S. 1418

At the request of Mr. ENZI, the names of the Senator from Maine (Ms. SNOWE), the Senator from Michigan (Ms. STABENOW) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 1418, a bill to enhance the adoption of a nationwide inter operable health information technology system and to improve the quality and reduce the costs of health care in the United States.

S. 1496

At the request of Mr. CRAPO, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 1496, a bill to direct the Secretary of the Interior to conduct a pilot program under which up to 15 States may issue electronic Federal migratory bird hunting stamps.

S. 1508

At the request of Mr. FEINGOLD, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1508, a bill to require Senate candidates to file designations, statements, and reports in electronic form.

S. 1513

At the request of Ms. MIKULSKI, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. LEVIN) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 1513, a bill to reauthorize the HOPE VI program for revitalization of severely distressed public housing, and for other purposes.

S. 1631

At the request of Mr. DORGAN, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 1631, a bill to amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and to rebate the tax collected back to the American consumer, and for other purposes.

S. 1719

At the request of Mr. INOUYE, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1719, a bill to provide for the preservation of the historic confinement sites where Japanese Americans were detained during World War II, and for other purposes.

S. 1841

At the request of Mr. NELSON of Florida, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1883

At the request of Mr. HATCH, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1883, a bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to assist property owners and Federal agencies in resolving disputes relating to private property.

S. 1952

At the request of Mr. COLEMAN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1952, a bill to provide grants for rural health information technology development activities.

S. 1959

At the request of Mr. KERRY, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 1959, a bill to direct the Architect of the Capitol to obtain a statue of Rosa Parks and to place the statue in the United States Capitol in National Statuary Hall.

S. 1961

At the request of Mr. BIDEN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1961, a bill to extend and expand the Child Safety Pilot Program.

S. 1969

At the request of Mr. BAUCUS, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1969, a bill to express the sense of the Senate regarding Medicaid reconciliation legislation to be reported by a conference committee during the 109th Congress.

S. 2015

At the request of Mr. ISAKSON, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2015, a bill to provide a site for construction of a national health museum, and for other purposes.

S. CON. RES. 55

At the request of Mr. CRAIG, the names of the Senator from Kentucky (Mr. BUNNING), the Senator from Montana (Mr. BURNS), the Senator from Oklahoma (Mr. COBURN), the Senator from Texas (Mrs. HUTCHISON) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. Con. Res. 55, a concurrent resolution expressing the sense of the Congress regarding the conditions for the United States to become a signatory to any multilateral agreement on trade resulting from the World Trade Organization's Doha Development Agenda Round.

S. CON. RES. 60

At the request of Mr. TALENT, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. Con. Res. 60, a concurrent resolution designating the Negro Leagues Baseball Museum in Kansas City, Missouri, as America's National Negro Leagues Baseball Museum.

AMENDMENT NO. 2587

At the request of Mr. DORGAN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of amendment No. 2587 proposed to S. 2020, an original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

AMENDMENT NO. 2596

At the request of Mr. DURBIN, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Washington (Mrs. MURRAY) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of amendment No. 2596 proposed to S. 2020, an original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BYRD (for himself and Mr. ROCKEFELLER):

S. 2028. A bill to provide for the reinstatement of a license for a certain Federal Energy Regulatory Commission project; to the Committee on Energy and Natural Resources.

Mr. BYRD. Mr. President, I ask unanimous consent that the text of my bill to reinstate a hydroelectric license for a Federal Energy Regulatory Commission project in Grafton, WV, be printed in the RECORD.

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

S. 2028

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REINSTATEMENT OF LICENSE FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

(a) IN GENERAL.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to project numbered 7307 of the Federal Energy Regulatory Commission, the Commission shall, on the request of the licensee for the project, in accordance with that section (including the good faith, due diligence, and public interest requirements of that section and procedures established under that section), extend the time required for commencement of construction of the project until December 31, 2007.

(b) APPLICABILITY.—Subsection (a) shall apply to the project on the expiration of any extension, issued by the Commission under section 13 of the Federal Power Act (16 U.S.C. 806), of the time required for commencement of construction of the project.

(c) REINSTATEMENT OF EXPIRED LICENSE.—If a license of the Commission for the project expires before the date of enactment of this Act, the Commission shall—

(1) reinstate the license effective as of the date of the expiration of the license; and

(2) extend the time required for commencement of construction of the project until December 31, 2007.

By Mr. BIDEN:

S. 2030. A bill to bring the FBI to full strength to carry out its mission; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise today to introduce the Full Strength Bureau Initiative Act of 2005. This is a piece of legislation that I think is critically important to our national security. Over the past four years, we

have had numerous debates here in the Senate about what we need to do to protect ourselves from international terrorists. While I have disagreed with many of the specific decisions this Congress and President Bush have made, I do agree that we face a grave threat from radical fundamental terrorists. And, it should be a primary focus of our national security efforts. However, it simply makes no sense for us to spend all of our time worrying about terrorism if we turn a blind eye to traditional crime and the threat that it poses to our citizens. We simply have to be able to do both, and the legislation that I am introducing today will help do that.

Part of the response to address this threat has been to shift the primary function of the Federal Bureau of Investigation from investigating and capturing criminals to the prevention of terror attacks. I don't disagree that this is an appropriate shift in priorities, but, we haven't made the investments necessary for the FBI to shift priorities and meet its commitment to combat traditional crime. To address this concern, I am introducing legislation that will authorize funding for the FBI to hire an additional 1,000 agents. These agents will replace the ones that have been reassigned to counterterrorism cases and will help keep our communities safe. The cost—$160 million per year—is minimal when compared to the benefits it will provide. Its passage will help ensure that the FBI has the resources to achieve its counterterrorism priorities without neglecting its traditional crime fighting functions.

A 2004 Government Accountability Office found that the number of overall agents at the FBI has increased by only seven percent since 2001. During the same time, the overall percentage of agents dedicated to counterterrorism by twenty five percent—with 678 agents being permanently shifted from drug, white collar, and violent crime cases to counter-terror activities. In addition, we know that many agents are working on counterterrorism cases even if they have not been ''officially'' dedicated to that effort in a process know within the FBI as ''overburning.''

Ultimately, the GAO concluded, as it often does, that the impact on traditional crime was statistically inconclusive; however the report demonstrated many concerns. First, the report found that the FBI referred 236 counterterrorism matters to U.S. Attorneys for prosecution in fiscal year 2001, which ended three weeks after September 11. Two years later, in fiscal year 2003, the FBI referred 1,821 counterterrorism cases to U.S. Attorneys for prosecution—this is a 671 percent increase. During the same period of time, referrals for drug, whitecollar, and violent crime matters all declined by 39 percent, 23 percent, and 10 percent respectively. This statistically demonstrates that the reprogramming effort—while critical—has had an impact on the FBI's traditional crime fighting efforts.

In addition to investigating Federal crimes, the FBI also provides critical assistance to State and local law enforcement. Quite simply, the FBI has technical expertise and resources that are not available to many State and local agencies—especially smaller jurisdictions. These local agencies rely on the FBI to assist them on technical matters, and as the FBI continues to divert resources from criminal cases, a gap in overall law enforcement capabilities is developing. In order to preserve public safety and national security this is a gap that must be filled.

Unfortunately, local budget woes are making it impossible for local agencies to fill the slack. A recent survey indicated that 23 of 44 police agencies are facing an officer shortfall. The USA Today and the New York Times have reported officer shortages in New York, Cleveland, Los Angeles, Houston and others. In addition, I recently attended a Judiciary Committee hearing in Philadelphia and we heard testimony from the Philadelphia Chief of Police that he had lost 2,000 officers in recent years, and the Pittsburgh police chief reported that she had lost nearly ¼ of her officers and had to suspend her community policing programs and other crime prevention programs due to budget cuts.

In addition to local budget woes, the U.S. Congress continues to slash Federal assistance for State and local law enforcement. In this year's Commerce, Justice, State appropriations bill, the Congress cut roughly $300 million from the Justice Assistance Grant and completely eliminated the COPS hiring program. Any local sheriff or police chief will tell you how important this funding assistance is to their efforts, and the investments that we made in them over the past ten years helped drive down crime rates from all-time highs to the lowest levels in a generation. In addition, the COPS program has been statistically proven to reduce crime by the Government Accountability Office, and the Justice Assistance Grants are the primary grant programs used by local agencies to combat illegal drug use in their communities. I voted for this spending bill because it provided critical funding for the FBI and the Drug Enforcement Agency, but I remain very critical of the cuts to state and local law enforcement assistance and hope that the President and the Republican-led Congress will change course.

Unfortunately, these cuts and the FBI reprogramming of agents from crime to counter-terror cases is creating a perfect storm that I'm afraid will contribute to rising crime rates in the future. The good news is that the 2004 Uniform Crime Reports show that crime rates remain at historic lows. But, many criminologists have pointed out that many crime indicators should caution against complacency. Last year, there were over 16,000 murders throughout the United States, and police chiefs and sheriffs are reporting worrying signs of local youth violence. Indeed, a 2005 report by the FBI on youth gangs shows that gang activity is on the rise. Rather than pull-back, we need to re-double our effort to ensure that crime rates don't rise in the future and to push them even lower. I've often said that the safety of Nation's citizens should be the top priority of our Federal Government—this applies to combating international terrorists and traditional crime.

We spent a bulk of the nineties creating a Federal, State, and local partnership that helped make our Nation safer than it has been in a generation. This partnership is breaking down because the President and many in Congress feel that local crime is not a national priority. I couldn't disagree more. The safety of the American people is the most important priority that we have. It doesn't matter whether the threat comes from international terrorists, drug traffickers, or from the thug down the street. In my opinion, it is a terrible mistake to use the successes of the past ten years and the new focus on terrorism as an excuse to abandon our critical anti-crime responsibilities. We can—and we must do both. The American people are counting on us, and the legislation that I am introducing today will help ensure that we meet our commitment to the American people to make sure that they are safe from crime and terrorism.

By Mr. DURBIN (for himself, Mr. SPECTER, Mr. DEWINE, Mr. LEAHY, Mr. KENNEDY, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. HARKIN, Mr. AKAKA, Mr. LAUTENBERG, Ms. CANTWELL, Mr. PRYOR, and Mr. KERRY):

S. 2039. A bill to provide for loan repayment for prosecutors and public defenders; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today to introduce the Prosecutors and Defenders Incentive Act of 2005. I am honored to have the support and cosponsorship of Senator DEWINE with whom I have enjoyed working on similar measures in previous Congresses. I am further pleased that Senators SPECTER, LEAHY, KENNEDY, FEINGOLD, FEINSTEIN, AKAKA, CANTWELL, HARKIN, LAUTENBERG, PRYOR, and KERRY have also agreed to join me as original cosponsors of this legislation. Our bill is designed to encourage the best and the brightest law school graduates to enter public service as criminal prosecutors and public defenders by making a student loan repayment program available to them.

I am pleased that this legislation enjoys bipartisan support. I am anxious to work closely with Chairman SPECTER and Ranking Member LEAHY to advance it through the Judiciary Committee and secure its enactment by the full Senate.

Our proposed loan repayment program is supported by the American Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the National Legal Aid and Defender Association, and the American Council of Chief Defenders.

We can—and should—do more to help prosecutor and public defender offices compete with the higher salaries available in the private sector. In many instances, despite high aspirations and strong motivation to work in the public sector, many graduates find it economically impossible to pursue that career path due to the overwhelming burden of debt. The availability of student loan repayment can be a powerful incentive for attracting some of our most talented new lawyers to public service employment.

Many of today's law graduates are finishing law school owing staggering amounts of student loan debt. According to the American Bar Association, the median total cumulative educational debt for law school graduates in the class of 2004 was $97,763 for private schools and $66,810 for public schools. Educational loan debts represent a serious financial obligation which must be repaid. A default on any loan triggers serious consequences. Moreover, the looming obligation can impact career choices for many new graduates.

Many budding prosecutors and public defenders face a disheartening dilemma. On the one hand, they have a deep commitment to pursuing a career in public service. On the other hand, they need a level of income to meet the demands of exorbitant educational loan liabilities. This wrenching choice has not only personal impact but adverse implications for the legal profession and its commitment to ensuring access to justice for all citizens. And from an employer's perspective, comparatively low salaries and high debt make it extremely difficult to recruit and retain attorneys in prosecutor and public defender offices.

The results of a special study, ''Lifting the Burden: Law Student Debt as a Barrier to Public Service,'' published in August 2003 by the American Bar Association, reflects eight key findings, which I will describe in more specificity in my remarks.

First, law school tuition levels have skyrocketed. Second, the vast majority of law students borrow funds to finance their legal education. Third, law students are borrowing increasingly larger sums to finance their legal education. Fourth, public service salaries have not kept pace with rising law school debt burdens or private sector salaries. Fifth, high student debt bars many law graduates from pursuing public service careers. Sixth, many law graduates who take public service legal jobs must leave after they gain 2 to 3 years of experience. Seventh, public service employers report serious difficulty recruiting and retaining lawyers. And eighth, the legal profession and society pay a severe price when law graduates are shut out from pursuing public service legal careers due to high educational debt burden.

On the matter of skyrocketing tuition levels, since the early 1970s, there have been steep and persistent hikes in the costs of legal education and in the tuition rates law schools charge. Researchers found that tuition increased about 340 percent from 1985 to 2002 for private law school students and out-of-state students at public law schools. In state students at public law schools saw their tuition jump about 500 percent. During the period 1992–2002, the cost of living in the United States rose 28 percent while the cost of tuition for public law schools rose 134 percent for residents and 100 percent for nonresidents, and private law school tuition increased 76 percent.

In 1975, when private law school tuition averaged $2,525 and public law school tuition for in state residents was $700, the need to borrow to finance a legal education was not as prevalent or necessary. In 1990, when tuition was $11,680 for private institutions and $3,012 for public law schools, it was at least manageable. In 2002, the median law school annual tuitions were $24,920 for private law schools, $18,131 for nonresident students at public law schools, and $9,252 for resident students at public law schools.

A computation of the tuition rates of the 186 ABA-accredited law schools for 2004 reflects that charges for State residents at public law schools average $10,820 per year. For nonresidents attending public law schools, the average tuition amounts to $20,176 per year. Students attending private law schools pay an average of $25,603 per year.

Additional amounts for food, lodging, books, fees and personal expenses increase the costs for 3 years to more than $60,000 in almost all cases and well over $100,000 in many instances.

The vast majority of law students must borrow funds to finance their legal education. In 2002, almost 87 percent of law students borrowed to finance their legal education. That level remained consistent in 2004. Many of these students also carried unpaid debt from their undergraduate studies.

Law students are borrowing increasingly larger sums to finance their legal education. As tuition and other expenses of attending law school rose, more and more students found they needed to borrow to pay for law school. During the 1990s, the average amount students borrowed more than doubled. Today, the amount borrowed by many students exceeds $80,000.

Public service salaries have not kept pace with rising law school debt burdens or private sector salaries. Entry-level salaries for government or other public service position, have always been significantly lower than those in private practice.

Over the years since the mid-1970s, the median starting salaries in private practice have risen at a much faster pace than entry-level public service salaries. Between 1985 and 2002, the median starting salaries at private law firms rose by about 280 percent. Government lawyers, such as prosecutors and public defenders, saw their salaries increase by just 70 percent.

According to the 2004 Public Sector and Public Interest Attorney Salary Report, published in August 2004 by the National Association for Law Placement, Inc., the median entry-level salary for public defenders is $39,000; with 11 to 15 years of experience, the median is $65,000. The salary progression for State and local prosecuting attorneys is similar, starting at about $40,000 and progressing to $68,000–69,000 for those with 11 to 15 years of experience.

In August 2004, NALP also released the results of its tenth annual comprehensive survey of associate compensation in private sector law firms. According to the 2004 Associate Salary Survey Report, based on salary information as of April 1, 2004 provided by 599 offices, the median salary for first-year associates ranged from $65,000 in firms of 2 to 25 attorneys to $120,000 in firms of 500 attorneys or more, with a first-year median for all participating firms of $95,000. These figures evidence the stark reality of compensation differentials for those graduates electing to devote their skills to public service jobs as prosecutors and defenders.

High student debt bars many law graduates from pursuing public service careers. As law school tuition and student debt have sharply escalated, fewer and fewer law school graduates can afford to take the comparatively low-paying public service positions that are available in government agencies or with prosecutor, public defender, or legal services offices.

A national study of law school debt conducted by Equal Justice Works, the Partnership for Public Service, and the National Association for Law Placement found that law student debt prevented two-thirds of law student respondents from considering a public service career.

The report was based on a spring 2002 survey of graduating law students. Survey respondents included 1,622 students from 117 law schools representing 40 States, the District of Columbia, and Canada. Among the findings reported were the following: Overall, 66 percent of respondents stated that law school debt kept them from considering a public interest or government job. The percentage is higher among those who ultimately accepted jobs in small or large private firms, with 83 percent and 78 percent, respectively, stating that debt prevented them from seeking work with public interest organizations or the Federal Government.

Seventy-three percent of students who had not yet accepted a job when surveyed also indicated that they were disinclined to seek a public interest or government position due to heavy debt load. Providing $6,000 a year in available loan repayment assistance would

result in increased interest in a post graduate Federal Government job for 83 percent of student respondents.

Despite their high debt burden, some law graduates initially accept public service jobs. However, the magnitude of debt precipitates high turnover because many of these cannot repay loan obligations on a median starting salary of $36,000 and pay all their other remaining living expenses with the remaining $1,100 per month. Some who begin careers in public service, and who would like to remain, leave after a few years when they find their debts are too severely constraining on their hopes for making ends meet, much less raising children or saving for retirement.

Many public service employers report having a difficult time attracting the best qualified law graduates. Public service employers, such as prosecutor or public defender offices, have vacancies they cannot fill because new law graduates cannot afford to work for them. Alternatively, those who do hire law graduates find that, because of educational debt payments, those whom they do hire leave just at the point when they have acquired the experience to provide the most valuable services.

The legal profession and society pay a severe price when law graduates are shut out from pursuing public service legal careers due to high educational debt burden. Lawyers with dreams of serving their communities as prosecutors or public defenders are unable to use their skills to do so. And when governments cannot hire new lawyers or keep experienced ones, the ability to protect the public safety is challenged. The inability of poor and moderate-income persons to obtain legal assistance can result in dire consequences to those individuals and the communities in which they live.

Our bill, the Prosecutors and Defenders Incentive Act, is designed to help remedy some of these problems. Enacting this measure will help make legal careers in public service as prosecutors and public defenders in the criminal justice system more financially viable and attractive to law school graduates who have incurred significant financial obligations in acquiring their education.

Our proposal would establish, within the Department of Justice, a program of student loan repayment for borrowers who agree to remain employed for at least 3 years as public attorneys who are either State or local criminal prosecutors or State, local, or Federal public defenders in criminal cases. It would allow eligible attorneys to receive student loan debt repayments of up to $10,000 per year, with a maximum aggregate over time of $60,000.

Repayment benefits for such public attorneys would be made available on a first-come, first-served basis and subject to the availability of appropriations. Priority would be given to borrowers who received repayment benefits for the preceding fiscal year and have completed less than 3 years of the first required service period. Borrowers could enter into an additional agreement, after the required 3-year period, for a successive period of service which may be less than 3 years. It would cover student loans made, insured, or guaranteed under the Higher Education Act of 1965, including consolidation loans. Furthermore, it would extend to Federal public defenders the existing Perkins loan forgiveness program available for Federal prosecutors.

Our bill is modeled on the program for Federal executive branch employees which has been enjoying growing success. Federal law permits Federal executive branch agencies to repay their employees' student loans, up to $10,000 in a year, and up to a lifetime maximum of $60,000. In exchange, the employee must agree to remain with the agency for at least 3 years.

During fiscal year 2004, 28 executive branch agencies provided 2,945 Federal employees with more than $16.4 million in student loan repayments, as reported by the Office of Personnel Management in April 2005. This marked a 42-percent increase in the number of beneficiaries and a 79-percent increase in benefits over fiscal year 2003.

It is noteworthy that across the Federal Government in 2004, agencies used the loan repayment program most often to recruit and retain attorneys. In fiscal year 2004, 473 Federal lawyers received loan repayments, representing 16.1 percent of all employees who received the benefit.

The Securities and Exchange Commission provided the benefit to 239 lawyers, and the Justice Department distributed program benefits to 118 of its attorneys. According to the Office of Personnel Management's report, the Nuclear Regulatory Commission reported that the program has been of tremendous benefit in recruiting and retaining attorneys in its Honors Law Graduate Program. NRC commented that law school debt is continuing to rise—to more than $100,000 in some cases—and a gap exists between Federal and private law firm salaries. As a result, some quality candidates may rule out a career as an attorney in the Federal Government. NRC believes the Federal student loan repayment program helps the Commission overcome these obstacles.

I recently received a compelling letter from Jennifer Walsh, the assistant appellate defender for the State of Illinois. Her experiences portray in testamentary terms the real dilemmas encountered by perhaps thousands of attorneys desiring public service careers despite exorbitant student loan obligations.

To simply paraphrase Ms. Walsh's sentiments would diminish their impact, so I would like to quote some excerpts from her letter: ''I love being a public servant. . . . Helping those who cannot afford to help themselves isn't charity and it isn't socially progressive. It is justice and it has made me a better person. . . . However, the one problem that I have consistently had since becoming a public defender is getting my student loans paid. I have a debt burden over $110,000. . . . My student loan payments will soon exceed $950 a month. This represents about one-third of my monthly take-home pay. I cannot help pay the mortgage on my house. I cannot save for my two children's futures. During a financial crisis, my husband knows that he cannot look to me to help the family finances. . . . I am now faced with a Hobson's choice—do I fulfill the needs of my indigent clients or my struggling family? I absolutely, positively don't want to leave. But my responsibilities to my family and my student loan creditors make staying in the public sector feel selfish and irresponsible. Imagine that—working for the public good seems selfish and irresponsible because I cannot do what I love and, at the same time, repay what I owe.''

I appreciate Ms. Walsh's willingness to share her perspectives with me. By enacting and funding this legislation, we can take a meaningful step toward alleviating some of the financial burden for attorneys such as Ms. Walsh who choose careers as criminal prosecutors and public defenders.

I know there are many other law graduates who, like Jennifer Walsh, want to apply their legal training and develop their skills in the public sector, but are deterred by the weight of student loan obligations. Passage of our legislation will help them make their careers dreams a reality. I urge its swift adoption.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2039

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 ''Prosecutors and Defenders Incentive Act of 2005''.

SEC. 2. LOAN REPAYMENT FOR PROSECUTORS AND DEFENDERS.

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—LOAN REPAYMENT FOR PROSECUTORS AND PUBLIC DEFENDERS

''SEC. 2901. GRANT AUTHORIZATION.

''(a) PURPOSE.—The purpose of this section is to encourage qualified individuals to enter and continue employment as prosecutors and public defenders.

''(b) DEFINITIONS.—In this section:

''(1) PROSECUTOR.—The term 'prosecutor' means a full-time employee of a State or local agency who—

''(A) is continually licensed to practice law; and

''(B) prosecutes criminal cases at the State or local level.

''(2) PUBLIC DEFENDER.—The term 'public defender' means an attorney who—

''(A) is continually licensed to practice law; and

''(B) is—

''(i) a full-time employee of a State or local agency or a nonprofit organization operating under a contract with a State or unit of local government, that provides legal representation to indigent persons in criminal cases; or

''(ii) employed as a full-time Federal defender attorney in a defender organization established pursuant to subsection (g) of section 3006A of title 18, United States Code, that provides legal representation to indigent persons in criminal cases.

''(3) STUDENT LOAN.—The term 'student loan' means—

''(A) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965(20 U.S.C. 1071 et seq.);

''(B) a loan made under part D or E of title IV of the Higher Education Act of 1965(20 U.S.C. 1087a et seq. and 1087aa et seq.); and

''(C) a loan made under section 428C or 455(g) of the Higher Education Act of 1965(20 U.S.C. 1078–3 and 1087e(g)) to the extent that such loan was used to repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a loan made under section 428 or 428H of such Act.

''(c) PROGRAM AUTHORIZED.—The Attorney General shall establish a program by which the Department of Justice shall assume the obligation to repay a student loan, by direct payments on behalf of a borrower to the holder of such loan, in accordance with subsection (d), for any borrower who—

''(1) is employed as a prosecutor or public defender; and

''(2) is not in default on a loan for which the borrower seeks forgiveness.

''(d) TERMS OF AGREEMENT.—

''(1) IN GENERAL.—To be eligible to receive repayment benefits under subsection (c), a borrower shall enter into a written agreement that specifies that—

''(A) the borrower will remain employed as a prosecutor or public defender for a required period of service of not less than 3 years, unless involuntarily separated from that employment;

''(B) if the borrower is involuntarily separated from employment on account of misconduct, or voluntarily separates from employment, before the end of the period specified in the agreement, the borrower will repay the Attorney General the amount of any benefits received by such employee under this section;

''(C) if the borrower is required to repay an amount to the Attorney General under subparagraph (B) and fails to repay such amount, a sum equal to that amount shall be recoverable by the Federal Government from the employee (or such employee's estate, if applicable) by such methods as are provided by law for the recovery of amounts owed to the Federal Government;

''(D) the Attorney General may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest; and

''(E) the Attorney General shall make student loan payments under this section for the period of the agreement, subject to the availability of appropriations.

''(2) REPAYMENTS.—

''(A) IN GENERAL.—Any amount repaid by, or recovered from, an individual or the estate of an individual under this subsection shall be credited to the appropriation account from which the amount involved was originally paid.

''(B) MERGER.—Any amount credited under subparagraph (A) shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations, if any, as the sums with which the amount was merged.

''(3) LIMITATIONS.—

''(A) STUDENT LOAN PAYMENT AMOUNT.—Student loan repayments made by the Attorney General under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed upon by the borrower and the Attorney General in an agreement under paragraph (1), except that the amount paid by the Attorney General under this section shall not exceed—

''(i) $10,000 for any borrower in any calendar year; or

''(ii) an aggregate total of $60,000 in the case of any borrower.

''(B) BEGINNING OF PAYMENTS.—Nothing in this section shall authorize the Attorney General to pay any amount to reimburse a borrower for any repayments made by such borrower prior to the date on which the Attorney General entered into an agreement with the borrower under this subsection.

''(e) ADDITIONAL AGREEMENTS.—

''(1) IN GENERAL.—On completion of the required period of service under an agreement under subsection (d), the borrower and the Attorney General may, subject to paragraph (2), enter into an additional agreement in accordance with subsection (d).

''(2) TERM.—An agreement entered into under paragraph (1) may require the borrower to remain employed as a prosecutor or public defender for less than 3 years.

''(f) AWARD BASIS; PRIORITY.—

''(1) AWARD BASIS.—Subject to paragraph (2), the Attorney General shall provide repayment benefits under this section on a first-come, first-served basis, and subject to the availability of appropriations.

''(2) PRIORITY.—The Attorney General shall give priority in providing repayment benefits under this section in any fiscal year to a borrower who—

''(A) received repayment benefits under this section during the preceding fiscal year; and

''(B) has completed less than 3 years of the first required period of service specified for the borrower in an agreement entered into under subsection (d).

''(g) REGULATIONS.—The Attorney General is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for fiscal year 2006 and such sums as may be necessary for each succeeding fiscal year.''.

By Mr. AKAKA (for himself, Mr. LAUTENBERG, and Mr. CARPER):

S. 2040. A bill to amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to ensure that the Department of Homeland Security is led by qualified, experienced personnel; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce legislation that will help ensure our homeland security is in the hands of the best and the brightest leaders. The Department of Homeland Security Qualified Leaders Act will establish minimum qualification standards for most Senate-confirmed positions in the Department of Homeland Security, DHS. I am joined by Senators LAUTENBERG and CARPER in introducing this bill, and I thank them for their support.

Hurricane Katrina and the resignation of Under Secretary Michael Brown have raised concerns regarding the experience and qualifications of political appointees in the Federal Government. Mr. Brown had minimal emergency management experience prior to joining the Federal Emergency Management Agency, FEMA. Despite Mr. Brown's 3 years as a senior official at FEMA, the agency faltered during Hurricane Katrina under his leadership.

While not all of the Government's failures to prepare for and respond to Hurricane Katrina can be placed at Mr. Brown's doorstep, leadership matters. At a recent Homeland Security and Governmental Affairs Committee hearing on the Coast Guard's response to Hurricane Katrina, Cpt Bruce C. Jones, the commanding officer of Coast Guard Air Station New Orleans, testified, ''What counts most in a crisis, is not the plan, it's leadership. Not processes, but people. And not organizational charts, but organizational culture.''

According to Captain Jones, one of the reasons the Coast Guard was able to respond immediately and perform efficiently during Hurricane Katrina is because the leaders of the Eighth District and Sector New Orleans were able to make quick, sound decisions while following a predetermined plan. Quick thinking and good judgement cannot be written into a plan.

In addition, DHS, with its multitude of management challenges, requires leaders with strong management experience. Over the past few years, the DHS Inspector General and the Government Accountability Office have cited DHS for poor contract management, ineffective financial systems, and major human capital challenges. Moreover, DHS is in the process of implementing its Second Stage Review, an attempt to better organize the Department to meet its many missions. As Secretary Michael Chertoff overhauls the Department to create what will hopefully be a structure that serve DHS well for years to come, he needs senior officials who have experience running large organizations—people who know which systems and chains of command work and which do not. Good managers are needed across the Federal Government, but nowhere are they more needed than in an infant agency.

Comptroller General David Walker said in a September 21, 2005, interview with Federal Times that ''for certain positions, given the nature of the position, there should be statutory qualification requirements for any nominee.'' I agree.

For these reasons, we must ensure that the right people are leading DHS. Our bill delineates requirements for Senate-confirmed positions based on their compensation under the Executive Schedule. The most senior officials, those in Executive Level II and III, will be required to possess at least 5 years of management experience, 5 years of experience in a field relevant to the position for which the individual

is nominated, such as customs intelligence, or cybersecurity, and a demonstrated ability to manage a substantial staff and budget. These requirements will apply to the following positions: the Under Secretary of Science and Technology; the Under Secretary of Preparedness; the Director of FEMA; and the Under Secretary of Management. The Secretary and Deputy Secretary of Homeland Security are exempt from this bill.

Executive Level IV positions will be required to possess significant management experience, at least 5 years of experience in a field relevant to the position for which the individual is nominated, and a demonstrated ability to manage a substantial staff and budget. These position include the Assistant Secretary for Immigration and Customs Enforcement; the Assistant Secretary for Customs and Border Patrol; the Assistant Secretary for Border and Transportation Security Policy; the Assistant Secretary for Plans, Programs, and Budgets; the Director of the Office State and Local Government Coordination and Preparedness; the Director of U.S. Citizenship and Immigration Services; the Inspector General; the Chief Financial Officer; the U.S. Fire Administrator; and the General Counsel. The bill exempts the commandant of the Coast Guard from this section since requirements for selection of the commandant already exist in law.

I believe that any program or agency will succeed or fail based on leadership. This is especially true at Federal agencies, which need senior leaders with management skills and subject matter expertise. Our bill is a step in the right direction, and I urge my colleagues to join us in passing this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD following my statement.

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

S. 2040

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 ''Department of Homeland Security Qualified Leaders Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Department of Homeland Security, a large organization comprised of 180,000 employees and 22 legacy agencies, has a complex mission of securing the homeland from man-made and natural disasters;

(2) the Department and the agencies within require strong leadership from proven managers with significant experience in their respective fields; and

(3) the majority of positions requiring Senate confirmation at the Department do not have minimum qualifications.

SEC. 3. QUALIFICATIONS OF CERTAIN SENIOR OFFICERS.

(a) IN GENERAL.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after section 103 the following:

''SEC. 104. QUALIFICATIONS OF CERTAIN SENIOR OFFICERS.

''(a) EXECUTIVE SCHEDULE LEVEL II OR III POSITIONS.—

''(1) POSITIONS.—This subsection shall apply to any position in the Department that—

''(A) requires appointment by the President, by and with the advice and consent of the Senate; and

''(B) is at level II or III of the Executive Schedule under section 5313 or 5314 of title 5, United States Code, (including any position for which the rate of pay is determined by reference to level II or III of the Executive Schedule).

''(2) ADDITIONAL QUALIFICATIONS.—In addition to any other qualification applicable to a position described under paragraph (1), any individual appointed to such a position shall possess—

''(A) at least 5 years of executive leadership and management experience in the public or private sector;

''(B) at least 5 years of significant experience in a field relevant to the position for which the individual is nominated; and

''(C) a demonstrated ability to manage a substantial staff and budget.

''(b) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—

''(1) POSITIONS.—This subsection shall apply to any position in the Department that—

''(A) requires appointment by the President, by and with the advice and consent of the Senate; and

''(B) is at level IV of the Executive Schedule under section 5315 of title 5, United States Code, (including any position for which the rate of pay is determined by reference to level IV of the Executive Schedule).

''(2) ADDITIONAL QUALIFICATIONS.—In addition to any other qualification applicable to a position described under paragraph (1), any individual appointed to such a position shall possess—

''(A) significant executive leadership and management experience in the public or private sector;

''(B) at least 5 years of significant experience in a field relevant to the position for which the individual is nominated; and

''(C) a demonstrated ability to manage a substantial staff and budget.

''(c) EXCEPTIONS.—This section shall not apply to the position of—

''(1) the Secretary;

''(2) the Deputy Secretary of Homeland Security; or

''(3) the Commandant of the Coast Guard.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to lessen any qualification otherwise required of any position.

''(e) SENSE OF CONGRESS.—It is the sense of Congress that individuals nominated by the President for the positions of Secretary and Deputy Secretary of Homeland Security should possess significant management experience and expertise in a relevant field because of the significant level of responsibility entrusted to these individuals.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1 of the Homeland Security Act of 2002 (6 U.S.C. 101) is amended by inserting after the item relating to section 103 the following:

''Sec. 104. Qualifications of certain senior officers.''.

By Mr. REID:

S. 2041. A bill to provide for the conveyance of a United States Fish and Wildlife Service administrative site to the city of Las Vegas, Nevada; to the Committee on Environment and Public Works.

Mr. REID. Mr. President, I rise today to introduce the Ed Fountain Park Expansion Act. This legislation would transfer approximately eight acres of Federal land to the city of Las Vegas to allow for the expansion of one of the city's most popular parks.

Ed Fountain Park is one of the best known and well-used parks in the city of Las Vegas. Located in a mature part of the city, adjacent to the city's oldest golf course, Ed Fountain Park has provided recreational opportunities for generations of local residents. For many years it has been home to Pop Warner football practices, youth soccer games, and family picnics and reunions. On any given day or night, a multitude of activities are taking place at the park, many of which are associated with the numerous nonprofit organizations that utilize the park's resources.

The city of Las Vegas contacted my office several months ago to express their desire to expand Ed Fountain Park by acquiring land adjacent to the park that served as the site of the local administrative offices for the Bureau of Land Management, BLM, and U.S. Fish and Wildlife Service. The property was vacated by both Federal land management agencies several years ago after they relocated to a larger, multijurisdictional facility in the northwest part of the Las Vegas Valley.

The property to be acquired by the city is technically classified as part of the Desert National Wildlife Refuge Complex and is currently under the jurisdiction of the Fish and Wildlife Service. The parcel in question, however, is many miles away the actual wildlife refuge and sits as a vacant urban lot. The former administrative offices that were housed on the land were placed there many decades ago when this area was considered to be in the outskirts of town. Now, after years of unprecedented growth, this land is surrounded by well-established neighborhoods. The site also contains a single empty historical structure that would be part of the conveyance.

Were the property under the jurisdiction of the BLM, as is usually the case in the Las Vegas Valley, the property could have been transferred administratively under the authority of the Recreation and Public Purposes Act. But because it is the property of the Fish and Wildlife Service, legislation is needed to transfer ownership of the property from the Fish and Wildlife Service to the city.

This legislation provides the city with maximum flexibility to use the parcel to expand Ed Fountain Park, to build new athletic fields, to develop a community center, or any combination of these uses. All of these potential uses are in the public interest and provide important justification for conveying the land to the city at no cost.

I look forward to working with the distinguished chairman and ranking

member of the Environment and Public Works Committee to move this legislation forward in a timely manner.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2041

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 ''Ed Fountain Park Expansion Act ''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATIVE SITE.—The term ''administrative site'' means the parcel of real property identified as ''Lands to be Conveyed to the City of Las Vegas; approximately, 7.89 acres'' on the map entitled ''Ed Fountain Park Expansion'' and dated November 1, 2005.

(2) CITY.—The term ''City'' means the city of Las Vegas, Nevada.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

SEC. 3. CONVEYANCE OF UNITED STATES FISH AND WILDLIFE SERVICE ADMINISTRATIVE SITE, LAS VEGAS, NEVADA.

(a) IN GENERAL.—The Secretary shall convey to the City, without consideration, all right, title, and interest of the United States in and to the administrative site for use by the City—

(1) as a park; or

(2) for any other recreation or nonprofit-related purpose.

(b) ADMINISTRATIVE EXPENSES.—As a condition of the conveyance under subsection (a), the Secretary shall require that the City pay the administrative costs of the conveyance, including survey costs and any other costs associated with the conveyance.

(c) REVERSIONARY INTEREST.—

(1) IN GENERAL.—If the Secretary determines that the City is not using the administrative site for a purpose described in paragraph (1) or (2) of subsection (a), all right, title, and interest of the City in and to the administrative site (including any improvements to the administrative site) shall revert, at the option of the Secretary, to the United States.

(2) HEARING.—Any determination of the Secretary with respect to a reversion under paragraph (1) shall be made—

(A) on the record; and

(B) after an opportunity for a hearing.

By Mr. CHAMBLISS (for himself and Mr. HARKIN):

S. 2042. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to implement pesticide-related obligations of the United States under the international conventions or protocols known as the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CHAMBLISS. Mr. President, today, Senator HARKIN and I are introducing the POPs, LRTAP POPs and PIC Implementation Act of 2005. This bill would amend the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to implement the United States' pesticide-related obligations under the Stockholm Convention on Persistent Organic Pollutants (POPs Convention), the Aarhus Protocol on Persistent Organic Pollutants to the Geneva Convention on Long Range Transboundary Air Pollution (LRTAP POPs Protocol) and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention).

POPs are certain chemicals that are toxic, persist in the environment for an extended period of time and can bioaccumulate in the human food chain. POPs have been linked to adverse health effects on humans and animals. Due to their persistent characteristics and ability to circulate globally, POPs that are released in one part of the world can travel to neighboring regions and negatively affect environments where they are not produced or used.

The United States has taken a leading role in reducing and eliminating the use POPs. For example, in the late 1970s, the United States prohibited the manufacture of new PCBs and severely restricted the use of remaining stocks. And over the past 35 years, the United States has had a strong regulatory process that restricted the production and use of dangerous pesticides. Even prior to signing the POPs Convention, the United States prohibited the sale of all the POPs pesticides initially targeted by the convention.

In 2001, President George W. Bush signed the POPs Convention. Its ultimate goal is the safe management of hazardous chemicals. Over time, the convention will help bring an end to the production and use of dangerous pollutants around the world and to positively affect the U.S. environment and public health.

Specifically, the convention requires all signatory nations to stop the production and use of 12 listed POPs, including DDT, PCBs and dioxins. Parties to the convention also agree to control sources of POPs by-products to reduce releases and provide for the safe handling and disposal of POPs in an environmentally sound manner. The convention includes a science-based procedure to allow other POPs to be added and provides technical and financial assistance to help developing countries manage and control POPs.

In 1998, the United States and members of the United Nations Economic Commission for Europe (UN-ECE) negotiated a regional protocol on POPs under the auspices of the Convention on Long Range Transboundary Air Pollution (LRTAP). Informally, the agreement is called the LRTAP POPs Protocol. The goal of the protocol is to eliminate production and reduce emissions of POPs in North America and Europe.

The LRTAP POPs Protocol was the basis for the POPs Convention. The two agreements are similar in purpose, except that the LRTAP treaty is regional and it does not include trade restrictions or the technical and financial assistance available to developing nations under the POPs Convention. Also, the LRTAP POPs Protocol includes four additional chemicals to the 12 listed in the POPs Convention.

In 1998, the PIC Convention established an information-sharing process to promote cooperative efforts among the parties to the convention regarding trade in chemicals. The process is designed to help nations decide whether to allow a chemical to be imported. Basically, the PIC Convention provides for prior notification to potential importing countries by nations exporting chemicals that have been banned or severely restricted in the exporting country. Countries exporting the chemicals listed in the convention must generally ensure that the importing country has consented to import the chemical.

The bill we are introducing today would prohibit the sale, distribution, use, production or disposal of any listed POPs pesticides or LRTAP POPs pesticide. It would establish notice and reporting procedures to ensure the American public is aware of potential actions and decisions made by the parties to the conventions. The bill also would add new export reporting and labeling requirements to ensure compliance with U.S. obligations under the PIC Convention.

In order for the United States to become a party to the conventions, the Senate must ratify the POPs and PIC Conventions. Congress also must pass implementing legislation. This bill does not include a ratification resolution and it does not amend the Toxic Substances Control Act.

At this time, the United States is not a party to the conventions and does not have a seat at the negotiating table. This weak position hampers the ability of our technical experts and negotiators to protect our leadership role in international pesticide policy and regulation. Our observer-only status also limits our ability to participate in the critical decisions that affect U.S. businesses and economic interests and our environment and public health. The delay in ratifying the conventions serves to marginalize us.

The U.S. delegation was unable to fully participate in the first meeting of parties to the POPs Convention held in May 2005 in Punta del Este, Uruguay. The next meeting of the parties to the POPs Convention is May 2006. I urge my colleagues to ratify the conventions and pass implementing legislation so that the United States can reclaim its rightful place as a world leader in the safe management of hazardous chemicals.

I look forward to working with my colleagues on the Senate Foreign Relations Committee and the Environment and Public Works Committee on this matter.

Mr. HARKIN. Mr. President, today I am pleased to join with Chairman CHAMBLISS in introducing legislation to implement the Stockholm Convention on Persistent Organic Pollutants, the

LRTAP POPs Protocol, and the Rotterdam PIC Protocol. These three agreements provide an international framework for controlling and eliminating the use of chemicals that have the greatest potential for long-term environmental damage. These persistent organic pollutants, or POPs, are chemicals that do not easily break down in the environment. As a result, they tend to move across international boundaries and bio-accumulate—in other words, they travel up the food chain. This legislation modifies existing U.S. law under the Federal Insecticide, Fungicide and Rodenticide Act, FIFRA, to bring us into compliance with these agreements with regard to chemicals used in agriculture. Implementation of the agreements will also require modification of the Toxic Substances Control Act, TSCA.

These conventions and protocols have already entered into force. But at this point, though the United States is a signatory to all of them, we have not ratified them. All of the chemicals that are listed in the agreement are already banned or tightly controlled under U.S. law, but the Stockholm Convention's Review Committee just met in Geneva and further meetings are planned, and decisions are being made without our delegation able to fully participate as a party to the agreement. The United States needs to ratify the convention in order to have a voice in this process.

Our goal in writing this legislation is narrow. It has not been our intention to open up FIFRA as part of this process, but only to craft those changes compelled by our international commitments. That is not to say that FIFRA is perfect or could not be improved and strengthened—only that this is not the occasion to launch into changing the domestic law beyond the narrow goal of compliance with these agreements.

Some have urged that this measure provide for automatic processes triggered by the decisions of the review committee overseeing the Stockholm Convention. For instance, if the review committee lists a chemical, they would have the United States automatically take steps to regulate or ban the chemical domestically. I have sympathy with that approach, and I would hope that our existing environmental laws would be used to restrict the use of such a chemical before international action, as they have with all the initial chemicals listed in the Stockholm Convention.

But that is not what is called for in the Stockholm Convention. The convention that this legislation will implement does not compel parties to adopt new chemicals added to the convention in future years. Instead, the parties are allowed to opt in to the convention's restrictions. The legislation we are introducing today would allow for any information or studies generated as part of the international process to be used as part of a domestic regulatory action on the chemical, but would not provide an automatic process that compelled the Environmental Protection Agency, EPA, to take action. In essence, we are allowing the EPA to move forward and take action on a chemical if the case made in the international review for a ban is strong, and not make EPA reinvent the wheel and generate new data to back up their conclusions, while at the same time, not mandating EPA action to ban or regulate a chemical. This legislation strikes a fair balance and one that is consistent with the limited goal we have in this process to bring FIFRA into compliance with our international obligations.

The most controversial aspects of this legislation are the provisions that deal with the process by which new chemicals are brought under the convention's control. It is critically important that the position of the United States in the international regulation of chemicals take into account the views of all parties—pesticide manufacturers, farmers, environmental scientists, State regulators—everyone who has a stake in the process.

Under the Stockholm Convention, the process of listing new POPs chemicals follows a three-part process. The review committee determines whether a chemical satisfies the agreed screening criteria in the convention; if the criteria are satisfied, a risk profile is prepared; if on the basis of the risk profile, it is determined that global action is required, the committee or parties would consider listing the chemical.

In each of these stages, the U.S. position should be informed by formal notice and comment periods as provided in existing law. The Federal notice and comment process is open, well developed, and well understood by stakeholders in the process. If this process is optional, there is the risk that the U.S. position could be formed without taking into account important views. While nothing in this legislation dictates that any particular position in this established process be taken by the administration, there is a requirement that the administration use this process to collect information to inform its position in the international body regarding any particular chemical.

The administration's draft of this legislation gave the EPA Administrator permission to initiate a notice and comment period but did not require it. The argument for this position was a constitutional claim that the executive's authority over negotiations with other nations includes a right to rely on whatever information that the president chooses to use. The ''remedy'' for negotiating a faulty treaty, according to the letter received from the Department of Justice, is for the Senate to refuse to consent to the treaty.

This position is not consistent with existing Federal law and is impractical particularly in a process like this one, where the negotiation in question would never be subject to ratification by the Senate. My concern with this constitutional theory resulted in an exchange of correspondence last year, when this bill was being drafted by then-Chairman COCHRAN.

I wrote to then-Administrator Michael Leavitt at the EPA, asking for a written explanation of the administration's position on this issue. This resulted in two letters, one from Administrator Leavitt on behalf of the EPA dated March 25, 2004, and one from Assistant Attorney General William Moschella on behalf of the Department of Justice dated March 25, 2004. Finally, I requested an analysis of the constitutional issues raised by this provision from the American Law Division of the Congressional Research Service and received a memorandum dated March 30, 2004. I will offer all of these letters and the CRS memorandum for inclusion in the RECORD at the end of my statement.

Having reviewed all this material, I find that the administration's position is not well supported, and I would urge the Senate to reject any effort to include it in this legislation. The CRS memorandum on the EPA draft summarizes the state of the law as follows:

Stated succinctly, the separation of powers doctrine ''implicit in the Constitution and well established in case law, forbids Congress from infringing upon the Executive Branch's ability to perform its traditional functions.'' The Supreme Court has established that in determining whether an act of Congress has violated the doctrine, ''the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions.''

The memo goes on to state that it is ''difficult to see how a mandatory notice and comment requirement would implicate this traditional executive function.'' The memorandum concludes that ''it does not appear that a mandatory notice and comment requirement would present any substantive separation of powers concerns.'' Clearly, there is no merit to the Justice Department's contention that mandatory notice and comment would be an unconstitutional intrusion into the President's exclusive prerogative over foreign policy. Clearly, future steps taken domestically to carry out these international agreements should be informed by the views of all stakeholders and build the record through the notice and comment procedure for domestic implementation of any international action. This legislation makes the right choice by mandating notice and comment.

I appreciate the opportunity to work with Chairman CHAMBLISS on this legislation, and with our committee's previous chair, Senator COCHRAN, whose staff worked tirelessly to develop this legislation. I am hopeful that we can work together with the other body to reach agreement on implementing legislation along the lines of this bill,

that will clear the way for ratification of the Stockholm Convention.

I ask unanimous consent to include in the RECORD a letter to Administrator Michael Leavitt, his response from March 25, 2004, the response to the same letter by William Moschella on behalf of the Justice Department, and the memorandum of law from the Congressional Research Service.

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

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, DC, February 12, 2004.

Hon. MICHAEL LEAVITT,
Administrator, Environmental Protection Administration, Washington, DC.

DEAR ADMINISTRATOR LEAVITT: Thank you for your note asking for my help in passing legislation to implement the Stockholm Protocols. I certainly want to be helpful in that regard and support moving implementing legislation quickly that will enhance the ability of the Environmental Protection Agency to eliminate the threat that persistent organic pollutants (POPs) pose to our environment.

As we move forward on this legislation, I believe it is important to regulate not only the so-called ''dirty dozen'' POPs that are explicitly controlled by the Stockholm Protocols, but also to improve your agency's ability to address these types of pollutants through the EPA's regulatory system as expeditiously as possible, with opportunities for public participation and comment. This public participation and comment is particularly important to inform the agency in its evaluation of potential new pollutants brought before the review committee formed by this legislation.

One version of proposed implementing legislation would provide for mandatory notice and comment periods to allow public input at each of the three stages of the review committee process. The most recent draft of the legislation put forward by the EPA, however, makes each of these notice and comment periods fully subject to the agency's discretion. It has also been asserted that if Congress required the agency to provide a notice and comment period based on action of the international body, it would unconstitutionally impinge on our national sovereignty. This is a novel constitutional analysis that I would like to understand better before this legislation moves forward.

I request that, prior to our Committee taking up this issue, you provide me with any legal analysis, legal opinions, and citations to any legal authority supporting the proposition that Congress cannot require the EPA to hold notice and comment periods in response to the actions of an international body. I know that you are as committed as I am to move this legislation expeditiously, and I look forward to receiving this information soon.

Again, I look forward to working with you on this matter and want to help in any way I can to assist you in your work of improving our nation's environment.

Sincerely,

TOM HARKIN,
Ranking Democratic Member.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
Washington, DC, March 25, 2004.

Hon. TOM HARKIN,
Ranking Member, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: Thank you very much for your letter of February 12, 2004. I appreciate your willingness to support the legislative efforts of the Administration to allow the United States to become a Party to the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Protocol on Persistent Organic Pollutants to the 1979 Convention on Long-Range Transboundary Air Pollution.

In your letter, you noted a particular interest in the discretionary notice and comment procedures contained within the Administration's proposed legislation to implement the FIFRA-related obligations of the three environmental treaties referenced above. The Administration's proposal does not make these notice and comment procedures mandatory, and you requested additional information about the constitutional concerns that underlie that decision. I asked my staff to organize a meeting for the Department of Justice to discuss its constitutional concerns with your legislative assistants and to answer any questions. I understand that meeting occurred on March 3, 2004.

As you know, the Stockholm Convention creates an international ''Persistent Organic Pollutants Review Committee'' to evaluate whether various substances should be added or removed from the Convention's coverage. The United States expects to play a strong role at the international meetings of the Review Committee, and, as you note in your letter, the United States could use the notice and comment procedures under the proposed bill to ''allow public input at each of the three stages of the review committee process.''

U.S. stakeholders will no doubt have a great deal of expertise about proposed pollutants brought before the international review committee, and the Administration proposal specifically includes notice and comment procedures to allow the Executive branch to take advantage of this knowledge. The statutory notice and comment procedures are precatory, however, because the Department of Justice has advised the Administration that it has concluded that a mandatory consultation requirement would raise constitutional concerns with respect to the President's authority to conduct negotiations with other nations. I have forwarded your letter to the Department of Justice to respond to you more specifically on this point.

I do, however, agree with the concern behind your letter that ''public participation and notice and comment is particularly important to inform the agency in its evaluation of potential new pollutants brought before the review committee.'' The constitutional concerns that are presented by a mandatory requirement could be avoided by fully authorizing the Executive Branch to gather information from the public, but not requiring the Executive Branch to exercise that authority. In order to ensure that the public is well informed about events that are taking place internationally, and to provide an opportunity for the consideration of public comment in the event that the Administration does not execute the discretionary notice and comment procedures, my staff has included a new section in the legislation that I transmitted to you on February 25.

In this section, there is a mandatory requirement that the Administration publish a semiannual federal register notice that provides a full description of the events occurring at the international level and any domestic regulatory actions that have been initiated. Because this requirement is based on the calendar, relates to information that is publicly available, and is not linked to decisions in the international process, it does not raise the same constitutional concerns. This new provision also obligates the Environmental Protection Agency to consider comments received as a result of these semiannual federal register notices. I will be interested in your reaction to this proposal, which I believe addresses our respective concerns.

I appreciate the reiteration of your commitment to passing this legislation and to completing the necessary steps for the United States to deposit its instrument of consent to join these three very important multilateral environmental treaties. I look forward to working with you. If you have any further questions or concerns, please contact me or your staff may contact Peter Pagano in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564–3678.

Sincerely,

MICHAEL O. LEAVITT.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 25, 2004.

Hon. TOM HARKIN,
Ranking Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: The EPA has forwarded to the Department of Justice your letter dated February 12, 2004, regarding legislation proposed by the Administration to implement the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the Protocol on Persistent Organic Pollutants to the 1979 Convention on Long-Range Transboundary Air Pollution.

Specifically, you are interested in the discretionary notice and comment procedures contained within the Administration's proposed legislation to implement the FIFRA-related obligations of the three environmental treaties referenced above. At the request of the Department of Justice, the Administration's proposal does not make these consultations mandatory, and you requested additional information about the constitutional concerns underlying that decision.

The Stockholm Convention creates an international ''Persistent Organic Pollutants Review Committee'' to evaluate whether various substances should be added to, or removed from, the Convention's coverage. Also, as you note in your letter, the notice and comment procedures under the proposed bill would ''allow public input at each of the three stages of the review committee process.'' The statutory notice and comment procedures are precatory, however, because a mandatory consultation requirement would raise constitutional concerns.

The Executive branch has sole authority over the United States' negotiations with other nations. *See, e.g.,* Letter to Edmond Charles Genet, from Thomas Jefferson, Secretary of State (1793), reprinted in 9 The Writings of Thomas Jefferson 256 (Andrew A. Lipscomb ed., 1903) (''[T]he President of the United States. . . being the only channel of communication between this country and foreign nations, it is from him alone that foreign nations or their agents are to learn what is or has been the will of the nation.''). The Supreme Court has long concurred in this understanding of the President's power, noting that this exclusive authority extends throughout the entire ''field of negotiation.'' *See United States* v. *Curtiss-Wright Corp.,* 299 U.S. 304,319 (1936) (''In this vast external realm, with its important, complicated, delicate, and manifold problems, the President

alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it.''). *See also New York Times Co.* v. *United States,* 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (''In the governmental structure created by our Constitution, the Executive is endowed with enormous power in the two related areas of national defense and international relations.''); *United States* v. *Louisiana,* 363 U.S. 1, 35 (1960) (the President is ''the constitutional representative of the United States in its dealings with foreign nations''); *Earth Island Inst.* v. *Christopher,* 6 F.3d 648, 652–54 (9th Cir. 1993); *Sanchez-Espinoza* v. *Reagan,* 770 F.2d 202, 210 (D.C. Cir. 1985) (Scalia, J.) (''[B]road leeway'' is ''traditionally accorded the Executive in matters of foreign affairs.'').

Within this constitutional framework, statutes cannot direct the President to vote a certain way in an international forum, and they cannot require that the President consult with specific private organizations as he prepares to cast such a vote. Congress can certainly assist the President in his intentional negotiations by providing him with the authority to gather information from private citizens, cf. *New York Times Co.,* 403 U.S. at 729–30, but it remains for the President to decide how much, if any, additional information is needed and what should be done with it. If a proposed treaty is ill-informed, then the Constitution provides the remedy: the Senate may refuse to concur in that document. Joseph Story, 3 Commentaries on the Constitution of the United States §1507 (1833) (''The President is the immediate author and finisher of all treaties; and all the advantages, which can be derived from talents, information, integrity, and deliberate investigation on the one hand, and from secrecy and despatch on the other, are thus combined in the system. But no treaty, so formed, becomes binding upon the country, unless it receives the deliberate assent of two thirds of the Senate.''). What Congress may not do is direct, through legislation, how the President exercises his exclusive power to negotiate.

The Administration's concerns over legislation that would mandate consultation with Congress or with private parties in connection with the conduct of international negotiations are not new. Similar concerns were raised by the Department of Justice under President Clinton, President George H. W. Bush, and President Reagan. In each case, the Department objected to legislative proposals that would have required that the Executive branch consult in the context of international negotiations. For example, during the Clinton administration, the Department of Justice objected to legislative proposals that would have directed the Executive branch to consult with interested parties prior to negotiating trade agreements or prior to taking a position before the World Trade Organization. In 1991, the Department advised that the United States Trade Representative could not be required to periodically consult with interested parties on the progress of international trade negotiations. During the Reagan Administration, the Department wrote to Senator Lowell Weicker explaining that a proposed consultation requirement was objectionable because any provision that would require that the Executive branch disclose information that might interfere with the success of international negotiations would be subject to a valid claim of executive privilege. Presidents of both parties have also noted concerns about appropriations legislation containing similar provisions, and have stated that they would interpret such provisions not to intrude into this exclusive constitutional power over international negotiations. *See* Statement on Signing the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 36 Weekly Comp. Pres. Doc. 2809–10 (Nov. 13, 2000) (Statement of President Clinton) (''Certain provisions of the Act could interfere with my sole constitutional authority in the area of foreign affairs by directing or burdening my negotiations with foreign governments and international organizations . . . I will not interpret these provisions to limit my ability to negotiate and enter into agreements with foreign nations.''); Statement on Signing the Foreign Operations, Export Financing, and Related Programs Appropriations, 2002, 38 Weekly Comp. Pres. Doc. 49–50 (Jan. 10, 2002) (Statement of President Bush) (objecting to . provision ''which purports to direct the Secretary of State to consult certain international organizations in determining the state of events abroad'' and noting this and other provisions ''shall be construed consistent with my constitutional authorities to conduct foreign affairs, participate in international negotiations, and supervise the Executive Branch'').

In the pending legislation, the Department concluded that a mandatory requirement for ''public participation and comment'' would raise similar constitutional concerns and therefore recommended that more precatory language be used.

That said, the Department does not take issue with the general belief that ''public participation and notice and comment is particularly important to inform the [Administration] in its evaluation of potential new pollutants brought before the review committee.'' The constitutional concerns that are presented by a mandatory consultation requirement can be avoided by fully authorizing the Executive Branch to gather information from the public, but not requiring the Executive Branch to exercise that authority. To ensure that the public is well informed about events that are taking place internationally, and to provide an opportunity for the consideration of public comment in the event that the President chooses not to execute the discretionary notice and comment procedures, the bill requires that the Administration publish a semi-annual Federal Register notice that provides a full description of the events occurring at the international level and any domestic regulatory actions that have been initiated. Because this requirement based on the calendar, relates to information that is publicly available, and is not linked to decisions in the international process, this does not raise the same constitutional concerns.

We trust this provides an answer to your inquiry. We would welcome the opportunity to assist you with any future inquiries you may have. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

WILLIAM MOSCHELLA,
Assistant Attorney General.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, March 30, 2004.

Re: Validity of Provisions Mandating Notice and Comment Proceedings in Response to the Decisions of Parties Operating Pursuant to International Conventions and Protocols.

Hon. TOM HARKIN: Pursuant to your request, this memorandum analyzes certain provisions of a draft bill forwarded by the Administration that would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to allow for the implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs Convention), the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention) and the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution (LRTAP POPs Protocol). In pertinent part, the draft bill would imbue the Administrator of the Environmental Protection Agency (hereinafter referred to as ''Administrator'') with discretionary authority to publish notices in the Federal Register and to provide an opportunity for comment in response to certain actions taken by parties to the POPs Convention and the LRTAP POPs Protocol.

The Administration has asserted that the notice and comment provisions in its proposal are necessarily ''precatory'' in nature, ''because a mandatory consultation requirement would raise constitutional concerns.'' You have asked whether it would be constitutionally problematic to make the notice and comment provisions in the draft proposal mandatory, despite the concerns raised by the Administration. A review of relevant constitutional principles appears to indicate that such a requirement would pass constitutional muster.

POPS CONVENTION

The POPs Convention was signed by the United States on May 31, 2001, and requires nations to reduce or eliminate the production and use of listed chemicals. The POPs Convention allows new chemicals to be added to the list by amendment to the relevant treaty annexes, and an amendment may be proposed by any party to the Convention. Amendments may be adopted at a meeting of the Conference of the Parties after the circulation of such a proposal to all parties at least six months in advance of the meeting. The POPs convention also creates a Persistent Organic Pollutants Review Committee (POPs Review Committee) that is to consist of government-designated experts in chemical assessment or management. The POPs Review Committee is charged generally with determining whether a listing proposal submitted by a party meets screening criteria established in the Convention, determining whether global action is warranted regarding the proposal, and recommending whether a proposed chemical should be considered for listing by the Conference of the Parties.

LRTAP POPS PROTOCOL

The 1998 Aarhus Protocol on Persistent Organic Pollutants (hereinafter referred to as ''LRTAP POPs Protocol'') amended the Convention on Long-Range Transboundary Air Pollution with the objective of eliminating discharges, emissions and losses of listed persistent organic pollutants during their production, use and disposal. Any party may offer an amendment to add a new chemical to the LRTAP POPs Protocol, which may be adopted by consensus of the parties represented at a session of the Executive Body

of the Convention. Prior to the addition of a chemical, the LRTAP POPs Protocol requires the completion of a risk profile on the chemical establishing that it meets selection criteria specified under the protocol.

THE DRAFT PROPOSAL

The Administration's draft proposal, as supplied by your office, provides for the implementation of the PIC and POPs Conventions and the LRTAP POPs Protocol. To effectuate this implementation, the proposal imbues the Administrator with the discretionary authority to publish notices in the Federal Register in response to actions taken to add chemicals to the list of those covered under the POPs Convention and the LRTAP POPs Protocol specifically.

As noted above, the POPs Convention establishes a POPs Review Committee that is responsible for considering proposals to add chemicals to those listed in the POPs Convention and recommending to the Conference of the Parties whether a proposed chemical should be considered for listing by the Conference. In the event that the POPs Review Committee does not forward a proposal, the Conference may choose to consider the proposal on its own accord. Section 3(4) of the draft bill contains several provisions authorizing the Administrator of the EPA to publish notices in the Federal Register at certain stages of the listing process and to provide an opportunity for comment on a proposed listing. In particular, Section 3(4), establishing a new 7 U.S.C. 136o(e)(3), authorizes the publication of a notice and opportunity for comment after a decision by the POPs Review Committee that a listing proposal meets the screening criteria specified in the POPs Convention or, alternatively, if the Conference of the Parties decides that such a proposal should proceed.

Likewise, a new 7 U.S.C. 136o(e)(4) would authorize the publication of notice and opportunity for comment upon a determination by the POPs Review Committee that a proposed listing warrants global action, or, alternatively, if the Conference of the Parties decides that the proposal should proceed. Finally, a new 7 U.S.C. 136o(e)(5) would authorize the publication of notice and opportunity for comment after the POPs Review Committee recommends that the Conference of the Parties consider making a listing decision regarding the chemical at issue.

Publication of notice and opportunity for comment would also be authorized after a party to the LRTAP POPs Protocol submits a risk profile in support of a proposal to add a chemical to those already listed. Additional notice and comment proceedings would be authorized in instances where the Executive Body determines that further consideration of a pesticide is warranted, as well as after the completion of a technical review of a proposal to add a chemical to the LRTAP POPs Protocol. It is interesting to note that while the draft proposal makes the decision as to whether to engage at all in notice and comment procedures discretionary, the Administrator is required to provide detailed elements of notice in the event that such procedures are offered.

ANALYSIS

You have specifically inquired as to whether it would violate the doctrine of separation of powers to make the aforementioned discretionary notice and comment procedures mandatory, irrespective of the general concern voiced by the Administration that ''a mandatory consultation requirement would raise constitutional concerns.'' An examination of applicable principles and precedent appears to indicate that a mandatory notice and comment requirement would be constitutionally permissible.

Stated succinctly, the separation of powers doctrine ''implicit in the Constitution and well established in case law, forbids Congress from infringing upon the Executive Branch's ability to perform its traditional functions.'' The Supreme Court has established that in determining whether an act of Congress has violated the doctrine, ''the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions.'' Furthermore, as was noted by the Court of Appeals for the Ninth Circuit in *Confederated Tribes of Siletz Indians* v. *United States:*

Although the Supreme Court has not announced a formal list of elements to be considered when determining whether a violation of the doctrine has taken place, it has consistently looked to at least two factors: (1) the governmental branch to which the function in question is traditionally assigned, *see Mistretta*, 488 U.S. at 364, 109 S.Ct. at 65–51; *Morrison* v. *Olson*, 487 U.S. 654, 694–96, 108 S.Ct. 2597, 2620–22, 101 L.Ed. 2d 659 (1988); and (2) the control of the function retained by the branch, *see Mistretta*, 488 U.S. at 408–12, 109 S.Ct. at 673–75; *Morrison*, 487 U.S. at 692–96, 108 S.Ct. at 2619–22.

Applying these factors to the case at hand, it appears unlikely that a reviewing court would hold that mandatory notice and comment provisions would violate the doctrine. As is indicated by the DOJ letter, it seems that any argument that a mandatory requirement would offend the separation of powers doctrine would hinge on the assertion that such a requirement necessarily constitutes an intrusion into the core power of the Executive Branch over external affairs. Specifically, in *United States* v. *Curtiss-Wright Corp.*, the Supreme Court declared:

[n]ot only . . . is the federal power over external affairs in origin and essential character different from that over internal affairs, but participation in the exercise of the power is significantly limited. In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. As Marshall said in his great argument of March 7, 1800, in the House of Representatives, 'the President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.'

However, it is difficult to see how a mandatory notice and comment requirement would implicate this traditional executive function. Specifically, while it is generally conceded that there are some powers enjoyed by the President alone regarding foreign affairs, it is likewise evident that Congress possesses wide authority to promulgate policies respecting foreign affairs. Congress has often exercised this authority to determine policy objectives for the United States in international negotiations and to require subsequent legislative approval of international agreements before they may enter into force for the United States.

A mandatory notice and comment requirement would not appear to be an attempt to control the substance of negotiations between the United States and other parties to POPs Convention or the LRTAP POPs Protocol. Instead, such a requirement would simply establish that the Administrator must publish notices in the Federal Register providing information regarding chemicals that are being considered for listing to either the Convention or the Protocol. A somewhat analogous requirement in the international arena may be found at 19 U.S.C. 3537, which requires the United States Trade Representative to consult with the appropriate congressional committees and to publish detailed notices in the Federal Register whenever it is a party to any dispute settlement proceedings under the WTO. Furthermore, it should be noted that this notification provision could be likened to reporting requirements that are often imposed by Congress. As a general proposition, Congress is entitled to full access to information that is in the possession of the Executive Branch, subject to claims of executive privilege.

In addition to the general assertion that a mandatory notice and comment requirement would intrude on the President's power over the ''field of negotiation'' in foreign affairs, the DOJ letter states that any potential requirement that the Administrator consult with private parties or give consideration to comments received therefrom would also be constitutionally problematic. However, it is likewise difficult to ascertain how such a provision would necessarily impair the ability of the executive branch to carry out its core functions in this context. There is no indication that such a provision would be drafted so as to require the disclosure of sensitive information, or to require the inclusion of such individuals in the actual negotiation process. Rather, the notice and comment procedures at issue would appear to be tailored to ensure that the public is kept informed regarding ongoing proceedings in this context, and is further afforded the opportunity to comment on proposals under consideration. Accordingly, it appears that such a dynamic would not raise concerns any more significant than existing consultation requirements. Based on these factors, it does not appear that a mandatory notice and comment requirement would present any substantive separation of powers concerns.

T.J. HALSTEAD,
Legislative Attorney,
American Law Division.

By Mr. DURBIN (for himself, Mr. COCHRAN, and Mr. SALAZAR):

S. 2043. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide grants for mass evacuation exercises for urban and suburban areas and the execution of emergency response plans, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2043

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 ''Mass Evacuation Exercise Assistance Act of 2005''.

SEC. 2. MASS EVACUATION EXERCISES AND EXECUTION OF EMERGENCY RESPONSE PLANS.

Section 201 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131) is amended by adding at the end the following:

''(e) GRANTS FOR MASS EVACUATION EXERCISES FOR URBAN AND SUBURBAN AREAS AND THE EXECUTION OF EMERGENCY RESPONSE PLANS.—

''(1) IN GENERAL.—The Secretary of Homeland Security shall make grants to States or units of local governments nominated by States to—

''(A) establish programs for the development of plans and conduct of exercises for

the mass evacuation of persons in urban and suburban areas; and

''(B) execute plans developed under subparagraph (A), including the purchase and stockpiling of necessary supplies for emergency routes and shelters.

''(2) CONDITIONS.—As a condition for the receipt of assistance under paragraph (1)(A), the Secretary of Homeland Security may establish any guidelines and standards for the programs that the Secretary determines to be appropriate.

''(3) REQUIREMENTS.—To the maximum extent practicable, a program assisted under paragraph (1)(A) shall incorporate the coordinated use of public and private transportation resources in the plans developed and the exercises carried out under the program.

''(4) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—

''(A) IN GENERAL.—The Secretary of Defense may authorize the participation of members of the Armed Forces and the use of appropriate Department of Defense equipment and materials in an exercise carried out under a program assisted under this subsection.

''(B) REIMBURSEMENT FOR PARTICIPATION OF GUARD.—In the event members of the National Guard in State status participate in an exercise carried out under a program assisted under this subsection pursuant to an authorization of the chief executive officer of a State, the Secretary of Defense may, using amounts available to the Department of Defense, reimburse the State for the costs to the State of the participation of such members in such exercise.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $250,000,000 for each of fiscal years 2006 through 2010.

''(f) MASS EVACUATION PLANS.—

''(1) REQUIREMENT.—Each State or unit of local government receiving a grant under subsection (e)(1) shall, in consultation with relevant local governments, develop and maintain detailed and comprehensive mass evacuation plans for each area in the jurisdiction of the State unit of local government.

''(2) PLAN DEVELOPMENT.—In developing the evacuation plans required under paragraph (1), each State or unit of local government shall, to the maximum extent practicable—

''(A) assist urban and suburban county and municipal governments in establishing and maintaining mass evacuation plans;

''(B) assist hospitals, nursing homes, other institutional adult congregate living facilities, group homes, and other health or residential care facilities that house individuals with special needs in establishing and maintaining mass evacuation plans; and

''(C) integrate the plans described in subparagraphs (A) and (B) and coordinate evacuation efforts with the entities described in subparagraphs (A) and (B).

''(3) PLAN CONTENTS.—State, county, and municipal mass evacuation plans shall, to the maximum extent practicable—

''(A) establish incident command and decisionmaking processes;

''(B) identify primary and alternate escape routes;

''(C) establish procedures for converting 2-way traffic to 1-way evacuation routes, removing tollgates, ensuring the free movement of emergency vehicles, and deploying traffic management personnel and appropriate traffic signs;

''(D) maintain detailed inventories of drivers and public and private vehicles, including buses, vans, and handicap-accessible vehicles, that may be pressed into service;

''(E) maintain detailed inventories of emergency shelter locations and develop the necessary agreements with neighboring jurisdictions to operate or use the shelters in the event of a mass evacuation;

''(F) establish procedures for informing the public of evacuation procedures before and during an evacuation and return procedures after an evacuation, including using television, radio, print, and online media, land-based and mobile phone technology, and vehicles equipped with public address systems;

''(G) identify primary and alternate staging locations for emergency responders;

''(H) identify gaps in the ability to respond to different types of disasters, including the capacity to handle surges in demand for hospital, emergency medical, coroner, morgue, and mortuary services, quarantines, decontaminations, and criminal investigations;

''(I) establish procedures to evacuate individuals with special needs, including individuals who are low-income, disabled, homeless, or elderly or who do not speak English;

''(J) establish procedures for evacuating animals that assist the disabled;

''(K) establish procedures for protecting property, preventing looting, and accounting for pets; and

''(L) ensure the participation of the private and nonprofit sectors.

''(4) UPDATING OF PLANS.—State, county, municipal, and private plans under this subsection shall be updated on a regular basis.

''(g) ADDITIONAL ASSISTANCE TO STATES.—The Secretary of Homeland Security shall assist States and local governments in developing and maintaining the plans described in subsection (f) by—

''(1) establishing and maintaining comprehensive best practices for evacuation planning, training, and execution;

''(2) developing assistance teams to travel to States and assist local governments in planning, training, and execution;

''(3) developing a training curriculum based on the best practices established under paragraph (1);

''(4) providing the training curriculum developed under paragraph (3) to State and local officials;

''(5) maintaining a list of qualified government agencies, private sector consultants, and nonprofit organizations that can assist local governments in setting up evacuation plans; and

''(6) establishing and maintaining a comprehensive guide for State and local governments regarding—

''(A) the types of Federal assistance that are available to respond to emergencies; and

''(B) the steps necessary to apply for that assistance.

''(h) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this subsection, the Comptroller General of the United States shall conduct a study detailing—

''(1) any Federal laws that pose an obstacle to effective evacuation planning;

''(2) any State or local laws that pose an obstacle to effective evacuation planning; and

''(3) the political and economic pressures that discourage governors, county executives, mayors, and other officials from—

''(A) ordering an evacuation; or

''(B) conducting exercises for the mass evacuation of people.''.

By Mr. DEWINE:

S. 2046. A bill to establish a National Methamphetamine Information Clearinghouse to promote sharing information regarding successful law enforcement, treatment, environmental, social services, and other programs related to the production, use, or effects of methamphetamine and grants available for such programs, and for the other purposes; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, today I am introducing a bill that would create a National Methamphetamine Information Clearinghouse (NMIC). This web-based source of information would promote sharing of ''best practices'' regarding law enforcement, treatment, environmental, social services, and other programs to combat the production, use, and effects of methamphetamine.

The purpose of the NMIC is to make a one-stop shop, where all the ''best practices'' in the fight against meth can be found—information from law enforcement, treatment-based organizations, social services and environmental agencies. It will be a website providing information that agencies and organizations submit, describing what has worked in their local communities. The people who have had success with addressing meth and meth-related issues will be providing this information. Additionally, there will be information and links regarding available grants for establishing and maintaining anti-meth programs.

The NMIC will serve two distinct populations—law enforcement and the broader community. The NMIC will contain a restricted access section where law enforcement will be able to post their successful strategies, training techniques, and conference notes so that other law enforcement will be able to get ideas and incorporate them in their own jurisdictions. The unrestricted portion of the website will include resources for other agencies and the public at large. For example, child protection agencies might post techniques on dealing with meth orphans, community health centers might post treatment options that provided them with some success, and environmental groups might post tips on cleaning up the toxic waste.

So, a landlord or hotel owner whose property was used as a meth lab and who wants to be able to rent out the property again, or the mother who wants to figure out if her child is a meth addict—and what to do if she is they would all be able to find useful information on the site.

One of our challenges in the fight against meth is finding those who need assistance and connecting them with those who can help—and that is exactly what this clearinghouse can do. Many people and organizations that have had some success in controlling meth are more than willing to share the techniques they found that work, if only they knew who needed the information. And, there are those who are just starting to attack the meth problem in their communities and need guidance as to how to make that start an effective one. The NMIC can help bring those groups of people together and enhance everyone's ability to fight the plague of meth.

NMIC will be housed under the auspices of the Department of Justice and

will be governed by an Advisory Council comprised of 10 members from a variety of agencies and organizations. It is this Council who will monitor the submissions to the Clearinghouse and make sure that the information found on the site is accurate, up-to-date, and useful.

The bill I am introducing today provides the basic outline of this idea, and over the next two months, I will be working closely with law enforcement and community groups to modify and improve the Clearinghouse before we move forward with this legislation next year. I look forward to that process and encourage all of my colleagues to join me in this effort to combat the meth problem.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2046

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Methamphetamine Information Clearinghouse Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''Council'' means the National Methamphetamine Advisory Council established under section 3(b)(1);

(2) the term ''drug endangered children'' means children whose physical, mental, or emotional health are at risk because of the production, use, or effects of methamphetamine by another person;

(3) the term ''National Methamphetamine Information Clearinghouse'' or ''NMIC'' means the information clearinghouse established under section 3(a); and

(4) the term ''qualified entity'' means a State or local government, school board, or public health, law enforcement, nonprofit, or other nongovernmental organization providing services related to methamphetamines.

SEC. 3. ESTABLISHMENT OF CLEARINGHOUSE AND ADVISORY COUNCIL.

(a) CLEARINGHOUSE.—There is established, under the supervision of the Attorney General of the United States, an information clearinghouse to be know as the National Methamphetamine Information Clearinghouse.

(b) ADVISORY COUNCIL.—

(1) IN GENERAL.—There is established an advisory council to be known as the National Methamphetamine Advisory Council.

(2) MEMBERSHIP.—The Council shall consist of 10 members appointed by the Attorney General—

(A) not fewer than 3 of whom shall be representatives of law enforcement agencies;

(B) not fewer than 4 of whom shall be representatives of nongovernmental and nonprofit organizations providing services related to methamphetamines; and

(C) 1 of whom shall be a representative of the Department of Health and Human Services.

(3) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for 3 years. Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment.

SEC. 4. NMIC REQUIREMENTS AND REVIEW.

(a) IN GENERAL.—The NMIC shall promote sharing information regarding successful law enforcement, treatment, environmental, social services, and other programs related to the production, use, or effects of methamphetamine and grants available for such programs.

(b) COMPONENTS.—The NMIC shall include—

(1) a toll-free number; and

(2) a website that—

(A) provides information on the short-term and long-term effects of methamphetamine use;

(B) provides information regarding methamphetamine treatment programs and programs for drug endangered children, including descriptions of successful programs and contact information for such programs;

(C) provides information regarding grants for methamphetamine-related programs, including contact information and links to websites;

(D) allows a qualified entity to submit items to be posted on the website regarding successful public or private programs or other useful information related the production, use, or effects of methamphetamine;

(E) includes a restricted section that may only be accessed by a law enforcement organization that contain successful strategies, training techniques, and other information that the Council determines helpful to law enforcement agency efforts to combat the production, use or effects of methamphetamine;

(F) allows public access to all information not in a restricted section; and

(G) contains any additional information the Council determines may be useful in combating the production, use, or effects of methamphetamine.

(c) REVIEW OF POSTED INFORMATION.—

(1) IN GENERAL.—Not later than 30 days after the date of submission of an item by a qualified entity, the Council shall review an item submitted for posting on the website described in subsection (b)(2)—

(A) to evaluate and determine whether the item, as submitted or as modified, meets the requirements for posting; and

(B) in consultation with the Attorney General, to determine whether the item should be posted in a restricted section of the website.

(2) DETERMINATION.—Not later than 45 days after the date of submission of an item, the Council shall—

(A) post the item on the website described in subsection (b)(2); or

(B) notify the qualified entity that submitted the item regarding the reason such item shall not be posted and modifications, if any, that the qualified entity may make to allow the item to be posted.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) for fiscal year 2006—

(A) $1,000,000 to establish the NMIC and Council; and

(B) such sums as are necessary for the operation of the NMIC and Council; and

(2) for each of fiscal years 2007 through 2010, such sums as are necessary for the operation of the NMIC and Council.

By Mr. OBAMA (for himself and Mrs. CLINTON):

S. 2047. A bill to promote healthy communities; to the Committee on Health, Education, Labor, and Pensions.

Mr. OBAMA. Mr. President, today, I am introducing the Healthy Communities Act of 2005, and I am pleased to have the support of my good friend and colleague Senator HILLARY RODHAM CLINTON.

Over the last few decades, our medical researchers and scientists have developed increasingly sophisticated and high tech methods to diagnose and treat disease. Yet, this approach has caused us to lose sight of the need for preventing diseases on the front-end, with greater investment in basic public health interventions that too often get short shrift.

Today, I would like to bring it back to the basics and talk about environmental quality. The air we breathe, the food we eat, the houses in which we live, and the parks in which our children play—all of these factors contribute to our health. Environmental health, as defined by the World Health Organization, includes both the direct, damaging effects of chemicals, radiation, and some biological agents, and the effects on health and well-being of the broad physical, psychological, social, and aesthetic environment. The legislation that I have introduced draws attention to that aspect of the environment that is the physical environment—the toxicants and pollutants that we may not notice, but are present in our everyday surroundings and taking a toll on our health.

My home State of Illinois faces a number of environmental challenges, including high levels of lead poisoning. It is estimated that over 400,000 children in this country suffer from elevated blood lead levels. Chicago has the unfortunate distinction of ranking number 1 for children with elevated blood lead levels. 6,691 children have elevated blood lead levels, which is 50 percent higher than the number of children in the second ranked city of Philadelphia. Elevated blood levels are known to cause behavioral and learning problems, slowed growth, impaired hearing and damage to the kidneys, brain and bone marrow. Adults are not exempt from lead toxicity—poisoned adults suffer pregnancy difficulties, high blood pressure, digestive problems, nerve disorders, memory and concentration problems, and muscle and joint pain. Lead poisoning is completely preventable, and although our agencies have made good progress, we can and must do more to address this issue.

Obviously lead is only one of many toxicants and pollutants with which we must contend. Different areas of the U.S. face unique challenges—States like California are grappling with the repercussions of air pollution, while Massachusetts and others in the Northeast are challenged with high levels of mercury in the water. As much as we know about these hazards, the effects of many chemicals are unknown.

Less than half of the chemicals produced in this country in quantities greater than 10,000 pounds have been tested for their potential human toxicity, with less than 10 percent studied to assess effects on development. This lack of knowledge has serious health repercussions—in children, environmental toxins are estimated to cause

up to 35 percent of asthma cases, up to 10 percent of cancer cases, and up to 20 percent of neurobehavioral disorders. Overall, an estimated 25 percent of preventable illnesses worldwide can be attributed to poor environmental quality. Diseases such as cancer, heart disease, asthma, birth defects, infertility, and obesity are all caused or exacerbated by toxicants or pollutants in the environment.

Minority Americans are significantly more likely to be affected than other Americans. Some studies have found that 3 of every 5 African- and Latino Americans live in communities with one or more toxic waste sites. Communities with existing incinerators, and those that are proposed for placement of new incinerators, have substantially higher numbers of minority residents. Minority Americans are already plagued with higher rates of death and disease, and fewer health resources in their neighborhoods. As we focus our efforts on environmental health, we must be cognizant that some groups are disproportionately affected by federal policies and decision-making, and deserve careful attention.

The Healthy Communities Act of 2005 addresses environmental health concerns in a comprehensive fashion, building upon many of the successful federal initiatives and filling in gaps in other critical areas. The bill establishes an independent advisory committee to provide recommendations across all relevant Federal agencies. It asks the CDC and the EPA to assess and report the environmental public health of the nation, and each State. The Health Action Zone Program will provide intense Federal attention and resources to clean up and address the health needs of the nation's most blighted communities. Environmental research is expanded, including biomonitoring and health tracking initiatives. Finally, the Act promotes environmental health workforce programs at the CDC and the NIH.

The Healthy Communities Act of 2005 will increase national attention on the importance of the environment, and its relationship to good health. As we work to make our future stronger for our communities, let us look to our past. In the National Environmental Policy Act (NEPA) of 1969, Congress wrote that it is the continuing responsibility of the Federal Government to assure that all Americans live in ''safe, healthful and aesthetically and culturally pleasing surroundings.'' Almost forty years later, our responsibility to the American people continues. I encourage all of my colleagues to join me and support passage of this bill.

By Mr. OBAMA:

S. 2048. A bill to direct the Consumer Product Safety Commission to classify certain children's products containing lead to be banned hazardous substances; to the Committee on Commerce, Science, and Transportation.

Mr. OBAMA. Mr. President, I rise today to introduce the Lead Free Toys Act of 2005, which directs the Consumer Product Safety Commission to intensify efforts to reduce lead exposure for children.

The unfortunate reality for many children—particularly in low-income and minority households—is the continued presence of high blood lead levels. Over 400,000 children in this country have elevated blood lead levels, with my own hometown of Chicago having the largest concentration of these children.

Lead is a highly toxic substance that can produce a range of health problems in young children, including IQ deficiencies, reading and learning disabilities, impaired hearing, reduced attention spans, hyperactivity, and damage to the kidneys, brain and bone marrow. Even low levels of blood lead in pregnant women, infants and children can lead to impaired cognitive abilities, fetal organ development and behavioral problems.

We know that lead poisoning is completely preventable. As the Nation has increased efforts to reduce environmental lead exposure, the number of children with high blood levels has steadily dropped. Restricting lead in gasoline and paint represent two major accomplishments in this regard. But much work remains to be done.

Earlier today I introduced the Healthy Communities Act of 2005, to strengthen Federal, State and local efforts to address environmental health issues in communities already affected by lead and other toxins. However, we need to take greater proactive steps to prevent contamination, and the Lead Free Toys Act of 2005 will help us do just that.

Disturbingly, lead is present in a number of toys and other frequently used objects by young children. According to research conducted by the National Center for Environmental Health, about half of tested lunch boxes have unsafe levels of lead. The highly popular Angela Anaconda lunch box was found to have 56,400 parts per million of lead, which is more than 90 times the 600 parts per million legal limit for lead in paint for children's products. Other lunch boxes showed levels of lead between two and twenty-five times the legal limit for lead paint in children's products. In most cases, the highest lead levels were found in the lining of lunch boxes, where lead could come into direct contact with food.

This problem is not limited to lunchboxes. One study found that 60 percent of more than 400 pieces of costume jewelry purchased at major department stores contain dangerous amounts of lead. From September 2003 through July 2004, there were 3 recalls of nearly 150 million pieces of toy jewelry because of toxic levels of lead.

This past August the Centers for Disease Control updated their ''Preventing Lead Poisoning in Young Children'' statement calling for the elimination of all nonessential uses of lead in children's products. Specifically, the CDC urged a more systematic approach to identifying lead-contaminated items and prohibiting their sale before children are exposed, rather than usual recall efforts after exposure has occurred.

The Consumer Product Safety Commission leads our national efforts to safeguard our children from potentially dangerous objects. However, the Commission has dragged its feet in aggressively addressing the problem of lead in toys. The Lead Free Toys Act, introduced by my colleague Congressman HENRY WAXMAN earlier this year, requires the Consumer Product Safety Commission to prescribe regulations classifying any children's product containing lead as a banned hazardous substance under the Hazardous Substances Act. It defines ''children's product containing lead'' as any consumer product marketed or used by children under age 6 that contains more than trace amounts of lead as determined by the Commission and prescribed by regulations. The Act also requires the Commission to issue standards for reduction in lead in electronic devices.

It's a national disgrace that toys that could pose a serious and significant danger to children are readily available in our department stores and markets. The Lead Free Toys Act of 2005 will help us keep our children safe and healthy, and contribute to national efforts to reduce lead exposure. I ask each of my colleagues to help support this Act.

By Mr. DOMENICI (for himself, Mr. DORGAN, and Mr. TALENT):

S. 2049. A bill to improve the security of the United States borders and for other purposes; to the Committee on the Judiciary.

Mr. DOMENICI. Mr. President, I rise today with my friend from North Dakota, Senator DORGAN, and my friend from Missouri, Senator TALENT, to introduce a bill of critical importance to the security of our borders: the Border Modernization and Security Act of 2005.

Securing our borders is the first necessary step towards immigration reform, and I believe the legislation I am introducing makes an enormous leap in the right direction.

Our bill builds upon legislation we introduced in the last Congress to improve our port of entry infrastructure as well as a lot of good ideas proposed by other Senators in this Congress, and adds some provisions that I think are important to a comprehensive border security and immigration reform effort.

The Border Modernization and Security Act increases the number of Customs and Border Protection (CBP) officers and Immigration and Customs Enforcement (ICE) agents each by 1000 for each of fiscal years 2007 through 2011. These personnel are necessary to improve our enforcement at ports of entry and within the United States, and increasing the number of these employees goes hand in hand with our recent efforts to increase the number of

border patrol agents who are enforcing the law along our international borders. Along this same line, the bill allows the Department of Homeland Security (DHS) to support its border and immigration forces with National Guard personnel and volunteer retired law enforcement officers, provides for an increase in the number of DHS alien and immigration investigative personnel, and increases the number of Deputy Marshals to investigate criminal immigration matters.

Increasing the number of DHS employees alone will not solve our border problems. Unauthorized aliens also cause a significant burden on our courts. For example, for the 12-month period ending September 30, 2004, 364 felony cases per judge were filed in the New Mexico District. It is apparent how burdensome this number is for my border State's court when you consider that the national average of felony cases filed per judge is 88. To help with these high caseload levels, our bill increases the number of DHS immigration attorneys, federal defenders, Office of Immigration Litigation attorneys, assistant US Attorneys, and immigration judges.

Increased personnel is only one aspect of our effort to secure the border. Any border security effort must provide DHS personnel with necessary technologies and assets. To that end, our bill authorizes funds for the Department to acquire new technologies, construct roads, fences, and barriers, purchase air assets, vehicles, and other equipment, maintain temporary and permanent border checkpoints, and construct the appropriate facilities to support the increased number of DHS personnel being hired. Such assets are invaluable tools for our CBP and ICE employees, and we must make sure those men and women have what they need. We also provide for up to 15,000 new detention beds for unauthorized aliens in our bill.

Another area Congress must address is our land port of entry infrastructure. No American border has undergone a comprehensive infrastructure overhaul since 1986, when Senator Dennis DeConcini of Arizona and I put forth a $357 million effort to modernize the southwest border. A great deal has changed in the past nineteen years. More importantly, much has changed since September 11, 2001. Congress has passed legislation to improve security at airports and seaports, but we have not yet addressed the needs of our busiest ports, located on the United States' northern and southwestern land borders. The Border Modernization and Security Act would change that and would prevent terrorists from exploiting weaknesses at our land ports.

My bill requires the General Service Administration (GSA) to identify port of entry infrastructure and technology improvement projects that would enhance homeland security. The GSA would work with the Department of Homeland Security to prioritize and implement these projects based on needs along the border. The Secretary of Homeland Security would also have to prepare a Land Border Security Plan to assess the vulnerabilities at each port of entry located on the northern border or the southern border. This plan will require the cooperation of Federal, State and local entities involved at our borders to ensure that everyone who plays a role in border security is consulted about the plan.

The Border Modernization and Security Act would also modernize homeland security along the United States' borders by implementing technology demonstration programs to test and evaluate new port of entry and border security technologies. Because equipment and technology alone will not solve the security problems on our border, these test sites will also house facilities to provide the necessary training to personnel who must implement and use these technologies under realistic conditions.

We must also improve the enforcement of existing immigration laws. Our bill authorizes funds for the Department of Homeland Security to expand its Expedited Removal Procedures so DHS can expeditiously return non-Mexican illegal aliens who have spent less than 14 days in the US and who are apprehended within 100 miles of the international border to the alien's country of origin. We also allow DHS to create an automated biometric entry and exit data system at our land ports of entry so we can more accurately keep track of who is entering and leaving the US.

In order for the Department to more easily identify and remove unauthorized aliens who commit crimes under State law and are held in State and local prisons, we authorize the expansion of DHS' Institutional Removal Program. Because of the burden these aliens place on our State and local prisons, DHS will be responsible for reimbursing prisons that detain an alien after the alien has completed his prison sentence in order to effectuate the alien's transfer to federal custody.

Along the same line, the Border Modernization and Security Act provides additional assistance to States that are impacted by unauthorized aliens who commit crimes. I know first hand the impact such aliens have on our State and local prisons from talking to prosecutors and judges in New Mexico, so our bill reauthorizes the State Criminal Alien Assistance Program to help our States with the costs of incarcerating these aliens. Additionally, the bill allows for the reimbursement of State and local costs of processing illegal aliens through the criminal justice system and creates a new grant program for State, local, and Indian tribe law enforcement agencies who incur costs related to border security activities.

I believe that these measures are an important part of addressing this nation's homeland security needs, and I am pleased to introduce this bill today with Senators DORGAN and TALENT.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2049

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 ''Border Security and Modernization Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—Except as otherwise provided, the term ''Department'' means the Department of Homeland Security.

(2) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

(3) STATE.—Except as otherwise provided, the term ''State'' has the meaning given that term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(36)).

SEC. 3. CONSTRUCTION.

Nothing in this Act may be construed to require law enforcement personnel of a State or political subdivision of a State to—

(1) report the identity of a victim of, or a witness to, a criminal offense to the Secretary for immigration enforcement purposes;

(2) arrest such victim or witness for a violation of the immigration laws of the United States; or

(3) enforce the immigration laws of the United States.

TITLE I—BORDER PROTECTION

Subtitle A—Personnel and Training

SEC. 101. PERSONNEL OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—

(1) CUSTOMS AND BORDER PROTECTION OFFICERS.—During each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations for such purpose, increase by not less than 1,000 the number of positions for full-time active duty officers of the Bureau of Customs and Border Protection of the Department for such fiscal year.

(2) IMMIGRATION AND CUSTOMS ENFORCEMENT INSPECTORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking ''800'' and inserting ''1000''.

(3) INVESTIGATIVE PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by paragraph (2), during each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations for such purpose, increase by not less than 100 the number of positions for investigative personnel within the Department to investigate alien smuggling and immigration status violations for such fiscal year.

(4) LEGAL PERSONNEL.—During each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations for such purpose, increase by not less than 100 the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters for such fiscal year.

(5) WAIVER OF FTE LIMITATION.—The Secretary is authorized to waive any limitation on the number of full-time equivalent personnel employed by the Department to fulfill

the requirements of paragraph (1) and the amendment made by paragraph (2).

(b) TRAINING.—The Secretary shall provide appropriate training for the agents, officers, inspectors, and associated support staff of the Department on an ongoing basis to utilize new technologies and techniques and to ensure that the proficiency levels of such personnel are acceptable to protect the international borders of the United States.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of fiscal years 2007 through 2011, such sums as may be necessary to carry out this section.

SEC. 102. PERSONNEL OF THE DEPARTMENT OF JUSTICE AND OTHER ATTORNEYS.

(a) LITIGATION ATTORNEYS.—During each of the fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice for such fiscal year.

(b) UNITED STATES ATTORNEYS.—During each of the fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of United States Attorneys to litigate immigration cases in the Federal courts for such fiscal year.

(c) UNITED STATES MARSHALS.—During each of the fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of Deputy United States Marshals to investigate criminal immigration matters.

(d) IMMIGRATION JUDGES.—During each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 100 the number of immigration judges for such fiscal year.

(e) DEFENSE ATTORNEYS.—During each of the fiscal years 2007 through 2011, the Director of the Administrative Office of the United States Courts shall, subject to the availability of appropriations for such purpose, increase by not less than 100 the number of attorneys in the Federal Defenders Program for such fiscal year.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of fiscal years 2007 through 2011 such sums as may be necessary to carry out this section, including the hiring of necessary support staff.

SEC. 103. USE OF THE NATIONAL GUARD FOR BORDER PROTECTION ACTIVITIES.

(a) IN GENERAL.—Section 112 of title 32, United States Code, is amended—

(1) by striking ''drug interdiction and counter-drug activities'' each place it appears and inserting ''drug interdiction, counter drug, and border activities''; and

(2) in subparagraphs (A) and (B) of subsection (e)(1), by striking ''drug interdiction or counter-drug activities'' each place it appears and inserting ''drug interdiction, counter-drug, or border activities''.

(b) DEFINITION OF DRUG INTERDICTION, COUNTER-DRUG, AND BORDER ACTIVITIES.—Subsection (h)(1) of such section is amended to read as follows:

''(1) The term 'drug interdiction, counter-drug, and border activities', with respect to the National Guard of a State, means the use of National Guard personnel in—

''(A) drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities authorized by the law of the State and requested by the Governor of the State; or

''(B) activities conducted in cooperation with personnel of the Department of Homeland Security to secure the international borders of the United States, including constructing roads, fencing, and vehicle barriers, assisting in search and rescue operations conducted by personnel of the Department of Homeland Security, and monitoring international borders, and excluding any law enforcement activities conducted by personnel of the Department of Homeland Security.''.

SEC. 104. DEPUTY BORDER PATROL AGENT PROGRAM.

(a) AUTHORITY TO ESTABLISH.—The Secretary may establish a Deputy Border Patrol Agent Program (in this section referred to as the ''Program'') in the Office of Border Patrol.

(b) PURPOSE.—The purpose of the Program shall be to establish a volunteer force of trained, retired law enforcement officers to assist the Secretary in carrying out the mission of the Department to achieve operational control of the borders of the United States.

(c) QUALIFICATIONS.—An individual may participate as a volunteer in the Program only if such individual is a retired law enforcement officer, who is or was previously licensed by a Federal or State authority to enforce Federal, State, or local penal offenses.

(d) UTILIZATION OF VOLUNTEERS.—The Secretary may utilize an individual who participates as a volunteer in the Program to provide such border security functions that the Secretary determines are appropriate.

(e) TRAINING AND OTHER REQUIREMENTS.—The Secretary may require an individual who participates as a volunteer in the Program to participate in such training, testing, and other requirements that the Secretary determines are appropriate.

(f) SWEARING IN.—Upon completion of any training, testing, or other procedures required by the Secretary, an individual who participates in the Program shall be sworn in and assigned to the Office of Border Patrol.

(g) ASSIGNMENT OF VOLUNTEERS.—The Secretary may assign individuals participating in the Program to provide patrol services at facilities and locations along the international borders of the United States.

(h) OVERSIGHT OF AGENTS.—The Secretary, acting through the Commissioner of the Bureau of Customs and Border Protection of the Department, shall have oversight of all individuals participating in the Program. Such volunteers shall serve at the pleasure of the Secretary, acting through the Commissioner of the Bureau of Customs and Border Protection.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

SEC. 105. DOCUMENT FRAUD DETECTION.

(a) TRAINING.—The Secretary shall provide appropriate officers of the Bureau of Customs and Border Protection of the Department with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the Forensic Document Laboratory of the Bureau of Immigration and Customs Enforcement of such Department.

(b) FORENSIC DOCUMENT LABORATORY.—The Secretary shall provide all officers of the Bureau of Customs and Border Protection with access to the Forensic Document Laboratory.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

Subtitle B—Infrastructure

SEC. 111. MODERNIZATION OF BORDER INFRASTRUCTURE.

(a) DEFINITIONS.—In this section:

(1) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of the Bureau of Customs and Border Protection of the Department.

(2) MAQUILADORA.—The term ''maquiladora'' means an entity located in Mexico that assembles and produces goods from imported parts for export to the United States.

(3) NORTHERN BORDER.—The term ''northern border'' means the international border between the United States and Canada.

(4) SOUTHERN BORDER.—The term ''southern border'' means the international border between the United States and Mexico.

(b) BORDER TECHNOLOGIES, ASSETS, AND CONSTRUCTION.—

(1) ACQUISITION.—The Secretary shall procure technologies necessary to support the mission of the Department to achieve operational control of the international borders of the United States. In determining what technologies to procure, the Secretary shall consult with the Secretary of Defense and the head of the National Laboratories and Technology Centers of the Department of Energy.

(2) CONSTRUCTION OF BORDER CONTROL FACILITIES.—The Secretary shall construct roads, acquire vehicle barriers, and construct fencing necessary to support such mission.

(3) ASSETS.—The Secretary shall acquire unmanned aerial vehicles, police-type vehicles, helicopters, all terrain vehicles, interoperable communications equipment, firearms, sensors, cameras, lighting and such other equipment and assets as may be necessary to support such mission.

(4) FACILITIES.—The Secretary shall construct such facilities as may be necessary to support the number of employees of the Department who are hired pursuant to any provision of this Act or of subtitle B of title V of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3733).

(5) CHECKPOINTS.—The Secretary may construct and maintain temporary or permanent checkpoints on roadways located in close proximity to the northern border or the southern border to support such mission.

(c) PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.—

(1) REQUIREMENT TO UPDATE.—In order to carry out the mission of the Department to achieve operational control of the international borders of the United States, not later than January 31 of each year, the Administrator of General Services shall update the Port of Entry Infrastructure Assessment Study prepared by the United States Customs Service, the Immigration and Naturalization Service, and the General Services Administration in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the conference report accompanying H.R. 2490 of the 106th Congress, 1st session (House of Representatives Rep. No. 106–319, page 67) and submit such updated study to Congress.

(2) CONSULTATION.—In preparing the updated studies required by paragraph (1), the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and the Commissioner.

(3) CONTENT.—Each updated study required by paragraph (1) shall—

(A) identify port of entry infrastructure and technology improvement projects that would enhance border security and facilitate the flow of legitimate commerce if implemented;

(B) include the projects identified in the National Land Border Security Plan required by subsection (d); and

(C) prioritize each project described in subparagraph (A) or (B) based on the likelihood that the project will—

(i) fulfill immediate security requirements; and

(ii) facilitate trade across the borders of the United States.

(4) PROJECT IMPLEMENTATION.—

(A) IN GENERAL.—The Commissioner shall implement the infrastructure and technology improvement projects described in each updated study required by paragraph (1) in the order of priority assigned to each project under paragraph (3)(C).

(B) EXCEPTION.—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate security needs or changes in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

(d) NATIONAL LAND BORDER SECURITY PLAN.—

(1) REQUIREMENT FOR PLAN.—In order to carry out the mission of the Department to achieve operational control of the international borders of the United States, not later than January 31 of each year, the Secretary shall prepare a National Land Border Security Plan and submit such plan to Congress.

(2) CONSULTATION.—In preparing the plan required by paragraph (1), the Secretary shall consult with the Under Secretary for Information Analysis and Infrastructure Protection and the Federal, State, and local law enforcement agencies and private entities that are involved in international trade across the northern border or the southern border.

(3) VULNERABILITY ASSESSMENT.—

(A) IN GENERAL.—The plan required by paragraph (1) shall include a vulnerability assessment of each port of entry located on the northern border or the southern border.

(B) PORT SECURITY COORDINATORS.—The Secretary may establish 1 or more port security coordinators at each port of entry located on the northern border or the southern border—

(i) to assist in conducting a vulnerability assessment at such port; and

(ii) to provide other assistance with the preparation of the plan required by paragraph (1).

(e) EXPANSION OF TRADE SECURITY PROGRAMS.—

(1) CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commissioner, in consultation with the Secretary, shall develop a plan to expand the size and scope (including personnel needs) of the Customs-Trade Partnership Against Terrorism programs along the northern border and southern border, including—

(i) the Business Anti-Smuggling Coalition;

(ii) the Carrier Initiative Program;

(iii) the Americas Counter Smuggling Initiative;

(iv) the Free and Secure Trade Initiative; and

(v) other Industry Partnership Programs administered by the Commissioner.

(2) MAQUILADORA DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall establish a demonstration program to develop a cooperative trade security system with maquiladoras to improve supply chain security.

(f) PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT.—In order to carry out the mission of the Department to achieve operational control of the international borders of the United States, the Secretary shall carry out a technology demonstration program to test and evaluate new port of entry technologies, refine port of entry technologies and operational concepts, and train personnel under realistic conditions. The Commissioner of the Bureau of Customs and Border Protection shall oversee the program in consultation and cooperation with other divisions of the Department.

(2) TECHNOLOGY AND FACILITIES.—

(A) TECHNOLOGY TESTED.—Under the demonstration program, the Secretary shall test technologies that enhance port of entry operations, including those related to inspections, communications, port tracking, identification of persons and cargo, sensory devices, personal detection, decision support, and the detection and identification of weapons of mass destruction.

(B) FACILITIES DEVELOPED.—At a demonstration site selected pursuant to paragraph (3)(B), the Secretary shall develop facilities to provide appropriate training to law enforcement personnel who have responsibility for border security, including cross-training among agencies, advanced law enforcement training, and equipment orientation.

(3) DEMONSTRATION SITES.—

(A) NUMBER.—The Secretary shall carry out the demonstration program at not less than 3 sites and not more than 5 sites.

(B) SELECTION CRITERIA.—To ensure that at least 1 of the facilities selected as a port of entry demonstration site for the demonstration program has the most up-to-date design, contains sufficient space to conduct the demonstration program, has a traffic volume low enough to easily incorporate new technologies without interrupting normal processing activity, and can efficiently carry out demonstration and port of entry operations, at least 1 port of entry selected as a demonstration site shall—

(i) have been established not more than 15 years before the date of enactment of this Act;

(ii) consist of not less than 65 acres, with the possibility of expansion onto not less than 25 adjacent acres; and

(iii) have serviced an average of not more than 50,000 vehicles per month in the 12 full months preceding the date of enactment of this Act.

(4) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal or State agency to utilize a demonstration site described in paragraph (3) to test technologies that enhance port of entry operations, including those related to inspections, communications, port tracking, identification of persons and cargo, sensory devices, personal detection, decision support, and the detection and identification of weapons of mass destruction.

(5) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at each demonstration site under the technology demonstration program established under this subsection.

(B) CONTENT.—Each report submitted pursuant to subparagraph (A) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout the Bureau of Customs and Border Protection.

(g) BORDER PATROL TECHNOLOGY DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT.—In order to carry out the mission of the Department to achieve operational control of the international borders of the United States, the Secretary shall carry out a technology demonstration program to test and evaluate new border security technologies and train personnel under realistic conditions.

(2) TECHNOLOGY AND FACILITIES.—

(A) TECHNOLOGY TESTED.—Under the demonstration program, the Secretary shall test technologies that enhance border security, including those related to communications, sensory devices, personal detection, and decision support.

(B) FACILITIES DEVELOPMENT.—At a site where border patrol agents participate in law enforcement training, the Secretary shall develop facilities to carry out the demonstration program, including providing appropriate training to law enforcement personnel who have responsibility for border security, including cross-training among agencies, advanced law enforcement training, and equipment orientation.

(3) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal or State agency to utilize the demonstration site described in this subsection to test technologies that enhance border security, including those related to communications, sensory devices, personal detection, and decision support.

(4) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at the demonstration site under the technology demonstration program established under this subsection.

(B) CONTENT.—Each report submitted pursuant to subparagraph (A) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout the Department.

(h) INTERNATIONAL AGREEMENTS.—Funds authorized in this Act may be used for the implementation of projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico, agreed to March 22, 2002, Monterrey, Mexico (commonly known as the Border Partnership Action Plan) or the Smart Border Declaration between the United States and Canada, agreed to December 12, 2001, Ottawa, Canada that are consistent with the provisions of this Act.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated the following:

(1) For each of the fiscal years 2007 through 2011, $1,000,000,000 to carry out subsection (b).

(2) For each of the fiscal years 2007 through 2011, such sums as may be necessary to carry out paragraph (1) of subsection (c).

(3) For each of the fiscal years 2007 through 2011, $100,000,000 to carry out paragraph (4) of subsection (c).

(4) For each of the fiscal years 2007 through 2011, such sums as may be necessary to carry out subsection (d).

(5)(A) For fiscal year 2007, $30,000,000 to carry out paragraph (1) of subsection (e); and

(B) For each of the fiscal years 2008 through 2011, such sums as may be necessary to carry out such paragraph.

(6)(A) For fiscal year 2007, $5,000,000 to carry out paragraph (2) of subsection (e); and

(B) For each of the fiscal years 2008 through 2011, such sums as may be necessary to carry out such paragraph.

(7)(A) For fiscal year 2007, $50,000,000 to carry out subsection (f), and not more than $10,000,000 of such amount may be expended for technology demonstration program activities at any 1 port of entry demonstration site during such fiscal year.

(B) For each of the fiscal years 2008 through 2011, such sums as may be necessary to carry out subsection (f), and not more

than $10,000,000 may be expended for technology demonstration program activities at any 1 port of entry demonstration site in any such fiscal year.

(8) For each of the fiscal years 2007 through 2011, $10,000,000 to carry out subsection (g).

SEC. 112. DETENTION SPACE AND REMOVAL CAPACITY.

Section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108-458; 118 Stat. 3734) is amended by striking ''8,000'' and inserting ''15,000''.

SEC. 113. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FEDERAL FACILITIES IDENTIFIED FOR CLOSURE.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary shall construct or acquire additional detention facilities in the United States.

(2) DETERMINATION OF LOCATION.—The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Deputy Assistant Director of the Office of Detention and Removal Operations within the Bureau of Immigration and Customs Enforcement of the Department.

(3) USE OF FEDERAL FACILITIES IDENTIFIED FOR CLOSURE.—In acquiring detention facilities under this subsection, the Secretary shall, to the maximum extent practical, request the transfer of appropriate portions of military installations approved for closure or realignment and any other Federal facilities identified for closure.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 114. ALTERNATIVES TO DETENTION.

The Secretary shall implement demonstration programs in each State located along the international border between the United States and Canada or along the international border between the United States and Mexico to study the effectiveness of alternatives to the detention of aliens, including electronic monitoring devices and intensive supervision programs, that ensure that alien's appearance at court and compliance with removal orders.

Subtitle C—Grants for States

SEC. 121. BORDER LAW ENFORCEMENT GRANTS.

(a) LAW ENFORCEMENT AGENCY DEFINED.—In this section, the term ''law enforcement agency'' means a Tribal, State, or local law enforcement agency.

(b) AUTHORITY TO AWARD GRANTS.—The Secretary is authorized to award grants to an eligible law enforcement agency to provide assistance with costs associated with State border security efforts, including efforts to combat criminal activity that occurs in the jurisdiction of such agency by virtue of such agency's proximity to an international border of the United States.

(c) CRITERIA.—The Secretary shall award grants under subsection (b) on a competitive basis, considering criteria including—

(1) the law enforcement agency's distance from the international border, with communities closer to the border given priority because of their proximity;

(2) population, with smaller communities given priority;

(3) the criminal caseload of the law enforcement agency, based upon the number of felony criminal cases filed per judge in the United States district court located in the district that the law enforcement agency has jurisdiction over, with priority given to those with higher caseloads;

(4) the percentage of undocumented aliens residing in the law enforcement agency's State compared to the total number of such aliens residing in all States, based on the most recent decennial census; and

(5) the percentage of undocumented alien apprehensions in the law enforcement agency's State in that fiscal year compared to the total of such apprehensions for all such States for that fiscal year.

(d) USE OF FUNDS.—Grants awarded under subsection (b) shall be used to provide additional resources for a law enforcement agency to address criminal activity occurring near an international border of the United States, including—

(1) law enforcement technologies;

(2) equipment such as police-type vehicles, all terrain vehicles, firearms, sensors, cameras, and lighting; and

(3) such other resources as are available to assist the law enforcement agency.

(e) APPLICATION.—The head of a law enforcement agency seeking to apply for a grant under this section shall submit an application to the Secretary at such time, in such manner, and with such information as the Secretary may require.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

TITLE II—IMMIGRATION PROVISIONS

SEC. 201. EXPEDITED REMOVAL BETWEEN PORTS OF ENTRY.

(a) IN GENERAL.—Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended—

(1) in subsection (b)(1)(A)(i), by striking ''the officer'' and inserting ''a supervisory officer''; and

(2) in subsection (c), by adding at the end the following:

''(4) EXPANSION.—The Secretary of Homeland Security shall make the expedited removal procedures under this subsection available in all border patrol sectors on the southern border of the United States as soon as operationally possible.

''(5) TRAINING.—The Secretary of Homeland Security shall provide employees of the Department of Homeland Security with comprehensive training on the procedures authorized under this subsection.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2007 through 2011 to carry out the amendments made by this section.

SEC. 202. CANCELLATION OF VISAS.

Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1), by inserting ''and any other nonimmigrant visa issued by the United States that is in the possession of the alien'' after ''such visa''; and

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in a consular office located in the country of the aliens nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office located in the country of the aliens nationality or foreign residence''.

SEC. 203. BIOMETRIC ENTRY-EXIT SYSTEM.

(a) GROUNDS OF INADMISSIBILITY.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(7), by adding at the end the following:

''(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who fails to comply with a lawful request for biometric data is inadmissible.''; and

(2) in subsection (d), by inserting after paragraph (1) the following:

''(2) The Secretary of Homeland Security may waive the application of subparagraph (C) of subsection (a)(7) for an individual alien or a class of aliens, at the discretion of the Secretary.''.

(b) COLLECTION OF BIOMETRIC DATA FROM ALIENS DEPARTING THE UNITED STATES.—Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185) is amended—

(1) by redesignating subsection (c) as subsection (g); and

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

''(c) The Secretary of Homeland Security is authorized to require aliens departing the United States to provide biometric data and other information relating to their immigration status.''.

(c) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(d) of the Immigration and Nationality Act (8 U.S.C. 1185(d)) is amended by adding at the end the following:

''(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsection (b), immigration officers are authorized to collect biometric data from—

''(A) any applicant for admission or alien seeking to transit through the United States; or

''(B) any lawful permanent resident who is—

''(i) entering the United States; and

''(ii) not regarded as seeking an admission into the United States pursuant to section 101(a)(13)(C).''.

(d) COLLECTION OF BIOMETRIC DATA FROM ALIEN CREWMAN.—Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) is amended by inserting ''Immigration officers are authorized to collect biometric data from any alien crewman seeking permission to land temporarily in the United States.'' after ''this title''.

(e) IMPLEMENTATION.—Section 7208 of the 9/11 Commission Implementation Act of 2004 (8 U.S.C. 1365b) is amended in subsection (l)—

(1) by striking ''There are authorized'' and inserting the following:

''(1) IN GENERAL.—There are authorized''; and

(2) by adding at the end the following:

''(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008, 2009, and 2010 to implement the automated biometric entry and exit data system at all land border ports of entry.''.

SEC. 204. REIMBURSEMENT FOR STATES.

(a) INCARCERATION COSTS.—Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended to read as follows:

''(5) There are authorized to be appropriated to carry out this subsection—

''(A) $750,000,000 for fiscal year 2007;

''(B) $850,000,000 for fiscal year 2008; and

''(C) $950,000,000 for each of the fiscal years 2009 through 2011.''.

(b) REIMBURSEMENT FOR COSTS ASSOCIATED WITH PROCESSING CRIMINAL ILLEGAL ALIENS.—

(1) IN GENERAL.—The Secretary shall reimburse States and units of local government for costs associated with processing illegal aliens through the criminal justice system, including—

(A) indigent defense;

(B) criminal prosecution;

(C) autopsies;

(D) translators and interpreters; and

(E) courts costs.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 for each of the fiscal years 2007 through 2011 to carry out paragraph (1).

SEC. 205. COMPLETION OF BACKGROUND AND SECURITY CHECKS.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

''(i) Notwithstanding any other provision of law, the Secretary of Homeland Security,

the Attorney General, or any court may not—

''(1) grant or order the grant of adjustment of status to that of an alien lawfully admitted for permanent residence;

''(2) grant or order the grant of any other status, relief, protection from removal, or other benefit under the immigration laws; or

''(3) issue any documentation evidencing or related to such grant by the Attorney General, the Secretary, or any court,

until such background and security checks as the Secretary may in his discretion require have been completed to the satisfaction of the Secretary.''.

SEC. 206. RELEASE OF ALIENS FROM NON-CONTIGUOUS COUNTRIES.

Section 236(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)) is amended to read as follows:

''(2) may release the alien on bond of not less than $5,000 with security approved by, and containing conditions prescribed by, the Secretary of Homeland Security; but''.

SEC. 207. COUNTRIES THAT DO NOT ACCEPT RETURN OF NATIONALS.

Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended—

(1) by striking ''On being notified'' and inserting the following:

''(1) IN GENERAL.—Upon notification''; and

(2) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''; and

(3) by adding at the end the following:

''(2) DENIAL OF ADMISSION.—The Secretary of Homeland Security, after making a determination that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, and after consultation with the Secretary of State, may deny admission to any citizen, subject, national or resident of that country until the country accepts the alien that was ordered removed.''.

TITLE III—PENALTIES

SEC. 301. INCREASED CRIMINAL PENALTIES FOR ALIEN SMUGGLING.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(1) in paragraph (1)(B)—

(A) in clause (i), by striking ''10 years'' and inserting ''15 years'';

(B) in clause (ii), by striking ''5 years'' and inserting ''10 years''; and

(C) in clause (iii), by striking ''20 years'' and inserting ''40 years'';

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''one year, or both; or'' and inserting ''3 years, or both'';

(B) in subparagraph (B)—

(i) in clause (i), by adding at the end the following: ''be fined under title 18, United States Code, and imprisoned not less than 5 years nor more than 25 years;'';

(ii) in clause (ii), by striking ''or'' at the end and inserting the following: ''be fined under title 18, United States Code, and imprisoned not less than 3 years nor more than 20 years; or''; and

(iii) in clause (iii), by adding at the end the following: ''be fined under title 18, United States Code, and imprisoned not more than 15 years; or''; and

(C) by striking the matter following clause (iii) and inserting the following:

''(C) in the case of a third or subsequent offense described in subparagraph (B) and for any other violation, shall be fined under title 18, United States Code, and imprisoned not less than 5 years nor more than 15 years.'';

(3) in paragraph (3)(A), by striking ''5 years'' and inserting ''10 years''; and

(4) in paragraph (4), by striking ''10 years'' and inserting ''20 years''.

SEC. 302. INCREASED CRIMINAL PENALTIES FOR DOCUMENT FRAUD.

Section 1546 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''not more than 25 years'' and inserting ''not less than 25 years'';

(B) by inserting ''and if the terrorism offense resulted in the death of any person, shall be punished by death or imprisoned for life,'' after ''section 2331 of this title)),'';

(C) by striking ''20 years'' and inserting ''imprisoned not more than 40 years'';

(D) by striking ''10 years'' and inserting ''imprisoned not more than 20 years''; and

(E) by striking ''15 years'' and inserting ''imprisoned not more than 30 years''; and

(2) in subsection (b), by striking ''5 years'' and inserting ''10 years''.

SEC. 303. INCREASED CRIMINAL PENALTIES FOR CERTAIN CRIMES.

(1) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 51 the following:

"CHAPTER 52—ILLEGAL ALIENS

"SEC. 1131. ENHANCED PENALTIES FOR CERTAIN CRIMES COMMITTED BY ILLEGAL ALIENS.

''(a) Any alien unlawfully present in the United States, who commits, or conspires or attempts to commit, a crime of violence or a drug trafficking offense (as defined in section 924), shall be fined under this title and sentenced to not less than 5 years in prison.

''(b) If an alien who violates subsection (a) was previously ordered removed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on the grounds of having committed a crime, the alien shall be sentenced to not less than 15 years in prison.

''(c) A sentence of imprisonment imposed under this section shall run consecutively to any other sentence of imprisonment imposed for any other crime.''.

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 51 the following:

52. Illegal aliens 1131

SEC. 304. INCREASED CRIMINAL PENALTIES FOR CRIMINAL STREET GANGS.

(a) INADMISSIBILITY.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (J); and

(2) by inserting after subparagraph (E) the following:

''(F) ALIENS WHO ARE MEMBERS OF CRIMINAL STREET GANGS.—Any alien who is determined by a court to be a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code) is inadmissible.''.

(b) DEPORTABILITY.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) ALIENS WHO ARE MEMBERS OF CRIMINAL STREET GANGS.—Any alien who is determined by a court to be a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code) is deportable.''.

(c) TEMPORARY PROTECTED STATUS.—Section 244(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(B)) is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) in clause (ii), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(iii) the alien is determined by a court to be a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code).''.

TITLE IV—REMOVAL AND VIOLATION TRACKING

SEC. 401. INSTITUTIONAL REMOVAL PROGRAM.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program of the Department to—

(A) identify removable criminal aliens in Federal and State correctional facilities;

(B) ensure that such aliens are not released into the community; and

(C) remove such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—Not later than 5 years after the date of the enactment of this Act, the Secretary shall expand the Institutional Removal Program to every State.

(3) STATE PARTICIPATION.—The appropriate officials of each State in which the Secretary is operating the Institutional Removal Program should—

(A) cooperate with Federal officials carrying out the Institutional Removal Program;

(B) expeditiously and systematically identify criminal aliens in the prison and jail populations of the State; and

(C) promptly convey the information described in subparagraph (B) to the appropriate officials carrying out the Institutional Removal Program.

(b) REPORT TO CONGRESS.—Not later than 2 years after of the date of the enactment of this Act, the Secretary shall submit a report to Congress on the participation of the States in the Institutional Removal Program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $50,000,000 to carry out the expanded Institutional Removal Program authorized under subsection (a).

SEC. 402. AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.

(a) IN GENERAL.—Law enforcement officers of a State or political subdivision of a State are authorized to—

(1) hold an illegal alien for a period of up to 14 days after the alien has completed the alien's State or local prison sentence in order to effectuate the transfer of the alien to Federal custody when the alien is removable or not lawfully present in the United States; or

(2) issue a detainer that would allow aliens who have served a State or local prison sentence to be detained by an appropriate prison until personnel from the Bureau of Immigration and Customs Enforcement can take the alien into Federal custody.

(b) REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary shall reimburse a State or a political subdivision of a State for all reasonable expenses incurred by the State or the political subdivision for the detention of an alien as described in subsection (a).

(2) COST COMPUTATION.—The amount of reimbursement provided for costs incurred carrying out subsection (a) shall be determined pursuant to a formula determined by the Secretary.

(c) TECHNOLOGY USAGE.—Technology such as videoconferencing shall be used to the maximum extent possible in order to make the Institutional Removal Program available in remote locations. Mobile access to Federal databases of aliens and live scan technology shall be used to the maximum extent practicable in order to make these resources available to State and local law enforcement agencies in remote locations.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to reimburse a

State or political subdivision of a State for the detention of an illegal alien pursuant to subsection (b).

SEC. 403. USE OF THE NATIONAL CRIME INFORMATION CENTER DATABASE TO TRACK VIOLATIONS OF IMMIGRATION LAW.

(a) PROVISION OF INFORMATION TO THE NATIONAL CRIME INFORMATION CENTER.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall provide the National Crime Information Center of the Department of Justice with such information as the Director may have related to—

(A) any alien against whom a final order of removal has been issued;

(B) any alien who is subject to a voluntary departure agreement that has become invalid under section 240B(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1229c); and

(C) any alien whose visa has been revoked.

(2) REQUIREMENT TO PROVIDE AND USE INFORMATION.—The information described in paragraph (1) shall be provided to the National Crime Information Center, and the Center shall enter the information into the Immigration Violators File of the National Crime Information Center database if the name and date of birth are available for the individual, regardless of whether the alien received notice of a final order of removal or the alien has already been removed.

(3) REMOVAL OF INFORMATION.—Should an individual be granted cancellation of removal under section 240A of the Immigration and Nationality Act (8 U.S.C. 1229b), or granted permission to legally enter the United States pursuant to the Immigration and Nationality Act after a voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), information entered into the National Crime Information Center in accordance with paragraph (1) of this section shall be promptly removed.

(b) INCLUSION OF INFORMATION IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.—Section 534(a) of title 28, United States Code, is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

''(4) acquire, collect, classify, and preserve records of violations of the immigration laws of the United States, regardless of whether the alien has received notice of the violation or the alien has already been removed; and''.

Mr. DORGAN. Mr. President, I am pleased to join Senator DOMENICI in introducing the Border Security and Modernization Act of 2005.

Senator DOMENICI and I represent border States, but the bill we are introducing today is not one of merely regional importance. Border security is an issue that affects our country as a whole. We cannot have homeland security without strong and effective border security.

The Administration has signaled that it wants to have a vigorous debate on border security and immigration issue early next year. Our bill does not attempt to change immigration law, but it squarely addresses the border security issue.

I began working on border security long before the attacks of September 11, 2001. The Northern border is over 4,000 miles long. In the past, almost all of our resources in this country were targeted at the Southern border. It used to be that we had ports of entry at the Northern border where, at night, the only barrier was an orange rubber cone in the middle of the road. The polite people crossing at night actually stopped and removed the cone before they came across the border. Those who were not so polite would run over it at 60 miles an hour.

In 2001, before the September 11 attacks, I proposed something called the Northern Border Initiative. That bill added hundreds of Customs officers to the Northern border, and it became law. I also worked to replace the orange cones with hardened gates. But we clearly have to do much more.

The legislation we are introducing today, which Senator DOMENICI has described in detail, would devote significant new resources to our border security. Among other things, this legislation would authorize the hiring of an additional 1,000 Customs and Border Protection inspectors and Immigration and Customs Enforcement officers a year for the next five years. It would authorize the Department of Homeland Security to work with States to use National Guard and a volunteer force of retired law enforcement officers as resources to help monitor the borders. And it would have the Federal Government reimburse State governments for the cost of detaining undocumented aliens while decisions are made regarding possible deportation.

This bipartisan proposal is not about immigration. It's about border security. We need to do a better job of securing our borders, and we need to do so on an urgent basis. We hope our colleagues will join us, on a bipartisan basis, in supporting this legislation.

By Ms. SNOWE (for herself and Ms. CANTWELL):

S. 2050. A bill to establish a commission on inland waters policy; to the Committee on Commerce, Science, and Transportation.

I rise today to introduce legislation that creates a national commission on island waters policy to support the long-term sustainability of our water resources. A 2001 National Academy of Sciences report found that U.S. Federal policies and research lack the coordination necessary to respond to increasing future demands. The overarching goal of this legislation is to recommend actions that will better coordinate and improve the Federal Government's water management policies, similar to the U.S. Commission on Ocean Policy, PL 106–256.

My legislation is supported by the American Society of Limnology and Oceanography, ASLO, and the Council of Scientific Society Presidents, CSSP, representing 1.4 million scientists and science educators. I especially want to thank Dr. Peter Jumars of the School of Marine Sciences at University of Maine at Orono and Darling Marine Center and immediate past president of ASLO, for all of his extensive knowledge and assistance that helped craft the legislation.

The bill creates a commission to study the Nation's policies for inland waters—a category that would include all lakes, streams, rivers, groundwaters, estuaries, and fresh- and salt water wetlands. The stewardship of these resources is essential to human health, the ecosystem, the economy, agriculture, energy production, and the transportation sector.

The National Academy of Sciences, NAS, issued a report in 2001 describing that water resources of the United States will be subjected to more intense and a broader array of pressures in the 21st century. It found that U.S. Federal policies and research lack the coordination necessary to respond to increasing future demands. An inland waters policy commission should be viewed as an attempt to make sure our Nation's clean water laws are achieving what Congress mandated. Water policies have been very contentious in many parts of the Nation and have oftentimes pitted people and their livelihoods against preservation concerns. Only by developing greater water research and coordinating a comprehensive national policy will the conflict between anthropogenic needs and water preservation be overcome.

Mr. Chairman, in April of this year, the GAO published a report with findings that the administration is not addressing the study of water resources, agriculture, energy, biological diversity and other areas in relation to climate change as mandated under the Global Change Research Act. None of those topics has been addressed in 21 studies that the Bush administration plans to publish by September 2007, the GAO report found, even though fairly robust climate models are now making predictions about changes in rainfall globally and nationally as the climate changes. Water policy currently has no intelligent mechanism for using this information. The GAO report points out that a comprehensive study of the Nation's water resources is needed.

The bill authorizes an appropriation of $8.5 million until expended. By comparison, the U.S. Commission on Ocean Policy appropriation was set at a total of up to $6 million for fiscal years 2001 and 2002.

I hope my colleagues will take a close look at this legislation and see the great value in supporting the long-term sustainability of our Nation's water resources.

I thank the Chair.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 2051. A bill to extend eligibility for certain Federal benefits to citizens of the Freely Associated States; to the Committee on Finance.

Mr. AKAKA. Mr. President, I rise today to introduce legislation with my senior colleague from Hawaii, Senator DAN INOUYE, to provide certain Federal

public benefits for citizens of the Freely Associated State, FAS, who are residing in the United States. The bill would provide eligibility for nonemergency Medicaid, Food Stamps, Temporary Assistance to Needy Families, TANF, and Supplemental Security Income, SSI, to FAS citizens residing in the United States.

Citizens from the FAS are from the Republic of the Marshall Islands, RMI, Federated States of Micronesia, FSM, and the Republic of Palau, which are jurisdictions that have a unique political relationship with the United States. The Compact of Free Association established these nations as sovereign states responsible for their own foreign policies. However, the FAS remain dependent upon the United States for military protection and economic assistance.

Under the compact, the United States has the right to reject the strategic use of, or military access to, the FAS by other countries, which is often referred to as the ''right of strategic denial.'' In addition, the U.S. may block FAS government policies that it deems inconsistent with its duty to defend the FAS, which is referred to as the ''defense veto.'' The compact also states that the United States has exclusive military base rights in the FAS.

In exchange for these prerogatives, the United States is required to support the FAS economically, with the goal of producing self-sufficiency, and FAS citizens are allowed free entry into the United States as nonimmigrants for the purposes of education, medical treatment, and employment. Many FAS citizens reside in the State of Hawaii. Since 1997, when Hawaii began reporting its impact costs, the State has identified more than $140 million in costs associated with FAS citizens. In 2002, the State of Hawaii expended more than $32 million in assistance to FAS citizens. P.L. 108–188, the Compact of Free Association Amendments Act of 2003, provides $30 million in annual funding for compact impact assistance to be shared between the State of Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, CNMI, and American Samoa. While this funding is a positive step forward, it does not begin to reimburse the affected jurisdictions for the costs associated with FAS citizens.

This legislation would provide assistance to states and territories that shoulder the majority of the costs associated with the compact. The Federal Government must provide appropriate resources to help States meet the needs of the FAS citizens—an obligation based on a Federal commitment. It is unconscionable for a State or territory to shoulder the entire financial burden of providing necessary educational, medical, and social services to individuals who are residing in that State or territory when the obligation is that of the Federal Government. For that reason, we are seeking to provide reimbursement of these costs. It is time for the Federal Government to take up some of the financial responsibility that until now has been carried by the State of Hawaii, CNMI, Guam, and American Samoa by restoring public benefits to FAS citizens.

This bill would restore eligibility of FAS citizens for nonemergency Medicaid. FAS citizens lost many of their public benefits as a result of the Personal Responsibility and Work Opportunity, PRWORA, Act of 1996, including Medicaid coverage. FAS citizens were previously eligible for Medicaid as aliens permanently residing under color of law in the United States.

After the enactment of welfare reform, the State of Hawaii could no longer claim Federal matching funds for services rendered to FAS citizens. Yet the State of Hawaii, Guam, American Samoa, and the CNMI have continued to meet the health care needs of FAS citizens. The State of Hawaii has used its resources to provide Medicaid services to FAS citizens.

In 2003 alone, the State spent approximately $9.77 million to provide Medicaid services without receiving any federal matching funds. This represents a dramatic increase from $6.75 million in State fiscal year 2002. Furthermore, the trend in the need for health care services among FAS citizens continues to rise. During fiscal year 2004, the number of individuals served in the State of Hawaii's Medicaid program grew from 3,291 to 4,818 people based on the average monthly enrollment. This is an increase of 46 percent.

This bill would also provide eligibility for FAS citizens residing in the United States to participate in the Temporary Assistance for Needy Families and Supplemental Security Income programs. According to Hawaii's attorney general, financial assistance in the form of the Temporary Assistance to Other Needy Families, TAONF, Program, a State program, provided $5.1 million to FAS citizens in State fiscal year 2003. This continues an upward trend from $4.5 million in State fiscal year 2002. This total includes funds that go to the General Assistance Program, which supports individuals and couples with little or no income and who have a temporary, incapacitating medical condition; the aged, blind, and disabled program for FAS citizens with little or no income who are not eligible for federally-funded Supplemental Security Income; and the State's TAONF Program that assists other needy families who are not eligible for federal-funding under the Temporary Assistance to Needy Families program. The financial assistance that the State of Hawaii provides to FAS citizens in the form of TAONF is a great support to those families attempting to achieve economic stability, but it has a significant financial impact on the State's budget.

The bill would also provide eligibility for the Food Stamp Program. Mr. President, the Food Stamp Program serves as the first line of defense against hunger. It is the cornerstone of the Federal food assistance program and provides crucial support to needy households and those making the transition from welfare to work. We have partially addressed the complicated issue of alien eligibility for public benefits such as food stamps, but again, I must say it is just partial. Not only should all legal immigrants receive these benefits, but so should citizens of the FAS. Exclusion of FAS citizens from Federal, State, or local public benefits or programs is an unintended and misguided consequence of the welfare reform law. We allow certain legal immigrants eligibility in the program. Yet FAS citizens, who are not considered immigrants but who are required to up for the Selective Service if they are residing in the United States are ineligible to receiving food stamps. This bill corrects this inequity.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD. I also ask unanimous consent that a letter of support I received last week from Director Lillian Koller of the State of Hawaii, Department of Human Services be printed in the RECORD.

I look forward to working with my colleagues to enact this measure which is of critical importance to my State of Hawaii, which has borne the costs of these benefits for FAS citizens living in Hawaii for the past 19 years.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 2051

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCEPTION FOR CITIZENS OF FREELY ASSOCIATED STATES.

(a) IN GENERAL.—Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding at the end the following:

''(M) EXCEPTION FOR CITIZENS OF FREELY ASSOCIATED STATES.—With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to any individual who lawfully resides in the United States (including territories and possessions of the United States) in accordance with—

''(i) section 141 of the Compact of Free Association between the Government of the United States and the Government of the Federated States of Micronesia, approved by Congress in the Compact of Free Association Amendments Act of 2003;

''(ii) section 141 of the Compact of Free Association between the Government of the United States and the Government of the Republic of the Marshall Islands, approved by Congress in the Compact of Free Association Amendments Act of 2003; or

''(iii) section 141 of the Compact of Free Association between the Government of the United States and the Government of Palau, approved by Congress in Public Law 99–658 (100 Stat. 3672).''.

(b) MEDICAID AND TANF EXCEPTIONS.—Section 402(b)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)) is amended by adding at the end the following:

''(G) MEDICAID AND TANF EXCEPTIONS FOR CITIZENS OF FREELY ASSOCIATED STATES.—With respect to eligibility for benefits for the programs defined in subparagraphs (A) and (C) of paragraph (3) (relating to temporary assistance for needy families and medicaid), paragraph (1) shall not apply to any individual who lawfully resides in the United States (including territories and possessions of the United States) in accordance with a Compact of Free Association referred to in subsection (a)(2)(M).''.

(c) QUALIFIED ALIEN.—Section 431(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(b)) is amended—

(1) in paragraph (6), by striking ''or'' at the end;

(2) in paragraph (7), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(8) an individual who lawfully resides in the United States (including territories and possessions of the United States) in accordance with a Compact of Free Association referred to in section 402(a)(2)(M).''.

(d) CONFORMING AMENDMENT.—Section 1108 of the Social Security Act (42 U.S.C. 1308) is amended—

(1) in subsection (f), in the matter preceding paragraph (1), by striking ''subsection (g)'' and inserting ''subsections (g) and (h)''; and

(2) by adding at the end the following:

''(h) The limitations of subsections (f) and (g) shall not apply with respect to medical assistance provided to an individual described in section 431(b)(8) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.''.

(e) EFFECTIVE DATE.—The amendments made by this Act take effect on the date of enactment of this Act and apply to benefits and assistance provided on or after that date.

STATE OF HAWAII,
DEPARTMENT OF HUMAN SERVICES,
Honolulu, HI, November 9, 2005.

Sen. DANIEL K. AKAKA,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA, I am writing in support of your legislation to reinstate eligibility for Compact migrants from the Freely Associated States for various Federal programs, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps, and Medicaid. As you know, ''Compact migrants'' refers to those who have relocated to Hawaii from the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. As you know, a high percentage of the Compact migrant population are poorly educated and live in poverty, and are thus part of the additional demand on the already strained social support systems of the State.

The Department of Human Services is the lead agency that administers social safety net programs for individuals and families in Hawaii. The amount of State resources that is being expended to care for Compact migrants has been steadily increasing as the number of migrants continues to grow. The costs to the State cannot be measured in the numbers of migrants alone. What is not reflected in the numbers of migrants alone, is that many of these migrants come to Hawaii with serious medical conditions that require costly intensive and extensive services. In 2004, the Department of Human Services alone spent over $26.6 million to provide services to over 10,800 migrants in our financial assistance, medical assistance, vocational rehabilitation, and youth services programs.

Allowing Compact migrants to be served with Federal funds under the TANF, SSI, Food Stamps, and Medicaid programs would tremendously assist the State of Hawaii. I appreciate your leadership in this area and look forward to continuing to work with you on your legislative efforts to assist Compact migrants in Hawaii.

Sincerely,

LILLIAN B. KOLLER, Esq.
Director.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 318—DESIGNATING NOVEMBER 27, 2005, AS ''DRIVE SAFER SUNDAY''

Mr. CHAMBLISS (for himself and Mr. ISAKSON) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 318

Whereas motor vehicle travel is the primary means of transportation in the United States;

Whereas everyone on the roads and highways needs to drive more safely to reduce deaths and injuries resulting from motor vehicle accidents;

Whereas the death of almost 43,000 people a year in more than 6 million highway crashes in America has been called an epidemic by Transportation Secretary Norman Mineta;

Whereas according to the National Highway Transportation Safety Administration, wearing a seat belt saved 15,434 lives in 2004; and

Whereas the Sunday after Thanksgiving is the busiest highway traffic day of the year: Now, therefore, be it

Resolved, That the Senate—

(1) encourages—

(A) high schools, colleges, universities, administrators, teachers, primary schools, and secondary schools to launch campus-wide educational campaigns to urge students to be careful about safety when driving;

(B) national trucking firms to alert their drivers to be especially focused on driving safely during the heaviest traffic day of the year, and to publicize the importance of the day using Citizen's band (CB) radios and in truck stops across the Nation;

(C) clergy to remind their members to travel safely when attending services and gatherings;

(D) law enforcement personnel to remind drivers and passengers to drive particularly safely on the Sunday after Thanksgiving; and

(E) everyone to use the Sunday after Thanksgiving as an opportunity to educate themselves about highway safety; and

(2) designates November 27, 2005, as ''Drive Safer Sunday''.

SENATE RESOLUTION 319—COMMENDING RELIEF EFFORTS IN RESPONSE TO THE EARTHQUAKE IN SOUTH ASIA AND URGING A COMMITMENT BY THE UNITED STATES AND THE INTERNATIONAL COMMUNITY TO HELP REBUILD CRITICAL INFRASTRUCTURE IN THE AFFECTED AREAS

Ms. MIKULSKI submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 319

Whereas on October 8, 2005, a magnitude 7.6 earthquake struck Pakistan, India, and Afghanistan;

Whereas the epicenter of the earthquake was located near Muzaffarabad, the capital of Pakistani-administered Kashmir, and approximately 60 miles north-northeast of Islamabad, with aftershocks and landslides continuing to affect the area;

Whereas the most affected areas are the North West Frontier Province, Northern Punjab, Pakistani-administered Kashmir, and Indian-administered Kashmir;

Whereas more than 75,000 people have died, nearly 70,000 are injured, and approximately 2,900,000 people are homeless as a result of the earthquake, and, according to the Executive Director of the United Nations Children's Fund (UNICEF), 17,000 of the dead are children;

Whereas the United States has pledged a total of $156,000,000 to provide assistance in the affected countries, with $50,000,000 to be used for humanitarian relief, $50,000,000 to be used for reconstruction, and $56,000,000 to be used to support Department of Defense relief operations;

Whereas the total amount of humanitarian assistance committed to Pakistan by the United States Agency for International Development is more than $40,000,000;

Whereas the Department of Defense has deployed approximately 875 members of the Armed Forces and 31 helicopters to aid in the earthquake relief efforts;

Whereas since October 8, 2005, United States helicopters have flown more than 1,000 missions, evacuated approximately 3,400 people, and delivered nearly 5,600,000 pounds of supplies;

Whereas the delivery of humanitarian assistance to the affected areas is difficult due to the mountainous terrain, cold weather, and damaged or collapsed infrastructure;

Whereas Secretary of State Condoleezza Rice, during her October 12, 2005, visit to Pakistan, said the United States would support the efforts of the Government of Pakistan over the long-term to provide assistance to the victims of the earthquake and rebuild areas of the country devastated by the earthquake;

Whereas the cost of rebuilding the affected areas could be in excess of $1,000,000,000; and

Whereas the recovery and reconstruction of the areas devastated by the earthquake will require the concerted leadership of the United States working with the governments of the affected countries and the international community: Now, therefore, be it

Resolved, That the Senate—

(1) commends the members of the United States Armed Forces and civilian employees of the Department of State and the United States Agency for International Development for taking swift action to assist the victims of the earthquake in South Asia that occurred on October 8, 2005;

(2) commends the international relief effort that includes the work of individual countries, numerous international organizations, and various relief and nongovernmental entities;

(3) commends the Governments of Pakistan and India for their cooperation in the common cause of saving lives and providing humanitarian relief to people on both sides of the Line of Control;

(4) encourages further cooperation between Pakistan and India on relief operations and efforts to fortify and expand peace and stability in the region as they cope with the impact of the earthquake during the winter of 2005 and the spring of 2006 and seek to rehabilitate the lives of those affected;

(5) urges the United States and the world community to reaffirm their commitment to