists, as those terms are defined in section 21–501, who have not had less than 5 years of experience in the diagnosis and treatment of mental illness.

''(b)(1) Appointment of members of the Commission shall be for terms of 4 years.

''(2) The initial appointment of a psychiatrist or a qualified psychologist shall be for a probationary period of one year. After the initial one-year probationary appointment, subsequent appointments of the psychiatrist or qualified psychologist shall be for terms of 4 years.

''(c) The psychiatrist or qualified psychologist members of the Commission shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the Court, so that at any one time the Commission shall consist of the Chairperson and 2 members, each of whom is either a psychiatrist or a qualified psychologist. Members of the Commission who are psychiatrists or qualified psychologists may practice their professions during their tenures of office, but may not participate in the disposition of a case of a person in which they have rendered professional service or advice.

''(d) The Chief Judge of the Court shall appoint a magistrate judge of the Court to serve as an alternate Chairperson of the Commission. The alternate Chairperson shall serve on a part time basis and act as Chairperson in the absence of the permanent Chairperson.

''(e) The rate of compensation for the members of the Commission who are psychiatrists or qualified psychologists shall be fixed by the Executive Officer of the Court.''.

(b) CLERICAL AMENDMENT.—The item relating to section 21–502 in the table of sections for subchapter I of chapter 5 of title 21, District of Columbia Official Code, is amended to read as follows:

''21–502. Commission on Mental Health; composition; appointment and terms of members; organization; chairperson; salaries.''.

(c) EFFECTIVE DATE; TRANSITION FOR CURRENT MEMBERS.—The amendments made by this section shall take effect on the date of the enactment of this Act, except nothing in this section or the amendments made by this section may be construed to affect the appointment or term of service of any individual who serves as a member or alternate member of the Commission on Mental Health (including an individual who serves as the Chairperson or alternate Chairperson of the Commission) on such date.

SEC. 3. COMMISSION MEMBERS DEEMED COMPETENT AND COMPELLABLE WITNESSES AT MENTAL HEALTH PROCEEDINGS.

Section 21–503(b), District of Columbia Official Code, is amended by striking ''The Commission, or any of the members thereof,'' and inserting ''Commission members who are psychiatrists or qualified psychologists''.

SEC. 4. DETENTION FOR EMERGENCY OBSERVATION AND DIAGNOSIS.

Section 21–526, District of Columbia Official Code, is amended by adding at the end the following new subsections:

''(c) The maximum period of time for detention for emergency observation and diagnosis may be extended for up to 21 days, if judicial proceedings under subchapter IV of this chapter have been commenced before the expiration of the order entered under section 21–524 and a psychiatrist or qualified psychologist has examined the person who is the subject of the judicial proceedings and is of the opinion that the person being detained remains mentally ill and is likely to injure himself or others as a result of the illness unless the emergency detention is continued. For good cause shown, the Court may extend the period of detention for emergency observation and diagnosis. The period of detention for emergency observation and diagnosis may be extended pursuant to section 21–543(b) or following a hearing before the Commission pursuant to subsections (d) and (e) of this section.

''(d) If the Commission, at the conclusion of its hearing pursuant to section 21–542, has found that the person with respect to whom the hearing was held is mentally ill and, because of the mental illness, is likely to injure himself or others if not committed, and has concluded that a recommendation of inpatient commitment is the least restrictive alternative available to prevent the person from injuring himself or others, the detention for emergency observation and diagnosis may be continued by the Department or hospital—

''(1) pending the conclusion of judicial proceedings under subchapter IV of this chapter;

''(2) until the Court enters an order discharging the person; or

''(3) until the Department or hospital determines that continued hospitalization is no longer the least restrictive form of treatment appropriate for the person being detained.

''(e) If the Commission, at the conclusion of its hearing, finds that the person is mentally ill, is likely to injure himself or other persons as a result of mental illness if not committed, and that outpatient treatment is the least restrictive form of commitment appropriate, then, within 14 days of the date of the hearing, the person shall be discharged from inpatient status and shall receive outpatient mental health services or mental health supports as an emergency nonvoluntary patient consistent with this subchapter, pending the conclusion of judicial proceedings under subchapter IV of this chapter.''.

SEC. 5. REPRESENTATION BY COUNSEL OF PERSONS ALLEGED TO BE MENTALLY ILL.

Section 21–543, District of Columbia Official Code, is amended—

(1) in subsection (a) (as redesignated by section 2(r)(1) of the Mental Health Civil Commitment Act of 2002), by striking the last sentence; and

(2) by adding at the end the following new subsection:

''(b) The Commission may not grant a continuance for counsel to prepare his case for more than 5 days. The Commission may grant continuances for good cause shown for periods of up to 14 days. If the Commission grants a continuance, the emergency observation and detention of the person about whom the hearing is being held shall be extended for the duration of the continuance.''.

SEC. 6. HEARING AND DETERMINATION ON QUESTION OF MENTAL ILLNESS.

(a) IN GENERAL.—Section 21–545, District of Columbia Official Code, is amended—

(1) in subsection (a), by striking ''jury trial'' each place it appears and inserting ''jury trial or a trial by the Court'';

(2) by amending subsection (b) to read as follows:

''(b)(1) If the Court or jury finds that the person is not mentally ill or is not likely to injure himself or others as a result of mental illness, the Court shall dismiss the petition and order the person's release.

''(2) If the Court or jury finds that the person is mentally ill and, because of that mental illness, is likely to injure himself or others if not committed, the Court may order the person's commitment to the Department or to any other facility, hospital, or mental health provider that the Court believes is the least restrictive alternative consistent with the best interests of the person and the public. An order of commitment issued pursuant to this paragraph shall be for a period of one year.''; and

(3) by adding at the end the following new subsections:

''(c) The psychiatrists and qualified psychologists who are members of the Commission shall be competent and compellable witnesses at a hearing or trial held pursuant to this chapter.

''(d) The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the Court, from the jurors in attendance upon other branches of the Court, who shall perform the services in addition to and as part of their duties in the Court.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect

to trials under section 21–545, District of Columbia Code, which are initiated on or after the date of the enactment of this Act.

SEC. 7. RENEWAL OF COMMITMENT STATUS BY COMMISSION.

(a) IN GENERAL.—Subchapter IV of chapter 5 of title 21, District of Columbia Official Code, is amended by inserting after section 21–545 the following new section:

"§ 21–545.01. Renewal of commitment status by commission; review by Court

''(a) At least 60 days prior to the expiration of an order of commitment issued pursuant to section 21–545 or this section, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which the person is committed may petition the Commission for a renewal of the order of commitment for that person. For good cause shown, a petition of commitment may be filed within the last 60 days of the one-year period of commitment. The petition for renewal of commitment shall be supported by a certificate of a psychiatrist or qualified psychologist stating that he has examined the person and is of the opinion that the person is mentally ill, and, because of the illness, is likely to injure himself or other persons if not committed. The term of the renewed commitment order shall not exceed one year.

''(b) Within 3 days of the filing of a petition under subsection (a) of this section, the Commission shall send a copy of the petition and supporting certificate by registered mail to the person with respect to whom the petition was filed and by regular mail to the person's attorney.

''(c) The Commission shall promptly examine a person for whom a petition is filed under subsection (a) of this section, and, in accordance with the procedures described in sections 21–542 and 21–543, shall thereafter promptly hold a hearing on the issue of the person's mental illness and whether, as a result of a mental illness, the person is likely to injure himself or other persons if not committed.

''(d) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held is no longer mentally ill, or is not mentally ill to the extent that the person is likely to injure himself or other persons if not committed, the Commission shall immediately order the termination of the commitment and notify the Court of that fact in writing.

''(e) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held remains mentally ill to the extent that the person is likely to injure himself or others if not committed, the Commission shall order the renewal of the commitment of the person for an additional term not to exceed one year and shall promptly report that fact, in writing, to the Court. The report shall contain the Commission's findings of fact and conclusions of law. A copy of the report shall be served by registered mail on the person with respect to whom the hearing was held and by mail on the person's attorney.

''(f) If a petition for a renewal of an order of commitment is pending at the expiration of the commitment period ordered under section 21–545 or this section, the Court may, for good cause shown, extend the period of commitment pending resolution of the renewal petition.

''(g) Within the last 30 days of the period of commitment, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which a person is committed, shall notify the Court which ordered the person's commitment pursuant to section 21–545 or this section of the decision not to seek renewal of commitment. Notice to the Court shall be in writing and a copy of the notice shall be mailed to the person who was committed and the person's attorney.

''(h)(1) A person for whom the Commission orders renewed commitment pursuant to subsection (e) of this section may seek a review of the Commission's order by the Superior Court of the District of Columbia, and the Commission, orally and in writing, shall advise the person of this right.

''(2) A review of the Commission's order of renewed commitment, in whole or in part, may be made by a judge of the appropriate division sua sponte and shall be made upon a motion of one of the parties made pursuant to procedures established by rules of the Court. The reviewing judge shall conduct such proceedings as required by the rules of the Court.

''(3) An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Court has reviewed the Commission's order of renewed commitment.''.

(b) CLERICAL AMENDMENT.—The table of sections of subchapter IV of chapter 5 of title 21, District of Columbia Official Code, is amended by inserting after the item relating to section 21–545 the following:

''21–545.01. Renewal of commitment status by Commission; review by Court.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. TOM DAVIS) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. TOM DAVIS).

GENERAL LEAVE

Mr. TOM DAVIS of Virginia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 4302, the District of Columbia Civil Commitment Modernization Act of 2004.

I introduced this legislation, along with the gentlewoman from the District of Columbia (Ms. NORTON), in order to amend the authorities of the D.C. Commission on Mental Health. The Commission is a branch of the D.C. Superior Court that presides over civil commitment hearings and makes recommendations to the court.

Mr. Speaker, this legislation is important because the current mental health care system in the District is outdated, and these improvements are imperative and long overdue. First, H.R. 4302 will limit the duration of civil commitment to one year from indeterminate. The bill includes provisions that will create a streamlined procedure for civil recommitment, permit the commission to determine the least restrictive setting for the patient's care and permit qualified psychologists to join the panel of doctors who preside over commitment hearings. In addition, these changes will enable private hospitals to provide emergency in-patient psychiatric treatment, relieving a significant financial burden from the District of Columbia.

H.R. 4302 is based on the D.C. Mental Health Civil Commitment Act of 2002 which passed the D.C. Council last year. Today's legislation is necessary, because the D.C. Home Rule Act requires congressional approval of measures that affect the D.C. Superior Court.

Mr. Speaker, I urge Members to join with the gentlewoman from the District of Columbia and myself to help the District modernize its mental health care practices and end the era of Federal court cases against the city.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I ask unanimous consent that the gentlewoman from the District of Columbia (Ms. NORTON) manage the time on our side for this bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Ms. NORTON. Mr. Speaker, I thank the gentleman from Illinois for yielding me this time to manage the bill, and I especially thank my good friend, the gentleman from Virginia (Mr. DAVIS), the chairman of the Committee on Government Reform, for introducing this bill with me.

Mr. Speaker, I yield myself such time as I may consume.

The District of Columbia Mental Health Civil Commitment Modernization Act would significantly help modernize the way mental health services in the District of Columbia are delivered. Under the Home Rule Charter, these changes require affirmative action by the Congress.

The amendments are intended to reinvigorate the rights of people with mental illness in the District of Columbia and encourage community-based treatment alternatives to costly and restrictive hospital confinement. The amendments are designed to ensure that people with mental illness are treated in the least restrictive setting, consistent with the individual's needs and public safety. The amendments also are designed to promote the use of private or community hospitals by people who are in need of acute psychiatric care, thus reducing the burden on Saint Elizabeth's Hospital.

Mr. Speaker, H.R. 4302 would adopt verbatim the changes to the Commission on Mental Health proposed in the District's law. In passing this bill, the Congress will play an important role in aiding the District to reform its mental health services and to treat its mental health patients with dignity and respect.

Last year, the District government approved sweeping changes to its 40-year old civil commitment statute, commonly referred to as the

"Ervin Act" after its principal author, Sam Ervin. Some provisions required no more than the 30-day congressional review period, while others required affirmative congressional approval. The amendments were intended to reinvigorate the rights of people with mental illness and encourage community-based treatment alternatives to costly and restrictive hospital confinement. The amendments are designed to ensure that people with mental illness are treated in the least restrictive setting consistent with the individual's needs and public safety. The amendments also are designed to promote the use of private or community hospitals by people who are in need of acute psychiatric care, thus reducing the burden on St. Elizabeth's Hospital, and increasing the amount of acute care that can be paid for by Medicaid instead of local tax dollars.

Among its significant improvements, the District's new law sets a limit on the length of commitment and limits how long a person can be confined to a hospital while waiting for a hearing. Specifically, this bill: (1) changes the duration of civil commitment from an indeterminate period to a year period; (2) permits the Commission on Mental Health to determine the least restrictive setting for a patient's care; (3) sets new limits on the postponement of the Commission's hearing; and (4) permits qualified psychologists to join the panel of doctors who preside over hearings on a rotating basis.

H.R. 4302 would adopt verbatim the changes to the Commission on Mental Health proposed in the District's law. In passing this bill, the Congress will play an important role in aiding the District to reform its mental health services and to treat its mental health patients with the dignity and respect.

Mr. Speaker, I yield back the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I have no other speakers, urge adoption of the bill, and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. TOM DAVIS) that the House suspend the rules and pass the bill, H.R. 4302, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

FEDERAL WORKFORCE FLEXIBILITY ACT OF 2003

Mr. TOM DAVIS of Virginia. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 129) to provide for reform relating to Federal employment, and for other purposes, as amended.

The Clerk read as follows:

S. 129

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 ''Federal Workforce Flexibility Act of 2004''.

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

Sec. 1. Short title; table of contents.
TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT
Sec. 101. Recruitment, relocation, and retention bonuses.
Sec. 102. Streamlined critical pay authority.
TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER DEVELOPMENT AND BENEFITS
Sec. 201. Agency training.
Sec. 202. Annual leave enhancements.
Sec. 203. Compensatory time off for travel.
TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION
Sec. 301. Corrections relating to pay administration.
Sec. 302. Technical corrections.

TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION BONUSES.

(a) BONUSES.—

(1) IN GENERAL.—Chapter 57 of title 5, United States Code, is amended by striking sections 5753 and 5754 and inserting the following:

"§ 5753. Recruitment and relocation bonuses

''(a)(1) This section may be applied to—

''(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

''(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

''(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

''(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

''(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a)); or

''(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

''(3) In this section, the term 'employee' has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

''(b) The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—

''(1) the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and

''(2) the individual—

''(A) is newly appointed as an employee of the Federal Government; or

''(B)(i) is currently employed by the Federal Government; and

''(ii)(I) moves to a new position in the same geographic area under circumstances described in regulations of the Office; or

''(II) must relocate to accept a position in a different geographic area.

''(c)(1) Payment of a bonus under this section shall be contingent upon the employee entering into a written service agreement to complete a period of employment with the agency, not longer than 4 years. The Office may, by regulation, prescribe a minimum service period for purposes of this section.

''(2)(A) The agreement shall include—

''(i) the commencement and termination dates of the required service period (or provisions for the determination thereof);

''(ii) the amount of the bonus;

''(iii) the method of payment; and

''(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

''(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

''(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

''(ii) the effect of the termination.

''(C) The required service period shall commence upon the commencement of service with the agency or movement to a new position or geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under regulations of the Office, such as when there is an initial period of formal basic training.

''(d)(1) Except as provided in subsection (e), a bonus under this section shall not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including a fractional part of a year, as determined under regulations of the Office) in the required service period of the employee involved.

''(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

''(3) A bonus under this section is not part of the basic pay of an employee for any purpose.

''(4) Under regulations of the Office, a recruitment bonus under this section may be paid to an eligible individual before that individual enters on duty.

''(e) The Office may authorize the head of an agency to waive the limitation under subsection (d)(1) based on a critical agency need, subject to regulations prescribed by the Office. Under such a waiver, the maximum bonus allowable shall—

''(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting '50' for '25'; but

''(2) in no event exceed 100 percent of the annual rate of basic pay of the employee at the beginning of the service period.

Nothing in this subsection shall be considered to permit the waiver of any requirement under subsection (c).

''(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

''(g) The Office may prescribe regulations to carry out this section, including regulations relating to the repayment of a bonus under this section in appropriate circumstances when the agreed-upon service period has not been completed.

"§ 5754. Retention bonuses

''(a)(1) This section may be applied to—

''(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

''(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

''(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

''(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

''(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a)); or

''(C) a position which has been excepted from the competitive service by reason of its

confidential, policy-determining, policy-making, or policy-advocating character.

''(3) In this section, the term 'employee' has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

''(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if—

''(1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

''(2) the agency determines that, in the absence of a retention bonus, the employee would be likely to leave—

''(A) the Federal service; or

''(B) for a different position in the Federal service under conditions described in regulations of the Office.

''(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

''(d)(1) Payment of a retention bonus is contingent upon the employee entering into a written service agreement with the agency to complete a period of employment with the agency.

''(2)(A) The agreement shall include—

''(i) the length of the required service period;

''(ii) the amount of the bonus;

''(iii) the method of payment; and

''(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

''(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

''(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

''(ii) the effect of the termination.

''(3)(A) Notwithstanding paragraph (1), a written service agreement is not required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred.

''(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

''(4) A retention bonus for an employee may not be based on any period of such service which is the basis for a recruitment or relocation bonus under section 5753.

''(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a percentage of the employee's basic pay for the service period associated with the bonus, may not exceed—

''(A) 25 percent of the employee's basic pay if paid under subsection (b); or

''(B) 10 percent of an employee's basic pay if paid under subsection (c).

''(2)(A) A retention bonus may be paid to an employee in installments after completion of specified periods of service or in a single lump sum at the end of the full period of service required by the agreement.

''(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

''(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement.

''(D) For purposes of this paragraph, the bonus percentage rate established for an employee means the bonus percentage rate established for such employee in accordance with paragraph (1) or subsection (f), as the case may be.

''(3) A retention bonus is not part of the basic pay of an employee for any purpose.

''(f) Upon the request of the head of an agency, the Office may waive the limit established under subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

''(g) The Office shall require that, before paying any bonuses under this section, an agency shall establish a plan for the payment of any such bonuses, subject to regulations prescribed by the Office.

''(h) The Office may prescribe regulations to carry out this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by striking the item relating to section 5754 and inserting the following:

''5754. Retention bonuses.''.

(3) SENSE OF CONGRESS.—It is the sense of the Congress that the Director of the Office of Personnel Management—

(A) should, each time a bonus is paid under the amendment made by paragraph (1) to recruit or relocate a Federal employee from one Government agency to another within the same geographic area or to retain a Federal employee who might otherwise leave one Government agency for another within the same geographic area, be notified of that payment within 60 days after the date on which such bonus is paid; and

(B) should monitor the payment of such bonuses (in the circumstances described in subparagraph (A)) to ensure that they are an effective use of the Federal Government's funds and have not adversely affected the ability of those Government agencies that lost employees to other Government agencies (in such circumstances) to carry out their mission.

(b) RELOCATION PAYMENTS.—Section 407 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note; 104 Stat. 1467) is repealed.

(c) REPORTS.—

(1) RECRUITMENT AND RELOCATION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives annually, for each of the first 5 years during which section 5753 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency and each type of bonus under such section—

(i) the number and dollar-amount of bonuses paid—

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to individuals who moved between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

(ii) a determination of the extent to which such bonuses furthered the purposes of such section.

(2) RETENTION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives annually, for each of the first 5 years during which section 5754 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency—

(i) the number and dollar-amount of bonuses paid—

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to prevent individuals from moving between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

(ii) a determination of the extent to which such bonuses furthered the purposes of such section.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—Except as provided under paragraphs (2) and (3), this section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO AGREEMENTS.—A recruitment or relocation bonus service agreement that was authorized under section 5753 of title 5, United States Code, before the effective date under paragraph (1) shall continue, until its expiration, to be subject to such section as in effect on the day before such effective date.

(3) APPLICATION TO ALLOWANCES.—Payment of a retention allowance that was authorized under section 5754 of title 5, United States Code, before the effective date under paragraph (1) shall continue, subject to such section as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than 1 year after such effective date).

SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.

Section 5377 of title 5, United States Code, is amended—

(1) by striking ''Office of Personnel Management'' each place it appears and inserting ''Office of Management and Budget'';

(2) by striking ''Office of Management and Budget'' each place it appears and inserting ''Office of Personnel Management'';

(3) in subsection (g), by striking ''prescribing regulations under this section or''; and

(4) in subsection (h), by striking ''Committee on Post Office and Civil Service'' and inserting ''Committee on Government Reform''.

TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER DEVELOPMENT AND BENEFITS

SEC. 201. AGENCY TRAINING.

(a) TRAINING TO ACCOMPLISH PERFORMANCE PLANS AND STRATEGIC GOALS.—Section 4103 of title 5, United States Code, is amended by adding at the end the following:

''(c) The head of each agency shall, on a regular basis—

''(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and

''(2) modify such program or plan as needed to accomplish such plans and goals.''.

(b) SPECIFIC TRAINING PROGRAMS.—

(1) IN GENERAL.—Chapter 41 of title 5, United States Code, is amended by adding after section 4120 the following:

''§ 4121. Specific training programs

''In consultation with the Office of Personnel Management, the head of each agency shall establish—

''(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

''(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

''(A) relating to employees with unacceptable performance;

''(B) mentoring employees and improving employee performance and productivity; and

''(C) conducting employee performance appraisals.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by adding at the end the following:

''4121. Specific training programs.''.

SEC. 202. ANNUAL LEAVE ENHANCEMENTS.

(a) CREDITABILITY OF PRIOR NONGOVERNMENTAL SERVICE FOR PURPOSES OF DETERMINING RATE OF LEAVE ACCRUAL.—

(1) IN GENERAL.—Section 6303 of title 5, United States Code, is amended by adding at the end the following:

''(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

''(A) such service—

''(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and

''(ii) meets such other requirements as the Office may prescribe; and

''(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

''(2) Service described in paragraph (1)—

''(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee's appointment; and

''(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

''(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.''.

(2) CONFORMING AMENDMENT.—The second sentence of section 6303(a) of title 5, United States Code, is amended by striking the period and inserting '', and for all service which is creditable by virtue of subsection (e).''.

(b) OTHER ANNUAL LEAVE ENHANCEMENTS.—Section 6303 of title 5, United States Code, is amended by adding after subsection (e) (as added by subsection (a)) the following:

''(f) Notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) shall be 1 day for each full biweekly pay period in the case of any employee who holds a position which is subject to—

''(1) section 5376 or 5383; or

''(2) a pay system equivalent to either of the foregoing, as determined by the Office of Personnel Management.''.

(c) APPLICABILITY.—None of the amendments made by subsection (a) shall apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.

SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.

(a) IN GENERAL.—Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) Notwithstanding section 5542(b)(2), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

''(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.''.

(b) 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 5550a the following:

''5550b. Compensatory time off for travel.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the earlier of—

(1) the effective date of any regulations prescribed to carry out such amendments; or

(2) the 90th day after the date of the enactment of this Act.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRATION.

(a) IN GENERAL.—Chapter 53 of title 5, United States Code, is amended—

(1) in section 5302, by striking paragraph (8) and inserting the following:

''(8) the term 'rates of pay under the General Schedule', 'rates of pay for the General Schedule', or 'scheduled rates of basic pay' means the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; and'';

(2) in section 5305—

(A) by striking subsection (a) and inserting the following:

''(a)(1) Whenever the Office of Personnel Management finds that the Government's recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

''(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.'';

(B) in subsection (b), by striking paragraph (4) and inserting the following:

''(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.'';

(C) in subsection (d)—

(i) by striking ''President'' and inserting ''Office of Personnel Management''; and

(ii) by striking ''or by such agency as he may designate'' and inserting ''(or by such other agency as the President may designate under the last sentence of subsection (a)(1))'';

(D) in subsection (e), by striking ''basic pay'' and inserting ''pay'';

(E) by striking subsection (f) and inserting the following:

''(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee's special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).'';

(F) in subsection (g)(1)—

(i) by striking ''basic pay'' and inserting ''pay''; and

(ii) by striking ''President (or his designated agency)'' and inserting ''Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)'';

(G) by striking subsection (h) and inserting the following:

''(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term 'basic pay' includes any applicable locality-based comparability payment under section 5304 or similar provision of law.''; and

(H) by adding at the end the following:

''(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee's new rate of pay shall be initially established under conversion rules prescribed

by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

''(1) First, determine the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move.

''(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

''(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.'';

(3) in section 5334—

(A) in subsection (b), by adding at the end the following:

''If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for the employee's grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.''; and

(B) by adding at the end the following:

''(g) In the case of an employee who—

''(1) moves to a new official duty station, and

''(2) by virtue of such move, becomes subject to a different pay schedule,

any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, shall be made—

''(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and

''(B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.'';

(4) in section 5361—

(A) by amending paragraph (4) to read as follows:

''(4) 'rate of basic pay' means—

''(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

''(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

''(ii) any applicable special pay under section 5305 or similar provision of law; and

''(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

''(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;'';

(B) in paragraph (6), by striking ''and'' at the end;

(C) in paragraph (7), by striking the period and inserting''; and''; and

(D) by adding at the end the following:

''(8) 'retained rate' means the rate of basic pay to which an employee is entitled under section 5363(b)(2).'';

(5) in section 5363—

(A) in subsection (a), by striking the matter following paragraph (4) and inserting the following:

''is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.''; and

(B) by striking subsections (b) and (c) and inserting the following:

''(b)(1)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

''(B) This section shall cease to apply to an employee to whom subparagraph (A) applies once the appropriate rate of basic pay has been determined for such employee under this paragraph.

''(2)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is greater than the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

''(i) the employee's former rate of basic pay; or

''(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved,

as adjusted by subparagraph (B).

''(B) A rate to which an employee is entitled under this paragraph shall be increased at the time of any increase in the maximum rate of basic pay payable for the grade of the employee's position by 50 percent of the dollar amount of each such increase.

''(3) For purposes of this subsection, the term 'former rate of basic pay', as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

''(c)(1) Notwithstanding any other provision of this section, in the case of an employee who—

''(A) moves to a new official duty station, and

''(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section,

this section shall be applied—

''(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the pay range) before the move, and

''(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

''(2) A reduction in an employee's rate of basic pay resulting from a determination under paragraph (1)(ii) is not a basis for an entitlement under this section.

''(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

''(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

''(e) This section shall not apply, or shall cease to apply, to an employee who—

''(1) has a break in service of 1 workday or more;

''(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or

''(3) is demoted for personal cause or at the employee's request.''; and

(6) in section 5365(b), by inserting after ''provisions of this subchapter'' the following: ''(subject to any conditions or limitations the Office may establish)''.

(b) SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.—Section 403(c) of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) is amended by striking all after ''provision of law)'' and inserting ''and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).''.

(c) REPEAL.—Section 4505a(a)(2) of title 5, United States Code, is amended—

(1) by striking ''(2)(A)'' and inserting ''(2)''; and

(2) by striking subparagraph (B).

(d) EFFECTIVE DATE; CONVERSION RULES.—

(1) EFFECTIVE DATE.—This section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) CONVERSION RULES.—

(A) INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee's position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

(B) DEFINITION.—For purposes of this paragraph, the term ''covered pay schedule'' has the meaning given such term by section 5361 of title 5, United States Code.

SEC. 302. TECHNICAL CORRECTIONS.

(a)(1) Section 5304 of title 5, United States Code, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), is amended—

(A) in subsection (g)(2)(A), by striking ''(A)–(D)'' and inserting ''(A)–(C)''; and

(B) in subsection (h)(2)(B)(i), by striking ''or (vii)'' and inserting ''or (vi)''.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

(b) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Administrator of the Office of Electronic Government.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. TOM DAVIS) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. TOM DAVIS).

GENERAL LEAVE

Mr. TOM DAVIS of Virginia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the Senate bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 129, the Federal Workforce Flexibility Act, is a momentous step toward effectively reforming the Federal civil service system. For 2 years, the Committee on Government Reform has worked to revitalize the management structure of specific departments and agencies: Homeland Security, Defense, NASA, the SEC and the GAO, to name a few. This legislation provides the rest of the Federal Government many of the flexibilities authorized for these specified agencies.

As we increase flexibilities provided to agencies and managers, we enhance their ability to manage their workforce. S. 129 is supported by the National Treasury Employees Union and the administration, and I urge my colleagues to support it as well.

Mr. Speaker, S. 129 will help Federal managers build a strong workforce by allowing managers to use recruitment, relocation and retention bonuses in a more strategic manner. This legislation also ensures that agencies will effectively manage their employee training efforts.

Under this bill, agencies will be required to align their training with performance plans and strategic goals, establish a comprehensive management succession program, and provide special training to managers who are dealing with unacceptable performances. In addition, it streamlines critical pay authority for positions that are difficult to fill and enhances annual leave benefits. It also allows workers to take time off in exchange for travel, and offers many other positive reforms for the Federal civil service.

Despite all of these reforms, it is our hope that the bill would include two additional provisions that we unfortunately had to remove due to direct spending implications, as well as a provision dealing with air traffic controller retirement.

The first provision would have corrected current inequities in retirement benefit calculations for part-time Federal service under the Civil Service Retirement System. The second would have codified the current practice of providing civil service retirement credit for attendance at one of the four Federal military service academies. And the final provision would have taken the air traffic controller retirement policy that was included as part of last year's aviation authorization bill and conformed it to existing government-wide enhanced annuity retirement policy.

Mr. Speaker, the Committee on Government Reform intends to pursue all of these legislative initiatives in the 109th Congress, and I look forward to working with my colleagues on these issues.

I want to commend the work of the Subcommittee on Civil Service on this legislation, especially our former chair, the gentlewoman from Virginia (Mrs. JO ANN DAVIS) and the gentleman from Illinois (Ranking Member DAVIS). Their good work and cooperation is reflected in this bill before us today, and their dedication to improving the Federal service generally is of great importance as we seek to make our government more competitive in the labor market.

Mr. Speaker, as chairman of the Committee on Government Reform, I have made my top priority the transformation of the Federal Government into an organization that is more efficient, effective and responsive to the needs of the American people. For this to occur, the establishment of a modernized human capital management system is of utmost importance. S. 129 is integral to this effort, and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

I am pleased to join with the gentleman from Virginia (Chairman TOM DAVIS) in consideration of S. 129, the Federal Workforce Flexibility Act of 2004, which would provide a variety of personnel flexibilities for Federal agencies.

Among other things, these government-wide flexibilities would provide Federal agencies with additional tools for recruiting employees for difficult-to-fill positions and for retaining employees with unusual qualifications. I am pleased that the flexibilities in this bill apply government-wide, and I view this as a better approach than the agency-specific reform bills that Congress has passed in recent years.

During the subcommittee markup of S. 129, this subcommittee accepted my amendment that prohibits recruitment, relocation and retention bonuses from being paid to political appointees. There is no evidence that the Federal Government is having difficulty recruiting or retaining political appointees, and therefore, such bonuses are not needed for this group of employees.

In addition, my amendment requires the Office of Personnel Management to report the number of bonuses paid under the bill. This will allow Congress to evaluate whether these bonuses are effective in improving the recruitment and retention of highly qualified employees.

Earlier this month, we were reminded of how important it is to make these kinds of determinations. The Government Accounting Office, or GAO, report found that agencies are not using all of the hiring flexibilities that Congress has given them over the years. This troubling GAO finding deserves this committee's further oversight. After all, it does no good to authorize recruiting tools that are never used.

□ 1645

Furthermore, the minority amendment recommends that OPM monitor recruitment bonuses paid by one Federal agency to hire an individual working in another Federal agency that is located in the same geographic area. OPM also will have to study bonuses that are used to keep current employees from leaving a position at one Federal agency for a position at another Federal agency. It is not generally in the government's best interest for agencies to engage in bidding wars over each other's employees. OPM should ensure that bonuses paid to employees moving within the Federal Government are an effective use of the government's resources and do not negatively impact the human capital needs of the entire Federal Government.

Finally, I want to highlight one provision in this bill that provides compensatory time for Federal employees when they travel on official business during nonworking hours. If it is necessary for an employee to travel on Sunday to attend an out-of-town meeting on Monday, that employee should receive some type of credit for giving up his or her weekend to travel for the government. I am pleased that an effort to place caps on compensatory time was dropped from the bill.

I want to commend the gentleman from Virginia (Mr. TOM DAVIS) and the ranking member, the gentleman from California (Mr. WAXMAN), for their leadership in bringing this legislation to the floor. I urge its support.

Mr. Speaker, I yield back the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I yield myself such time as I may consume.

I again want to thank my ranking member, the gentleman from California (Mr. WAXMAN), and the gentleman from Illinois (Mr. DAVIS) for

their work. It has been a good bipartisan operation. I thank, of course, the sponsors from the other body as well. I urge my colleagues to support this.

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today in strong support of S. 129, the Federal Workforce Flexibility Act of 2004. As the original sponsor of the House version of this legislation, H.R. 1601, I am proud to see S. 129 considered on the House floor today.

This bill is an important tool as the Federal Government works to become a model employer. As the former-Chair of the Civil Service Subcommittee, I held hearings to explore what steps we can take to attract, motivate, and retain the best qualified workers to the Federal Government. S. 129 addresses the very real pay, benefit, and personal issues we investigated that keep potential employees from joining the civil service and sometimes drive our best employees and managers away.

The Federal Workforce Flexibility Act would do many things to improve the effectiveness of the Federal Government, including expanding agencies' abilities to offer recruitment, retention, and relocation bonuses, allowing agencies to offer enhanced annual leave benefits to mid-career hires, emphasizing training, streamlining critical pay authority, and making it easier for agencies to establish demonstration projects.

Mr. Speaker, S. 129 will go a long way in strengthening the Federal workforce, and I urge my colleagues to support this important legislation.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Virginia (Mr. TOM DAVIS) that the House suspend the rules and pass the Senate bill, S. 129, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

CONGRATULATING ANDREW WOJTANIK FOR WINNING THE 16TH ANNUAL NATIONAL GEOGRAPHIC BEE

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 815) congratulating Andrew Wojtanik for winning the 16th Annual National Geographic Bee, conducted by the National Geographic Society.

The Clerk read as follows:

H. RES. 815

Whereas the 16th Annual National Geographic Bee was held in Washington, D.C., from May 25 to May 26, 2004;

Whereas the National Geographic Bee encourages the participation of millions of students and thousands of schools nationwide;

Whereas Andrew Wojtanik, an 8th grade student at Lakewood Middle School in Overland Park, Kansas, displayed his mastery of world geography by winning the 16th Annual National Geographic Bee;

Whereas Andrew Wojtanik competed against 54 other elementary, middle, and junior high school students from across the United States, Puerto Rico, the Virgin Islands, and the Pacific Territories;

Whereas the National Geographic Bee tests the knowledge of students in a variety of subjects related to world geography, including physical, economic, cultural, political, and environmental topics;

Whereas the creation of the National Geographic Bee is an example of the National Geographic Society's commitment to broadening the understanding of students and the general public about the world around them;

Whereas geographic literacy has become increasingly important as technology and world events more often cross borders, oceans, and continents;

Whereas surveys consistently show that the level of geographic knowledge among people in the United States lags behind citizens of other countries;

Whereas a National Geographic-Roper survey of young adults between the ages of 18 and 24 in 9 different countries recently indicated that young adults in the United States were outperformed in geographic literacy by young adults in Sweden, Germany, Italy, France, Japan, Great Britain, and Canada;

Whereas the National Geographic-Roper survey also indicated that only 13 percent of young adults in the United States between the ages of 18 and 24 could correctly identify Iraq on a map of the Asia and the Middle East: Now, therefore, be it

Resolved, That the House of Representatives—

(1) congratulates Andrew Wojtanik, the champion of the 16th Annual National Geographic Bee, for his comprehensive knowledge of geography; and

(2) directs the Clerk of the House of Representatives to make available enrolled copies of this resolution to Lakewood Middle School in Overland Park, Kansas, for appropriate display and to transmit an enrolled copy of this resolution to Andrew Wojtanik and his family.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 815.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 815 congratulates Andrew Wojtanik for winning the 16th Annual National Geographic Bee conducted by the National Geographic Society.

Mr. Speaker, this is a terrific and well-deserved honor for a terrific and deserving young man. I strongly support the resolution and urge all of my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 14-year-old 8th grader Andrew Wojtanik from Lakewood Middle School in Overland Park, Kansas, took top honors at the 2004 National Geographic Bee, which was held here in Washington, D.C. in May.

Andrew should be an example for all young people because he won a $25,000 college scholarship, a lifetime membership in the National Geographic Society, and a week at a Sea World Busch Gardens Adventure Camp.

The winning question was: ''Peshawar, a city in the North-West Frontier Province of Pakistan has had strategic importance for decades because of its location near a historic pass.''

Andrew answered correctly when he replied, ''Khyber Pass.''

How many of us would have answered that question correctly? Well, I do not know. But for a $25,000 scholarship I am sure that there are many young people who would try.

I congratulate Andrew and urge all of my colleagues to vote affirmatively for this resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I commend the gentleman from Kansas (Mr. MOORE), the author of this resolution, and I urge passage and congratulate Andrew Wojtanik.

Mr. MOORE. Mr. Speaker, on behalf of his proud neighbors in Kansas' Third Congressional District, and particularly on behalf of the students and teachers at Lakewood Middle School in Overland Park, Kansas, I am honored today to speak in favor of my resolution congratulating Andrew Wojtanik for winning the 16th Annual National Geographic Bee. I have been joined in this effort by Representatives JIM RYUN and JERRY MORAN of Kansas, and by Representatives MAJOR OWENS, EARL BLUMENAUER, and MAX BURNS. This resolution is similar to H. Res. 804, which we introduced last week, and reintroduced on Monday due to some jurisdictional issues which prevented bringing the original resolution to the floor quickly.

On May 26, 2004, Andrew won the 16th Annual National Geographic Bee when he correctly answered a question about the Khyber Pass in Northern Pakistan.

While Andrew's comprehensive knowledge of geography is an inspiration to students everywhere, studies suggest that most of Andrew's peers would be unable to find Pakistan on a map, let alone be aware of the significance of the Khyber Pass. Only 13 percent of young adults in the United States between the ages of 18 and 24 can correctly identify Iraq on a map of Asia and the Middle East. Year after year, American students are consistently outperformed in geographic literacy by students in Sweden, Germany, Italy, France, Japan, Great Britain, and Canada.

The truth is that many students in the United States receive only a minimal amount of geography education during their educational careers. In 2001, Congress acknowledged the importance of including geography education in school curriculums when it designated geography as a ''core subject'' in the No Child Left Behind Act; yet, geography remains the only core subject identified in that act without a Federal program designed to improve educational performance.

Congress must honor its commitment to the children of the United States and address the need for improved geography education. As we have recognized in other areas of education, the only way to truly improve the educational system at a student-level is to help schools use the most effective teaching techniques to increase student knowledge and understanding. Geography education is no exception.

The National Geographic Society Alliance Program is an excellent example of current efforts to improve geography education at the state and local level. Alliances around the country provide teachers with intensive professional development opportunities in geography education, cultivating opportunities for teachers in State-level chapters to collaborate on geography education efforts and to participate in NGS professional development programs. And the success of the National Geographic Society Alliance Program is seen through the achievements of its students—students of teachers who have been involved in the Alliance program have statistically higher levels of geographic literacy achievement than other students. Promoting proven, effective teaching techniques, such as those developed through the National Geographic Society Alliance Program, will be essential if Congress is to successfully foster greater geographic literacy among American students.

If we are to continue our efforts to develop the most educated citizenry in the world, we must closely examine how we educate our youngest citizens about the world. This resolution acknowledges the good work of the National Geographic Society and its commitment to geographic literacy through a variety of means, including its sponsorship of the National Geographic Bee and the successful operation of its Alliance Program. This is a useful first step to refocusing attention on the need for geographic literacy and its important role in our children's education.

It is my hope that passage of this resolution will do more than just applaud Andrew Wojtanik's mastery of geography skills—this resolution will reaffirm Congress's commitment to geography and recognize a national public-private partnership dedicated to improving geographic literacy among American students. For these reasons, I urge my colleagues to join with me in supporting this resolution today.

Mr. DUNCAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and agree to the resolution, H. Res. 815.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

HONORING THE 10 COMMUNITIES SELECTED TO RECEIVE THE 2004 ALL-AMERICA CITY AWARD

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 464) honoring the 10 communities selected to receive the 2004 All-America City Award.

The Clerk read as follows:

H. CON. RES. 464

Whereas the All-America City award is the oldest and most respected community recognition program in the Nation;

Whereas for 55 years the National Civic League has encouraged and recognized civic excellence by honoring communities of all sizes where business, citizens, voluntary organizations, and governments work together to address critical issues;

Whereas the All-America City Award recognizes exemplary grassroots community-oriented problem-solving, and is given to communities that confront challenges and achieve results cooperatively; and

Whereas more than 4000 communities have competed and more than 500 communities have been named All-America Cities: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress honors the cities of Concord, North Carolina; Evansville, Indiana; Cottage Grove, Oregon; Spokane, Washington; Springfield, Ohio; Montevideo, Minnesota; Pembroke Pines, Florida; Stockton, California; Philippi, West Virginia; and Hidalgo, Texas, on receiving the National Civic League 2004 All-America City Award.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Con. Res. 464.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H. Con. Res. 464. This measure honors the 10 communities selected to receive the 2004 All-America City Award. I commend our colleague, the gentleman from North Carolina (Mr. HAYES), for introducing this resolution.

Each year the National Civic League announces the recipients of the All-America City Award, perhaps our country's most prestigious civic recognition program. In an effort to promote community development, the All-America City Award is given to communities where citizens, government, businesses, and nonprofit organizations work together to effectively achieve the highest levels of civic participation.

Since 1949, more than 4,000 communities have applied for the award and about 500 have been selected as All-America cities. This year 10 communities received this honor. The 2004 award winners are Stockton, California; Pembroke Pines, Florida; Evansville, Tennessee; Montevideo, Minnesota; Concord, North Carolina; Springfield, Ohio; Cottage Grove, Oregon; Hidalgo, Texas; Spokane, Washington; and Philippi, West Virginia.

I offer my congratulations to these 10 communities. I urge my colleagues to join with the 10 co-sponsors of the resolution and myself in honoring these 10 cities for winning the All-America City Award.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Concurrent Resolution 464, introduced by my distinguished colleague from North Carolina (Mr. HAYES), honors 10 American cities for receiving the National Civic League 2004 All-America City Award. The American cities are Concord, North Carolina; Evansville, Indiana; Cottage Grove, Oregon; Spokane, Washington; Springfield, Ohio; Montevideo, Minnesota; Pembroke Pines, Florida; Stockton, California; Philippi, West Virginia; and Hidalgo, Texas.

Established in 1894, the National Civic League is one of America's oldest community advocacy organizations. The league's motto is ''strengthening citizen democracy by transforming democratic institutions.''

Their mission is to make democratic institutions and systems more accountable, inclusive, and responsive to citizens in communities across the country by informing, uniting, and empowering citizens. The National Civic League's annual award, the All-America City Award, is America's original and most prestigious community recognition award.

The award encourages and recognizes civic excellence by honoring communities of all sizes where community members, government businesses, and nonprofit organizations all work together to address critical local issues. Each year 10 cities are chosen to receive the All-America City Award. Each of the 10 cities demonstrates an efficient government, a willingness to help its less fortunate citizens, and a strong sense of community.

Therefore, Mr. Speaker, I commend again Concord, Evansville, Cottage Grove, Spokane, Springfield, Montevideo, Pembroke Pines, Stockton, Philippi, and Hidalgo for their awards. I commend the gentleman from North Carolina (Mr. HAYES) for introducing House Concurrent Resolution 464.

Mr. Speaker, I reserve the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina (Mr. HAYES), the author of this resolution.

Mr. HAYES. Mr. Speaker, I thank the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Illinois (Mr. DAVIS) for helping and supporting this legislation. I congratulate the gentleman from Texas (Mr. HINOJOSA) for his city as well.

Mr. Speaker, I rise to honor the people of Concord, North Carolina, and the other nine recipients of the 2004 All-America City Award.

It has been my distinct honor to represent the people of Concord since I was first elected to represent the 8th Congressional District of North Carolina. This opportunity is especially dear to me because this is my hometown and where much of my family still resides.

In fact, my family has called Concord home for decades, centuries now that I look at it; and we have had the privilege of watching this community grow. Concord personifies the term ''Southern hospitality'' and is home to some of the most engaging, welcoming and civically responsible citizens of the State of North Carolina.

Through close relationships I have forged with citizens of Concord and the pride I have in this community, it is truly an honor today for me to highlight this great city.

Because of Concord's hard work, the rest of America is getting to see the positive spirit of accomplishment that I have been fortunate to witness and experience my entire life. All-America City Award is a 55-year-old program that is sponsored by the National Civic League that recognizes excellence. The award is given annually to 10 communities that exemplify and display a positive spirit of grass-roots involvement and collaborative problem-solving in an effort to better the community.

The cities selected to receive this award exhibit the American spirit of hard work and cooperation as they seek to identify and correct community-wide challenges. Concord is a community where citizens, businesses, volunteers, and government officials work together to address the issues that are vitally important to their citizens.

Concord should take pride in the fact that they are in contention for recognition by this national organization for their hard work. Truly, Concord is a great example for other communities to emulate as other communities seek to meet the many challenges that face us all, communities large and small.

To qualify for the award, Concord representatives submitted a detailed application highlighting the city's three most pressing challenges. They are medical needs of the uninsured and underinsured, eliminating substandard housing in the community, and extending the mentoring and civic responsibilities of the Boys and Girls Club of Concord.

Programs such as Community Care Plan, Cabarrus Housing Partners, and the Boys and Girls Club of America have been designed and implemented to ensure the aforementioned areas are addressed.

I am pleased to represent such a fine community where the citizens come together to solve problems at a local level rather than waiting on someone else to fix things. A wise man once said there are three types of people in the world: those who watch what happen, those who make things happen, and those who wonder what happened. Rest assured, the people of my hometown, Concord, North Carolina, are people who make good things happen. It is my honor and privilege to represent these good folks.

I am proud that the National Civic League will recognize the city of Concord's success by awarding them the All-America City Award.

Mr. DAVIS of Illinois. Mr. Speaker, it is easy to see why the gentleman from North Carolina (Mr. HAYES), especially from Concord, is such a distinguished gentleman.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. HINOJOSA), a proud representative of Texas.

Mr. HINOJOSA. Mr. Speaker, I wish to acknowledge and thank the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. HAYES), as well as my good friend and colleague, the ranking member, the gentleman from Illinois (Mr. DAVIS).

Mr. Speaker, I join my colleagues in support of H.R. 464, honoring the 2004 All-America City Award winners. One of these year's recipients, Hidalgo, Texas, is in my congressional district. The city of Hidalgo, Texas, is a small town of about 7,500 residents located along the U.S.-Mexico border.

□ 1700

It is home to the fourth largest U.S. port of entry and has become a vibrant center of trade and commerce since the implementation of NAFTA.

Under the leadership of Mayor John David Franz, this community has created a business-friendly environment that has led to the opening of new businesses and the creation of good-paying jobs. Taking advantage of the natural resources and rare wildlife of the Lower Rio Grande Valley, the city of Hidalgo, Texas, has fostered ecotourism which brings bird watchers from throughout the world to the region's world-class birding centers.

Outstanding leaders such as former President Carter was one of the latest visitors to this beautiful city.

Recently, Hidalgo opened the new Dodge Arena, a $20 million multipurpose complex featuring a 6,800-seat arena that will be a venue for ice hockey, football, soccer, and first-class concerts. For the past 27 years, the city of Hidalgo has played host to the Borderfest, the largest and oldest heritage and music festival in south Texas. This annual festival draws thousands of visitors from all over the world.

In receiving this year's All-American City Awards, the city of Hidalgo had to compete with communities throughout the country. The selection committee looked at a variety of factors, including community achievements, creative leveraging of community resources, participation of the public, private and nonprofit sectors, and the development of quality community projects.

I want to congratulate Mayor Franz and all of the people of the city of Hidalgo on receiving this prestigious award.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana (Mr. HOSTETTLER) to speak on behalf of Evansville, Indiana.

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Speaker, I rise today to honor those communities designated as All-America Cities, particularly the city of Evansville in my district.

Evansville is to be commended and should take pride for being recognized by the National Civic League as an All-America City. Evansville, like all of southwest and west central Indiana, is a wonderful place to live, work and raise a family. The city has a rich heritage and its citizens hold dear Hoosier values like faith, family and hard work.

The All-America City Award recognizes in Evansville an exemplary grass-roots community approach to problem-solving where community members, government businesses and nonprofit organizations work together to address critical local issues.

The National Civic League recognized Evansville, Indiana, as a community that cooperatively tackles challenges and achieves results.

The All-America City Award is America's original and most prestigious community recognition award.

Mr. Speaker, I ask my colleagues to join me and the other cosponsors of this resolution in commending Evansville and the other cities honored by the National Civic League.

Mr. DAVIS of Illinois. Mr. Speaker, it is my pleasure to yield such time as he might consume to the gentleman from Texas (Mr. DOGGETT), one of the other proud sons of Texas.

Mr. DOGGETT. Mr. Speaker, I thank the gentleman for the time, and I am pleased to join in support of this resolution.

The All-America City Award is the oldest and most prestigious community recognition program in this Nation, and I am particularly pleased that this year one of the cities chosen, the only city chosen from the State of Texas, is right on our U.S.-Mexican border, and that is the city of Hidalgo.

Hidalgo is quite literally a representation of America's future. With a population that is nearly 98 percent Hispanic, Hidalgo is at the forefront of a demographic that is occurring rapidly in many of our Nation's cities. Also, with nearly half of its residents in elementary, middle or high school, Hidalgo is today comprised of the youth that will be the leaders of America tomorrow.

Hidalgo is one of the oldest cities in the State of Texas, and it started as a small trading post and ferry landing opposite Reynosa, Mexico, many years ago. Over the years, it has grown to the fourth largest U.S. port of entry, a

major entry point for trade and commerce from throughout two continents and a city that is intimately involved with our country's relationship with Mexico.

Hidalgo is often the first taste of America for many visitors to this country. This, combined with the fact that it is one of the country's southernmost cities, makes it not surprising that Hidalgo is sometimes referred to as being ''where the U.S. begins.''

The city has flourished under the leadership of very committed city council members Alvin Samano, Dan Dillard, Pedro Fonseca, and Siglinde Franz. Their hard work and dedication to serving the people of Hidalgo has contributed much to the community's success. Hidalgo works because Hidalgo works together.

Unfortunately, as a gateway to the United States, many people have seen Hidalgo only in traveling through it. Now, the people of this fine city have done much, through innovation and hospitality, to make Hidalgo a destination.

Project: Tour Hidalgo, a comprehensive and collaborative initiative that focuses resources, ideas, the spirit of volunteerism and community outreach, has increased tourism, tourism that focuses on the culture of Mexico and the United States, on ecotourism, a number of hike-and-bike trails to be built along the border and, of course, the many other aspects of the city that come alive during the holiday season.

I remember last year at the great Posada, with the Grammy-award-winning Hidalgo resident, Ramon Ayala, that we had around 7- or 8,000 spectators. It was quite a happening, and it drew people throughout Texas to share in the joy of the holiday season.

Borderfest also pulls in not only Texans but winter Texans from all over the country for a 4-day festival in March. Last year, about 50,000 people participated, five times the population of the city. It begins appropriately with an abrazo at the international bridge between the mayor of Hidalgo and the mayor of Reynosa, indicating the close relationship between the two countries.

In the 1980s, when advancements in technology made the city's old irrigation pumphouses obsolete, it was preserved as a museum that is now recognized by the National Trust for Historic Preservation.

With a sense of humor to accompany the other pleasant qualities of this community, when a few years ago it was noted that Hidalgo was the first place that the Africanized honey bee came, instead of avoiding this apparent bit of trouble, the city created a 10-foot-tall, 2,000-pound, full-color statue of the feared killer bee, and since that time the killer bee statue has become a tourist attraction. The Killer Bees became the name of the professional hockey team at the far southern edge of the United States. That is one winning team.

At the same time, Hidalgo has made substantial and impressive efforts to improve the standard of living for its residents. Almost half of all the families in Hidalgo are sustained on incomes below the poverty level.

It has been a long-time goal of the city to attract industries that will provide its citizens with a living wage. That is why the city created Team Hidalgo, a program through which the city and private businessmen and -women work with economic development experts and nonprofit groups to improve the economy of the area. To date, Team Hidalgo's greatest achievement has been the development of Dodge Arena, the spectacular 7,000 seat facility that is now drawing people throughout south Texas not only to the winning Killer Bees hockey team and an arena football team, but to a number of high-profile entertainment activities.

The students of Hidalgo spend their days in schools run by two separate and quality school districts, the Valley View Independent School District led by Superintendent Leonel Galaviz and School Board President and the Hidalgo Independent School District, led by Superintendent Daniel King and School Board President Noe Reyes. These are school districts with leadership on their boards and in the administration that devote their efforts to educational excellence.

The city is one that I hope to represent beginning in January. It is a place that I have visited a number of times and with whose leadership I have continued to work on a number of local projects. It is wonderful that the National Civic League has recognized these fine attributes of the community by naming it an All-America City.

As the city said in its application, despite being closer to Mexico than it is to many other cities in the United States, Hidalgo is truly all-American.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume, and I have no other speakers on this.

Let me close simply by saying that the All-America City Award was a program that was carried on for many years by Look magazine, one of our largest national circulation magazines, and I am very proud that in 1962 my hometown of Knoxville, Tennessee, received one of the very earliest All-America City Awards.

My father served as mayor of Knoxville for 6 years, from 1959 to 1964, and Look magazine recognized Knoxville not only for many civic improvements but also because of my father's work in leading the peaceful integration of the city, which made sure that Knoxville did not go through many of the troubles that most other cities in the North and the South went through during that time period.

So this is a great, great award. It is one that the people of Knoxville were always proud of; and these cities should be proud of it, too.

I thank the sponsor the gentleman from North Carolina (Mr. HAYES) and the cosponsors. I urge passage of this resolution.

Mr. HOBSON. Mr. Speaker, I rise today in support of House Concurrent Resolution 464 honoring the 10 cities named 2004 All-America Cities, and I would like to thank Representative ROBIN HAYES for his leadership in introducing this resolution.

Each year, the All-America Cities Award recognizes communities whose residents have been successful at identifying problems and working cooperatively to solve them. While all 10 cities named All-America Cities this year are deserving of this honor, I am particularly proud that Springfield, Ohio, my hometown, is one of them.

Springfield is a city that typifies an American heartland community. While it embraces its manufacturing past, Springfield has a clear goal of transitioning to a more diverse economy. This new focus emphasizes research and development. Recently, the Springfield Technology Park was established, which includes the new Lexis-Nexis data center and the new Ohio Supercomputer Center. Other high technology businesses are following. Not only is Springfield securing its economic future, it is developing proactive solutions to the other challenges it faces.

Springfield's All-America Cities application highlighted three programs that were designed to meet these challenges. The projects truly demonstrate the positive results that can be achieved through cooperation between public and private entities.

First, the Neighborhood Housing Partnership of Greater Springfield is an organization dedicated to making residents' dreams of home ownership come true. Government, private foundations, lenders, corporations, and realtors have all come together to provide financial assistance and support services to first-time homebuyers.

The second program, the Clark County Literacy Coalition, is a community partnership designed to help adults to acquire literacy skills. The Springfield-Clark County Chamber of Commerce, the Warder Literacy Center, and the Clark County Public Library are just three of the groups working cooperatively to help the residents of Springfield improve their reading and parenting skills.

A third organization, Rocking Horse Center, provides comprehensive health care services for children and young families. The local government, local hospitals, and other community organizations have come together to provide health services and child care advice to the community and to ensure affordable health care to those children who need it most.

In closing, I would like to congratulate the City of Springfield, the Springfield-Clark County Chamber of Commerce, and the Neighborhood Housing Partnership of Greater Springfield for their hard work in making sure that Springfield's All-America Cities application would be successful. The citizens of Springfield are also to be commended for making Springfield such a great place to live and work.

Mr. Speaker, I join today with my colleagues, the proud citizens of Springfield, and the residents of the other nine 2004 All-America Cities in support of this resolution.

Mr. DUNCAN. Mr. Speaker, I yield back the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 464.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR ADDITIONAL COSPONSORS FOR H.R. 10 SUBMITTED BY THE SPEAKER

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that, notwithstanding clause 7 of rule XII, the Union Calendar print of H.R. 10 may reflect additional cosponsors submitted by the Speaker.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

LEONARD C. BURCH POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5051) to designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''.

The Clerk read as follows:

H.R. 5051

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEONARD C. BURCH POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, shall be known and designated as the ''Leonard C. Burch Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Leonard C. Burch Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5051, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on behalf of the distinguished gentleman from Colorado, the sponsor of H.R. 5051, I rise in support of the Leonard C. Burch Post Office Designation Act.

Leonard Burch was chairman of the Southern Ute Tribal Council for more than 32 years. He was the first elected tribal chairman in 1966, making him the youngest ever at age 32. Chairman Burch was an effective, ambitious leader for the Southern Utes and helped to economically develop this tribe based in the Rocky Mountains.

Mr. Speaker, Leonard Burch died in August 2003 after suffering a heart attack. This post office will be a deserved honor for Leonard Burch, and I know it will make his family very proud.

I thank the sponsor, the gentleman from Colorado (Mr. MCINNIS), for bringing this bill to the floor today. I am pleased to urge passage of H.R. 5051.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, as a member of the House Committee on Government Reform, I am pleased to join my colleague in consideration of H.R. 5051, legislation naming a U.S. postal facility in Ignacio, Colorado, as the ''Leonard C. Burch Post Office.''

The gentleman from Colorado (Mr. MCINNIS), a Republican, introduced this measure which enjoys the support and cosponsorship of the entire Colorado delegation on September 9, 2004.

Leonard C. Burch was the long-time leader of the Southern Ute tribe of Colorado. He is credited with bringing his tribe from the brink of bankruptcy and into solvency. Through his efforts, the tribe became a major player in the energy development market with assets of $1.5 billion.

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As part of the Council For Energy Resource Tribes, Burch was instrumental in improving energy development in tribes throughout the country. Mr. Burch was also regarded as a skilled diplomat and testified before Congress on numerous occasions advocating for greater tribal control over its own resources.

Mr. Burch passed away last year after suffering a heart attack at the age of 69. We join the Southern Ute Tribe in their loss, for not only have they lost a great leader, but also the United States has lost a truly great man. I urge swift passage of this resolution.

Mr. UDALL of Colorado. Mr. Speaker, I rise today in support of H.R. 5051, the Leonard C. Burch Post Office Building Designation Act.

Leonard Burch served as chairman of the Southern Ute Tribe for 30 years. He became the youngest chairman of the Southern Ute Indian Tribe in south-western Colorado in 1966. Although it was criticized at the time, his decision to reinvest tribal royalties back into the tribal corporations has proved to be far sighted. Through this reinvestment the Southern Ute Indian Tribe is one of the wealthiest Indian tribe in the country.

In an effort to regain the rights to the resources on their land, Chairman Burch taught himself the intricacies of the oil and gas business. As a result, he was instrumental in the Southern Ute Tribe becoming the primary beneficiary of their own mineral rights. Under his leadership the tribe was able to acquire several commercial buildings, multiple energy companies, including the largest natural gas company in the state of Colorado, a real estate company, and a casino.

Chairman Burch championed the cause of tribal sovereignty. He was able to bring the Southern Ute Indian Tribe from relative obscurity into one of the most prominent and wealthy tribes in the country. The Southern Ute Tribe's business success can be used as a positive example for Native American tribes throughout the country. Chairman Burch was the driving force behind this success story.

Mr. Speaker, I ask my colleagues to join me and the Colorado delegation in honoring the life and accomplishments of Chairman Leonard Burch and support the designation of the Ignacio Main Post Office as the Leonard C. Burch Post Office Building.

For more information about the life of Chairman Burch, I am attaching an obituary published in The Durango Herald on August 2, 2003.

LEONARD CLOUD BURCH

Leonard Cloud Burch, the longtime leader of the Southern Ute Indian Tribe who advocated economic self-sufficiency, died Friday, Aug. 1, 2003, at Mercy Medical Center.

Mr. Burch, 69 who died after suffering a heart attack on Thursday, served as chairman of the Southern Ute Indian Tribal Council for more than 32 years. He was first elected tribal chairman in 1966.

Under his leadership the Southern Utes became an economic force in the Four Corners and the largest employers in the country.

Starting with interests in natural-gas wells, the Utes used revenues from businesses to fund improvements in tribal education, health and social services. He was invited by five separate U.S. presidents to conferences on American Indian policies at the White House.

He received numerous awards, including: the Durango Citizen of the Year Award (1997), the 15th annual Martin Luther King Humanitarian Award (2000) and the Council of Energy Resources Tribes' Achievement Award (2002). He was also recognized for his commitment to regional water resources development.

To settle various water claims by regional tribes, including the Southern Utes, Mr. Burch advocated development of the Animas-La Plata Project, a water-storage project now under construction south of Durango.

He was born on Dec. 24, 1933, to Sam and Clara (Cloud) Burch. Upon graduation from Ute Vocational High School in Ignacio, he enlisted in the U.S. Air Force, and he served four years. After his return from service, Mr. Burch worked for five years with the Bureau of Indian Affairs. He married Irene Coolidge, who had also attended school in Ignacio.

He is survived by his wife; seven daughters, Leonora Bravo of Ignacio, Leona Burch of Ignacio, Lena Mae Burch of Missoula, Mont., Lisa Burch-Watts of Ignacio, Leora Lucero of Ignacio. Laurena Burch of Albuquerque, and Lynnette Sage of Ignacio; 14 grandchildren; a brother, Anthony Burch of Two Rivers, Alaska; a sister, Bertha Grove of Bayfield; a half-brother, Everett Burch of Bayfield; and a half-sister, Judy Lansing-Burch of Ignacio.

A viewing and a visitation will be from noon to 8 p.m. Monday at Hood Mortuary. A

public memorial service will be at 10 a.m. Tuesday at the SunUte Recreation Center in Ignacio.

Donations honoring Mr. Burch should be made to the Leonard Burch Scholarship Fund, PO Box 2717, Durango CO 81302 or to the American Heart Association.

Mr. DAVIS of Illinois. Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I have no further requests for time, I urge passage of this bill, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the bill, H.R. 5051.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ADAM G. KINSER POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4807) to designate the facility of the United States Postal Service located at 140 Sacramento Street in Rio Vista, California, as the ''Adam G. Kinser Post Office Building''.

The Clerk read as follows:

H.R. 4807

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADAM G. KINSER POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 140 Sacramento Street in Rio Vista, California, shall be known and designated as the ''Adam G. Kinser Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Adam G. Kinser Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 4807, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4807 that would establish the Adam G. Kinser Post Office. I congratulate the gentleman from California (Mr. OSE) for introducing this bill and for securing the cosponsorship of the entire 53-Member delegation from California to comply with Committee on Government Reform policy.

All Americans mourn the loss of those who die in the service of their country in the Armed Services. Brave, dedicated 21-year-old Specialist Adam Kinser was one of these tremendous Americans. Adam proudly fought for his country in Afghanistan as part of the war on global terror.

In his senior year of high school, Adam felt a calling to serve his country and enlisted in the Army Reserves. In July 2003, the Army sent Specialist Kinser to Afghanistan as part of the Army Reserves' 304th Psychological Operations Company. On January 29, 2004, Kinser and eight fellow soldiers were working near a weapons cache in Ghanzi, 60 miles southwest of Kabul, when an explosion took the life of all nine men.

Mr. Speaker, Adam Kinser was a loving son and brother, dedicated student athlete, husband, and father. He was, in short, an American hero. The House joins with the community of Rio Vista and the family of Adam G. Kinser in grieving the loss of their beloved star student athlete. This post office will forever commemorate Adam's sacrifice to his grateful Nation.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a member of the House Committee on Government Reform, I am pleased to join with my colleague in consideration of H.R. 4807, legislation naming the U.S. postal facility in Rio Vista, California, after Adam Kinser.

This measure, which was introduced by the gentleman from California (Mr. OSE) on July 9, 2004, was unanimously reported by our committee on September 15, 2004. H.R. 4807 enjoys the support and cosponsorship of the entire California delegation.

Adam Kinser, a native of Rio Vista, California, joined the United States Army Reserve during his senior year of high school. A high school football player and hardworking member of his family's business, Adam was no stranger to hard work and dedication. He served with the 304th Psychological Operations Company, U.S. Army Reserve, based in Sacramento, California.

Last summer, Specialist Kinser was sent to Afghanistan. Earlier last year, he married his childhood sweetheart and learned prior to his deployment that his wife was expecting. Sadly, he was killed early this year, January 29, when an arms depot exploded in Ghanzi, Afghanistan. He left behind a wife and a son.

Mr. Speaker, I commend my colleague for seeking to honor the sacrifice of Specialist Kinser and urge swift adoption of this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to our colleague, the gentleman from California (Mr. OSE), the author of this bill.

Mr. OSE. Mr. Speaker, I thank the gentleman from Tennessee for yielding me this time, and I thank the gentleman from Illinois for his kind remarks.

Mr. Speaker, I rise today in support of H.R. 4807, the Adam G. Kinser Post Office Act. Adam was a national hero, a loving son and brother, a dedicated student, an athlete, and a proud father to be. These are just a few phrases that can be used to describe him. Frankly, while no list of descriptions can ever do justice to understanding his bravery, the compassion of this young man who gave his life for his country at age 21 merits recognition.

Adam Gareth Kinser was born in 1983, and from the age of 5 was raised in Rio Vista, California the very southern portion of my district. He and his four younger siblings grew up there. Even as a child, Adam stood out in his community, not only to his family and friends but also to his peers, teachers and teammates. He was a hardworking student. Adam was even a teaching assistant in some of his high school classes, and a former teacher described him as, frankly, the best the United States has to offer.

His positive attitude, his willingness to help others, his kind heart made him a natural role model to his friends and classmates. He was a leader on the field. He was also an outstanding varsity athlete. He ran track, played basketball, and he started on the football team as quarterback for three seasons, so as a sophomore, junior and senior.

Adam's leadership and compassion extended beyond school and the athletic fields into his home, where he acted as a mentor and a protector to his younger siblings, one of whom recalls that Adam ''was always protecting me, even when I didn't want it.''

A true role model and leader in his community, Adam also wanted to serve and protect his country, even as such a young man. During his senior year in high school, he joined the Army Reserve and was attending boot camp at Fort Bragg, North Carolina, on September 11, 2001. Adam was called up for active duty in July of 2003 and served in Afghanistan with the Army Reserves' 304th Psychological Operations Company.

During Christmas 2003, Adam returned home for some well-earned R&R, where his wife, Tiffany, surprised him with the amazing gift of an ultrasound of their soon-to-be-born son. Adam was ecstatic to be a father, and after returning to fulfill his duty in Afghanistan, he literally was counting down the days until he would be reunited with his wife and new baby.

As my colleagues have said, a tragic turn of events prevented Adam from coming home. On January 29 of this year, Adam was among nine soldiers

doing his duty working on a weapons cache near Ghanzi, 60 miles southwest of Kabul. An explosion took place that took his life and that of eight others.

Adam's death sent the Rio Vista community into a period of mourning and a recognition of loss for the young man that many knew and loved. They had watched Adam with pride from the time he was 5 years old, growing up to become a strong athlete, an excellent student and a brave soldier. Adam was the first Rio Vistan to give his life in wartime since the Korean War, and he will be missed by his newborn son and his family as well as by the whole community of Rio Vista.

Mr. Speaker, in order to ensure that the memory of this young man, this father, this brave soldier lives on, I am sponsoring this legislation to rename the post office in Adam's hometown in his name. It would be a great honor not only to his family but also to the Rio Vista community for this country to honor this true hero who valiantly gave back to his country that which is most precious, his life.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there is really no adequate way that we can show appreciation to this young man for giving his life in service to this Nation, but certainly, this is a very appropriate way to recognize the contributions that Adam Kinser gave to this Nation, and I guess you could say, in a way, it is the least that we can do.

I know that all Members of this Congress, on both sides of the aisle, join me and the sponsor, the gentleman from California (Mr. OSE), in expressing our condolences and our appreciation and the thanks of a grateful Nation to the family of Adam G. Kinser, and I urge passage of this bill.

Mr. DUNCAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the bill, H.R. 4807.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ROBERT J. OPINSKY POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2415) to designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the ''Robert J. Opinsky Post Office Building''.

The Clerk read as follows:

S. 2415

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ROBERT J. OPINSKY POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 4141 Postmark Drive, in Anchorage, Alaska, shall be known and designated as the ''Robert J. Opinsky Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Robert J. Opinsky Post Office Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2415, the Senate bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2415 honors a devoted Postal Service employee of more than four decades, Robert Opinsky. Bob Opinsky began his career with the Postal Service in 1956 as a $1.50-an-hour temporary clerk. Through hard work and dedication, he was able to work up the ranks of the Postal Service and become the district manager of the Postal Service in Alaska. He retired in 1996.

Bob Opinsky was a terrific leader within the Postal Service community; therefore, I am pleased to support this post office designation in his honor, an exceedingly appropriate tribute to his postal career.

Mr. Speaker, I thank the Senator from Alaska, Mr. STEVENS, for advancing this legislation. I support it, and I urge passage of the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 2415, to designate the facility of the United States Postal Service located at 4141 Postmark Drive in Anchorage, Alaska, as the Robert J. Opinsky Post Office Building.

Mr. Opinsky was an outstanding, hardworking postal employee who worked his way up through the ranks. He was known as a man who delivered mail through rain, sleet or snow. It is fitting and proper that we designate this facility in his honor.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the Senate bill, S. 2415.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

NOTICE

Incomplete record of House proceedings.

Today's House proceedings will be continued in the next issue of the Record.